

# **WAIKIKI DEVELOPMENTS: STREAMLINING THE REGULATORY PROCESS**

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## FOREWORD

This report has been prepared in response to Senate Concurrent Resolution No. 153, H.D. 1, S.D. 1 (1998), requesting the Legislative Reference Bureau to study ways to streamline and eliminate duplicative regulations regarding proposed use projects in the Waikiki area. The Bureau sincerely appreciates the time and knowledge contributed to this study by the following individuals:

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Acting Director

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## EXECUTIVE SUMMARY

Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998) requested the Legislative Reference Bureau, in consultation with the City and County of Honolulu's Department of Land Utilization (now the Department of Planning and Permitting), to study existing regulations affecting proposed developments in Waikiki and suggest ways to streamline the regulatory process. This report analyzes relevant issues and the major laws affecting that process, and seeks to balance the competing needs of protecting Waikiki's environment while promoting Waikiki's economic revitalization. This report suggests possible directions for legislative action and makes several recommendations to streamline the regulatory process, including the following:

- Establish a 5-year Waikiki consolidated permit application and review pilot program, which includes streamlining techniques in addition to those already specified in the existing consolidated application process (CAP), to further increase permit consolidation, coordination, and simplification for proposed Waikiki projects.
- Amend the Environmental Impact Statement (EIS) law to accomplish various streamlining objectives relating to Waikiki, including: implementing concurrent processing (while allowing sufficient time for environmental review); updating and standardizing agency exemption lists; allowing for the preparation of master and focused EISs; establishing a regional environmental impact database; providing for greater use of the Internet and other computer assisted technologies; implementing environmental dispute resolution strategies; providing for standardized or joint EIS documents for the State and City and County; providing for functional equivalents in the EIS law; and amending the "Waikiki trigger" by limiting its applicability to proposed "major" uses in Waikiki, as defined by the City and County, and requiring the OEQC to review the need for the continuation of that trigger after five years.
- Amend the Coastal Zone Management (CZM) law by establishing a coordinated permitting process for projects in Waikiki's Special Management Area (SMA) and eliminating the statutory dollar threshold for SMA permits for Waikiki projects.
- Amend planning laws by increasing coordination of state and local plans affecting Waikiki; establishing an area-specific agency to streamline long-range planning, including infrastructure improvements; and streamlining planning for Waikiki's economic revitalization, including the creation of business improvement districts.
- Amend the Automatic Permit Approval law (Act 164, Session Laws of Hawaii 1998) by adding time extensions, application completeness provisions, and expedited appeals procedures to ensure long-term streamlining and avoid potential abuses.
- Give the City and County of Honolulu greater responsibility and control over streamlining without State interference, except where necessary to prevent environmental degradation or achieve other statewide objectives.

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# Chapter 1

## INTRODUCTION

### A. Scope of Study

Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1, which was adopted by the State Legislature during its 1998 Regular Session (see Appendix A), requested the Legislative Reference Bureau (“Bureau”), in consultation with the Department of Land Utilization (now the “Department of Planning and Permitting”) of the City and County of Honolulu, to:

1. Study existing regulations for proposed use projects located in the Waikiki area; and
2. Suggest mechanisms to streamline and eliminate duplicative process.

The purpose of this report is to address the issues discussed in the Concurrent Resolution and related development, environmental, and streamlining issues as they apply to Waikiki, and suggest possible directions for legislative action. While certain issues currently facing Waikiki, such as crime and public safety, are important to Waikiki’s future, these issues are not discussed in this report as they fall outside of the scope of the study requested by the Concurrent Resolution. A discussion of other relevant issues, including transportation-related issues, are included only to the extent that they relate to the subject matter of the Concurrent Resolution.

### B. Boundaries of Waikiki

Formerly the home of Hawaiian royalty and King Kamehameha’s first capital,<sup>1</sup> Waikiki, meaning “spouting waters” in Hawaiian,<sup>2</sup> once covered a much broader area than it does today: “The *ahupua’a*, or ancient land division, of Waikiki actually covered the area extending from Kou (the old name for Honolulu) to Maunalua (now referred to as Hawai’i Kai).”<sup>3</sup> Waikiki’s marshland, the boundaries of which changed seasonally, once covered about three square miles or 2,000 acres (about four times the size of Waikiki today) before the marshes were drained.<sup>4</sup>

For the purposes of this report, however, the boundaries of Waikiki are those delineated in the City and County of Honolulu’s land use ordinance establishing the Waikiki Special District (WSD). These are the same boundaries used to determine whether a proposed action in Waikiki will require an environmental assessment under the State’s Environmental Impact Statement (EIS) law.<sup>5</sup> While the boundaries of Waikiki also included the Diamond Head area under the original version of the EIS law when enacted in 1974,<sup>6</sup> and the City and County’s Development Plans also include the Ala Wai golf course, school, and park,<sup>7</sup> the current WSD boundaries essentially cover that area of Oahu bounded by the Ala Wai Canal, Kapahulu Avenue, and the shoreline, as shown in Appendix B.<sup>8</sup>

Certain projects that would appear at first glance to be in Waikiki are not actually in the WSD, although they may impact on Waikiki. For example, the Waikiki War Memorial Park and Natatorium are actually in Kapiolani Park in the Diamond Head Special District and not part of

the WSD.<sup>9</sup> Likewise, the Waikiki Aquarium, the Waikiki Shell, and the Waikiki Bandstand, despite their names, are not located within the WSD. Similarly, while the newly constructed Hawaii Convention Center impacts heavily on Waikiki's traffic, tourism, economic development, and other areas, the Convention Center lies completely outside of the WSD.<sup>10</sup>

### **C. Methodology and Organization**

The Bureau obtained information, data, and materials from the agencies and sources identified in the Concurrent Resolution, through interviews with the named parties or representatives of those parties, by telephone, in person, or both. The Bureau also mailed out a nonscientific survey to various diverse organizations in both the public and private sectors, the intent of which was to ascertain the views of those organizations on the issues presented in the Concurrent Resolution and elicit new ideas and suggestions on those issues. The survey asked whether the "Waikiki trigger" (discussed in chapter 3) should be repealed from the Environmental Impact Statement law, and whether any changes should be made to the State's Coastal Zone Management law or the City and County's Waikiki Special District ordinance to assist in streamlining regulations in Waikiki. The survey also asked for other specific measures that could be taken by the State, the City and County of Honolulu, or both, to streamline and eliminate duplicative regulations affecting Waikiki.

Surveys were sent to members of the public and government likely to be affected by changes to regulations affecting Waikiki, including representatives of environmental groups, planners, engineers, architects, business interests, labor interests, consultants, Native Hawaiian interests, developers, contractors, and Waikiki community and neighborhood advocacy groups, as well as persons who testified on S.B. No. 2665 (proposing to delete the "Waikiki trigger" from the EIS law), S.B. No. 2204 (proposing maximum time periods and automatic approvals for development or business-related permits, which was subsequently enacted as Act 164, Session Laws of Hawaii 1998), and S.C.R. No. 153, S.D. 1, H.D. 1. Of 68 surveys sent out, only 17 were returned by mail or E-mail. The Governor forwarded a copy of the survey to the state Office of Planning and the Office of Environmental Quality Control for their response, while the City and County Department of Permitting and Planning responded on behalf of Honolulu's Mayor. A sample copy of the survey letter and a summary of responses are attached as Appendix C, and the survey distribution list is attached as Appendix D.

It should be noted at the outset that, unlike other recent studies regarding Waikiki, such as the City Planning Department's 1996 "Waikiki Planning & Program Guide", which was developed after receiving the input of a number of different people and interest groups over "[m]onths of meetings, hours of testimony and the participation of countless organizations and individuals",<sup>11</sup> this report is decidedly undemocratic in its approach, due to limited time and resources for the completion of the report. The bulk of this report consists primarily of a review of relevant literature on the issues presented in the Concurrent Resolution, including relevant laws of the State, the City and County, and other jurisdictions, as well as the author's own analysis of these issues.

In contrast to the City's planning and program guide, no public hearings were held and public involvement was extremely limited. While a number of people were interviewed and

surveys were sent to groups representing various diverse interests in the topics under consideration, and information from these sources has been included to the extent appropriate and relevant, the survey was not intended to be a scientific or representative sampling, but rather to simply generate new ideas on issues that have been studied extensively over the years.<sup>12</sup> Despite the absence of extensive public input, however, this report nevertheless seeks to balance the competing interests involved in the issues presented in the Concurrent Resolution and arrive at equitable possible directions for legislative action.

This chapter introduces Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1, and presents a methodology and an organizational framework for the study. Chapter 2 provides background information regarding Waikiki, including reasons for the perceived need for streamlining regulations affecting Waikiki and other relevant issues. Chapter 3 reviews the primary federal, state, and local laws that affect streamlining issues. Chapter 4 discusses techniques and proposals to streamline the regulatory process generally with respect to Waikiki developments. Chapter 5 focuses on streamlining measures relating to specific state and county issues affecting proposed Waikiki developments, including the Environmental Impact Statement law, the Coastal Zone Management law, and planning laws. Chapter 6 contains the Bureau's recommendations and conclusion.

#### **D. Proposed Legislation**

Brief summaries of proposed legislation have been included in appendices at the end of this report. Copies of the full text of these bills have been distributed to individual legislators and are available at the Legislative Reference Bureau and on the Internet on the LRB Library's website at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html). While each of the proposed bills relates only to Waikiki, the Legislature may wish to amend these bills by expanding their application to other areas within the City and County of Honolulu or the State.

### **Endnotes**

<sup>1</sup> After his conquest of O'ahu, King Kamehameha retired to Waikiki: "Since he was there, along with his gods, his court, his queen Ka'ahumanu and Keopuolani, his wife-to-be, his generals and his priests, for intents and purposes, his government was there, thereby making Waikiki his capital.... Kamehameha moved to Honolulu in 1809, ending Waikiki's claim to being the capital. While this brief period hardly compares to the four-hundred years or so that Waikiki served as a capital for other kings, it was the most eventful time in Waikiki's history." George S. Kanahale, Waikiki, 100 B.C. to 1900 A.D.: An Untold Story (Honolulu, HI: The Queen Emma Foundation, 1995), p. 90. However, "[I]t wasn't until 1810, after peaceful negotiations with the chief of Kaua'i, that Kamehameha would finally be able to claim himself *mo'i* or 'king' of the Hawaiian Islands." Glen Grant, Waikiki Yesteryear (Honolulu, HI: Mutual Publishing, 1996), p. 4.

<sup>2</sup> Grant, *supra* note 1, at 4.

<sup>3</sup> Kanahale, *supra* note 1, at 5: "On a city map today, this measures roughly from Pi'ikoi and Sheridan Streets, crossing near Roosevelt High School to the main ridge at Papakolea, passing over Tantalus to the peak of Konahuanui, then along the crest of the Ko'olau Range along the ahupua'a of Kailua and Waimanalo to Maunaloa."

<sup>4</sup> Id. at 5-6.

<sup>5</sup> Hawaii Revised Statutes, §343-5(5).

- <sup>6</sup> As enacted, Act 246, Session Laws of Hawaii 1974, part of section 1, required environmental impact statements to be prepared for “[a]ll actions proposing any use within the Waikiki-Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas (map designated as portion of 1967 city and county of Honolulu General Plan Development Plan Waikiki-Diamond Head [Section A])....”
- <sup>7</sup> The City and County of Honolulu’s development plans for the primary urban center, which includes Waikiki, defines Waikiki as “the area generally bounded by the Ala Wai Canal, the shoreline, Kapahulu Avenue, and includes the Ala Wai Golf Course, Ala Wai School and Ala Wai Park.” Revised Ordinances of Honolulu §24-2.2(b)(2).
- <sup>8</sup> Revised Ordinances of Honolulu §21-7.80-2(a) provides that the Waikiki Special District boundaries are identified on Exhibit 7.13, a copy of which is attached as Appendix B.
- <sup>9</sup> State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development, Final Environmental Impact Statement, Waikiki War Memorial Park and Natatorium (Honolulu: 1995), p. 3-34.
- <sup>10</sup> State of Hawaii, Convention Center Authority, Hawai`i Convention Center, Final Environmental Impact Statement, Vol. 1 (Honolulu: July 1995), p. 1-5. The final EIS noted, however, that the Convention Center Authority would work closely with the City to ensure that the project supported the objectives of, and was consistent, within legislative limits and project economics, with the objectives of the Waikiki Master Plan. Id.
- <sup>11</sup> City and County of Honolulu Planning Department, Waikiki Planning & Program Guide (Honolulu: Feb. 1996), p. iii.
- <sup>12</sup> For example, Professor of Law Daniel Mandelker noted in 1976 that “Hawaii is blessed (or burdened?) with an abundance of environmental, housing, and planning studies which constantly examine and re-examine the major premises underlying urban growth and land planning policies for the islands.” Daniel R. Mandelker, Environmental and Land Controls Legislation (New York, NY: The Bobbs-Merrill Co., 1976), p. 290. Numerous additional studies have been requested on these issues since that time, especially with respect to Waikiki. Some of these studies regarding Waikiki are reviewed in chapter 2.

## Chapter 2

### BACKGROUND AND ISSUES

The purpose of this chapter is to provide an overview of issues and background information on Waikiki to provide a context within which to examine the streamlining issues raised in Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998).

#### A. Introduction

The focus of the Hawaii Legislature in adopting S.C.R. No. 153 is to “streamline and eliminate duplicative process[es]” with respect to “existing regulations for proposed use projects in the Waikiki area...”<sup>1</sup> As a preliminary matter, it is important to note that while duplicative processes, time delays, and related matters (which may be collectively included under the term “red tape”), are significant issues, they are *not* necessarily the most important factors affecting the pace of development in Waikiki. Other, arguably more important explanations for Waikiki’s problems, including national and international factors influencing Waikiki development, are briefly discussed in sections 3 and 4 of this chapter.

This is not to say that there is no need to streamline duplicatory regulations. There is, in fact, much that can be done to assist in streamlining regulations affecting Waikiki. Streamlining techniques and proposals are discussed in greater detail in chapters 4 and 5, and recommendations are summarized in chapter 6. Nevertheless, streamlining is often used as a “quick-fix” approach to resolving problems that may result in short-sighted solutions to what are in reality long-term problems. In this context, the focus of the Concurrent Resolution on red tape fails to adequately consider these other issues as discussed in this chapter, and may give policy makers and others a false sense that streamlining measures will “solve” all of Waikiki’s development problems.

Unfortunately, streamlining red tape in Waikiki is simply the tip of the iceberg. The intent of the discussion in sections 3 and 4 of this chapter on other issues affecting Waikiki development is to place streamlining in a broader context to give policy makers a better understanding of the complexity of the issues facing Waikiki, and the need to develop a long-term perspective in seeking to resolve Waikiki’s problems that may include streamlining measures, but which may also include such other areas as long-term planning. While beyond the scope of this study, long-term planning involves including affected groups in a consensus-building endeavor to develop goals and set and evaluate priorities. Streamlining, it may be argued, often fails to adequately consider the long-term effects on the environment and local community in Waikiki.

Moreover, in view of the fact that the Concurrent Resolution requests information regarding how to streamline, rather than whether it is appropriate to streamline, the Legislature implicitly takes the policy position that streamlining regulations in *some* form is appropriate with respect to the Waikiki area. At the outset, it should be noted that many people completely disagree with this policy position.

On the one hand, there are those who argue that there is in fact *no* problem with the existing State and City and County regulations affecting Waikiki, and that any attempt to change those laws will result in further unsuitable development, as well as increase the risk of continued environmental degradation in that district. Others contend that not only is there no need for streamlining, but existing regulations should if anything be strengthened to provide for better growth management and to ensure greater opportunities for meaningful public participation for those affected by proposed projects in Waikiki. It is also argued that the problem is not so much “streamlining” – which is often considered a code word for the further weakening of environmental and land use protections – but rather such areas as deficient planning, the failure to adequately enforce existing land use and environmental laws, and insufficient funding and enforcement of existing environmental programs.

It is further argued that amending the State’s Environmental Impact Statement law by removing references to Waikiki will remove the opportunity for meaningful public input in proposed projects in that district, thereby subjecting Waikiki to potentially inappropriate development that may substantially and permanently damage Waikiki’s fragile coastal environment. Furthermore, it may be argued that this study itself, which is by its own terms conducted without the benefit of public input, is yet another “quick fix” for Waikiki, in which long-term planning for that district by community groups is sacrificed for short-term election-year politics. When Waikiki tourism – still the State’s “cash cow” – is threatened, it is argued that Waikiki is used as a political football, as politicians look for ways to keep the tourists’ money flowing rather than take responsibility for establishing reliable mechanisms to fund needed improvements based on the expressed needs of Waikiki’s residents and others directly affected by proposed developments.

On the other side are those who not only agree with the assumptions underlying the Senate Concurrent Resolution, but believe that the Concurrent Resolution does not go far enough. For a variety of reasons, it is argued, Waikiki has become not only an urban resort but a declining urban resort, which needs an immediate infusion of capital to renovate its aging infrastructure and physical plant if it is to not only remain competitive with other global tourist destinations but to prevent its decline. Visitors, especially repeat visitors, seek new and interesting reasons to visit, requiring Waikiki to continually reinvent itself. In an industry in which hotels, restaurants, and other tourism-related businesses must be constantly changing and improving, it is argued, duplicative and time-consuming regulations frustrate this objective by slowing the pace of renovation and significantly adding to its cost.

Revitalization, it is argued, need not require the removal of the few remaining pockets of open space in Waikiki, but may even allow for increased green space if greater densities are permitted for the renovation of nonconforming properties. Waikiki should not be singled out for increased scrutiny under the State’s Environmental Impact Statement law because of the multitude of environmental and land use protections built into other State and City and County laws. A revitalized Waikiki, through the streamlining of duplicative and time-consuming regulations affecting development, will benefit both residents and visitors alike and will help to restore new life to that district. The best way to streamline Waikiki, it is argued, is for the State to resist interference or micromanagement in what is primarily a local issue. While beyond the

scope of this study, it is also argued that the State should be spending less time seeking to fix Waikiki's problems and instead spend more time exploring long-term ways to diversify the economy through such areas as technology and diversified agriculture to lessen Hawaii's reliance on tourism as the backbone of state economic development, thereby giving the City and County of Honolulu greater say over Waikiki's future.

Numerous plans and reports have been proposed for Waikiki over the years. Some of the earlier plans, including Lucius Pinkham's controversial 1906 "reclamation" report to the Board of Health<sup>2</sup> and Lewis Mumford's 1938 "Whither Honolulu" report on city planning, "called for the preservation of a parklike open, tropical atmosphere for Waikiki; the servicing of the district by adequate and properly maintained public infrastructures; and convenient access."<sup>3</sup> Later plans have focused increasingly on assuring Waikiki's viability as a world-class visitor destination while preserving and enhancing Waikiki's existing residential communities.<sup>4</sup> S.C.R. No. 153 is in fact one of two Senate Concurrent Resolutions adopted in the 1998 Regular Session that seek solutions to Waikiki's problems. The other resolution – Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998) – urged the State and City and County of Honolulu to work cooperatively to form a Joint Waikiki Task Force to explore the revitalization and renovation of Waikiki and surrounding areas, including the Hawaii Convention Center.<sup>5</sup>

Some of the most recent plans and reports relating to Waikiki that are discussed in this study include the following:

- **Waikiki Tomorrow Conference Report** (1989) was a state-funded conference involving months of planning by a steering committee of public and private sector participants and post-conference follow-up surveys, addressing economic, environmental, social, cultural, and transportation issues.<sup>6</sup>
- **City and County of Honolulu General Plan** (last amended by the City Council in 1992). The City's General Plan as it relates to Waikiki is discussed in chapter 3 of this report.
- **Vision for Waikiki 2020** and **Vision for Hawaii 2020** (both published in 1992). Vision for Hawaii 2020, a nonprofit organization, initiated Vision for Waikiki 2020 in 1990 using five internationally recognized planning and design teams to consult with the community and prepare plans for Waikiki's future.<sup>7</sup>
- **Waikiki Master Plan** (1992) culminated a two-year consensus building effort led by the City's Department of General Planning to provide a framework for public and private improvements to guide Waikiki into the next century.<sup>8</sup>
- **City and County of Honolulu Development Plan** (last amended by the City Council in 1996). The City's Development Plan for the Primary Urban Center, of which Waikiki is a part, is discussed in chapter 3 of this report.
- **Waikiki Planning & Program Guide** (1996). This planning guide contains the results of City and County-sponsored studies and reports on Waikiki "and builds



upon the visioning and physical planning work conducted over the past few years, in which hundreds of interested persons participated.”<sup>9</sup>

- **Waikiki Planning Working Group Report** (1998) was a collaborative effort of State and City and County agencies that was convened by the Governor in October 1996 to provide a coordinated effort to revitalize Waikiki.<sup>10</sup>

Residents, businesses, developers, environmentalists, planners, and others who are affected by state and county regulations affecting Waikiki developments are predictably cynical about the prospects of yet another study in a seemingly endless series of studies, all resulting in much talk and little action. This cynicism is reflected in the minimal response to the Bureau’s self-described “unscientific” survey of streamlining issues. This is not to say that there are no problems to “fix” in Waikiki, however.

This report makes a number of recommendations, including suggested legislative measures, to assist policy makers in resolving the issues identified in the Concurrent Resolution. However, part of the difficulty inherent in resolving the legitimate issues on each side is the often extreme polarity between those who, on the one hand, oppose the removal of regulations affecting Waikiki to prevent environmental degradation, with those who seek the removal of duplicative regulations to encourage Waikiki’s revitalization. This report instead seeks to steer a middle course. Viewing the two opposing positions as a continuum, with environmental preservation in Waikiki at one extreme and unfettered development at the other, this study proposes taking a *balancing approach* between these extremes whenever possible. This approach will predictably appeal to neither side. One side will likely believe recommendations made in this report go too far, while the other side will likely believe that the proposals do not go far enough.<sup>11</sup> Despite these concerns, this report seeks to present the issues in a fair, balanced manner, taking into account the arguments of opposing sides on each issue.

A key question that policy makers should bear in mind when considering the following issues in this chapter is whether the streamlining of regulations affecting development in Waikiki, which may encourage needed renovation and revitalization of that area, can be accomplished without reducing environmental quality in Waikiki. In other words, how can streamlining be reconciled with protecting Waikiki’s natural environment?

## **B. Streamlining “Red Tape”**

As discussed earlier, the Concurrent Resolution focuses on the streamlining and elimination of duplicative processes regarding regulations affecting Waikiki developments. This issue of “red tape” covers such problems as time-consuming bureaucratic routine required before official action can be taken on a permit, as well as unnecessarily complex or duplicative paperwork required for processing permits. As a “multipermit state”, University of Hawaii Law Professor David Callies has noted that “Hawaii has one of the most sophisticated and plan-oriented (albeit time-consuming) land-use regulation and development-permission systems in the United States, if not the world.”<sup>12</sup> He further noted, however, that “Hawaii’s development permit process is easily the most complex and time-consuming in the fifty states.”<sup>13</sup>

Many argue that development in Waikiki is hindered in part by the number of permits required, as well as delays in obtaining permits caused by excessive government red tape, including duplicative paperwork, lengthy permit processing periods, overlapping or cumbersome state and local regulations, and other factors. As discussed in chapter 3 of this report, the City and County of Honolulu's most recent permit register contains a listing of nearly one hundred federal, state, and county permit and other procedural requirements. Many of these permits are not required for Waikiki developments, nor are delays caused by bureaucracy limited to Waikiki projects;<sup>14</sup> nevertheless, the large number of permits that a developer in Waikiki may need to obtain contributes to the time needed simply to process all of the necessary paperwork involved. Although some delay in the land-use permitting process is inevitable, the problem of delay raises substantial policy and constitutional questions, although the question of whether this delay in Hawaii amounts to a deprivation of property without due process of law has not been resolved.<sup>15</sup>

The overall complexity of Hawaii's permitting system may contribute to delays in processing permits, especially if there is little coordination among state and county agencies having authority to issue permits.<sup>16</sup> Permit requirements drive up the costs of projects for several reasons. First, many developers feel the need to obtain professional consultants to guide them through the permitting process.<sup>17</sup> Another factor is obtaining project financing, which can add additional years to the completion of a project.<sup>18</sup> Changes in land development strategies and market conditions may also affect the length of time needed to obtain permits.<sup>19</sup>

As will be discussed further in chapter 5, legislation enacted in 1998 requires the establishment of maximum time periods for the review and approval of all business and development-related permit approvals and licenses. The failure of the issuing agency to process an application in a timely manner will result in automatic approval of the application. While this law may help to reduce delays in processing permits, it may also create other problems as discussed in that chapter.<sup>20</sup>

Despite these problems, others contend that the permitting system is necessary and beneficial, however complex and time-consuming, and allows issuing agencies the opportunity to mitigate project impacts by attaching conditions to proposed developments.<sup>21</sup> The permit process itself also serves to protect the environment and make affected parties conscious of the environmental and other impacts of proposed developments, provided that the process is not overly cumbersome.<sup>22</sup> Moreover, while obtaining environmental and other permits add to the cost of a project, "[b]etween 50 and 60 percent of all environmental permit applications are granted with little more than paperwork processing and payment of permit fees. When obtained in conjunction with traditional building permits, the additional costs to the project are minimal."<sup>23</sup> The remaining percentage of projects requiring permits are delayed for a number of reasons, including "[p]oor planning and blatant disregard for environmental degradation"; however, "[m]ost delays ... stem from two general problems: the applicant's failure to prepare an unambiguous application and provide all required data, or the deterioration of the agency/applicant relationship into that of adversaries. In most cases these delays are caused or aggravated by permit applicants."<sup>24</sup>

The permit process can affect a project in three ways, namely, (1) time and expense; (2) additions or alterations to plans; and (3) the demise of a project. The *time* it takes to obtain a

permit, which can be as valuable as capital to many applicants, includes “application preparation, waiting time until approval, delays in other phases of the project, and hours spent on the project by various personnel (such as draftsmen, estimators, engineers, biologists, and typists).” *Capital expenses* include “direct outlays in application fees, laboratory fees, legal fees, technical-expert fees, telephone, general overhead costs, paperwork, and travel.” *Alterations or additions* can add to project costs, and “occasionally facilitate the granting of a permit and prevent permit denial or subsequent litigation (which can be even more costly).” Finally, while *project demise* can sometimes be avoided by compromise, “[m]ore typically, however, projects that meet with a total denial of permits show a lack of environmental consideration in the initial design phase and a total lack of early communications with environmental agencies.”<sup>25</sup>

### C. Other Issues Affecting Waikiki Development

While excessive red tape is certainly a problem affecting development in Waikiki, it is only one of many such factors. The following are some of the other key issues affecting the scope and pace of development in the Waikiki area. These and related issues may need to be addressed by policy makers in the course of determining whether, and how much, streamlining of regulations is appropriate:

**1. Environmental issues.** One of the most contentious issues regarding proposed projects and activities in Waikiki is that of the appropriate pace and scale of development versus environmental protection and preservation in Waikiki. As discussed in chapter 3 of this report, Hawaii’s Constitution provides for the broad protection and conservation of the State’s environmental resources.<sup>26</sup> Statutes relating to environmental quality control, environmental impact statements, and pollution control seek to implement the Constitution’s mandate that the State and its political subdivisions “conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources....”<sup>27</sup> Hawaii has developed rigorous protection of its environmental resources, it may be argued, because of the unique problems facing Hawaii as the nation’s only island state.<sup>28</sup>

Despite state constitutional provisions designed to protect Hawaii’s environment, and a number of statutes designed to protect and preserve the State’s environmental resources, including strong enforcement provisions, these laws have proved ineffective in ensuring environmental quality.<sup>29</sup> Hawaii’s strong protection of its environment and natural resources, perhaps more than any other state, is vital to its visitor industry: “Finally, probably no other state is as economically dependent on the quality of its environment as is Hawai’i. For Hawai’i’s economic success to continue, the state must insure the protection of the beaches, coastlines, swimming areas, and natural vegetation that do so much to attract tourism.”<sup>30</sup> In particular, environmentalists argue that Waikiki’s remaining resources – exploited through years of overdevelopment – should be preserved, not only for their own sake but to ensure Waikiki’s survival as a world-renowned tourist destination. After all, one of the primary reasons that tourists have come to Waikiki over the years include Waikiki’s tropical setting, clean beaches and water, views of Diamond Head and other scenic vistas, and natural beauty. If these resources are degraded, it is argued, tourists would be less inclined to visit this particular urban resort as opposed to other less expensive, less urban, and more accessible resort areas.

Public participation in decision making affecting the environment and land use is also a key component of preventing the degradation of Waikiki's natural environment. Effective citizen involvement, it has been noted, provides two major benefits: "increasing the civility of the decision-making process and enhancing the rationality of policy decisions.... [T]rust and civility must ultimately rest on citizen satisfaction with the openness, accessibility, and fairness of administrative decision making."<sup>31</sup> Removing the "Waikiki trigger" from the State's Environmental Impact Statement law would significantly reduce the opportunity for public input regarding projects that may adversely affect Waikiki's environment and reduce the accountability of public officials. Streamlining, in this context, is viewed by environmentalists as a euphemism for decreasing environmental regulation, in that it trivializes the public's role in decisions that affect the environment and removes or diminishes the State's and City and County's responsibilities in environmental regulation and preventing inappropriate development that could irrevocably harm Waikiki's environment. Harming Waikiki's environment, in turn, would cause tourists to seek other tropical destinations with cleaner environments.

**2. Development issues.** Generally, developers argue that new development contributes to state and local economic development by helping to create new jobs, revitalize urban districts, and increase tax revenues, and that revenues from property and other taxes accruing from development are needed to pay for schools, roads, water, sewage, and other public services and infrastructure. Despite these public benefits from development, however, it is argued that, beginning in the 1970s, with the enactment of numerous overlapping federal, state, and local environmental controls, both large and small developers have been caught in "webs of bureaucracy, uncertainty, and ill-defined purpose...."<sup>32</sup>

In addition, it is argued, overlapping procedural and permitting requirements of environmental protection statutes often place developers in a "take it or leave it" position when dealing with government on unclear or sensitive ecological issues. Many developers were forced to compromise with governments over environmental issues, often to their detriment: "In most cases, the developer did the majority of the compromising and often the end results showed that the developer was required to concede much more in the direction of environmental protection than the legislation initially intended."<sup>33</sup> Environmental permitting requirements also adversely affect the time and cost of development, causing many developers to rethink the type and price range of housing and other projects, or even whether to start proposed projects, leading one commentator to argue that "[t]he permitting process failed to give balanced consideration to the economic and social needs of society."<sup>34</sup>

Developers in Waikiki have also faced significant opposition from the public. In 1993, the City's Planning Department wrote: "Concerns regarding further development in Waikiki have come to the forefront during the past year and led to a one-year construction moratorium. Public opposition to development in Waikiki has become more vocal in light of several recent residential housing developments that were demolished in anticipation of redevelopment."<sup>35</sup> Development companies doing business in Waikiki will need to generate greater public support to stay in business.<sup>36</sup>

Finally, it is argued that Waikiki is already highly developed, and should not be treated as if it were a non-urban resort destination. In this context, it is argued that development in Waikiki

is already highly regulated. The “Waikiki trigger” in the State’s EIS law is simply another regulatory burden that developers find to be redundant or duplicative, given the existence of other State and City and County laws regulating Waikiki development, as discussed in chapter 3, which needlessly extend the time period for project completion and result in the wasteful and inefficient use of resources. When Waikiki faced rapid development in the early 1970s, there were no other mechanisms in place to provide for the comprehensive review of development projects. However, there is no longer a continuing justification for singling out Waikiki for special environmental review, it is argued, given the existing rigorous permit requirements for projects in that district.

**3. Land use and planning issues.** As Professor Callies has noted, “[t]here are few matters of public policy in Hawaii that do not include planning for the use of land.”<sup>37</sup> Hawaii is unique among the states in providing for state-wide land regulation: “The rational basis for this state-centered land-use control is probably the historically central nature of government in Hawaii. This is also reflected in the dearth of local governments. There are no cities, villages, towns, or special districts, but only the four counties of Honolulu, Hawaii, Kauai, and Maui.”<sup>38</sup> Centralized land use control was codified in the State’s Land Use Law in 1961, which “represented an attempt to preserve prime agricultural land from increasing urbanization in a state that still regarded agriculture as its economic mainstay.”<sup>39</sup>

However, according to University of Hawaii Professor Karl Kim, changes in Hawaii’s agriculture-based economy since that time have caused growing concern over the pace of development and the direction of state land use, planning, and environmental policies.<sup>40</sup> On the other hand, Kent Keith, former President of Chaminade University in Honolulu, has argued that public fears of overdeveloped land are misplaced, arguing that Hawaii is not overdeveloped, but rather “underpreserved.” He argues that there is actually “plenty of land”, most of which is open space, but that the bulk of the population resides on Oahu, and that “significant growth in residential and commercial development” can be sustained “with only a small increase in the percentage of our land which is urbanized...”<sup>41</sup>

Development battles are also due in part to the sensitivity of land use decisions, which affect not only the enjoyment of private property rights but “many other aspects of a community’s lifestyle – e.g., population composition, environmental quality, recreational opportunity, and fiscal stability.”<sup>42</sup> As noted earlier, public participation in decision making affecting the environment and land use is a major component to preventing environmental degradation. However, controversies arising from land use decisions may result in conflicts between citizens’ groups and government agencies over land use decisions that could add further delays to the permitting process.<sup>43</sup> Streamlining measures that seek to reduce opportunities for public participation may therefore fail to achieve their objectives in the face of strong public opposition and mobilization against a controversial development proposed for Waikiki.

Development pressures experienced in other areas of Hawaii have been felt keenly in Waikiki. The need for implementation of effective planning and land use regulations has been advocated at least since the 1950s.<sup>44</sup> At that time, Waikiki’s new “concrete canyons”, it was believed, would make Waikiki less attractive to tourists, who were beginning to arrive in greater numbers.<sup>45</sup> With statehood and the enactment of the Land Use Law, Waikiki became subject to

greater planning. Yet despite a number of proposals, including plans for more orderly growth by citizen advisory committees, as well as an urban renewal plan proposed by the Honolulu Redevelopment Agency for part of the district, development and tourism pressures in Waikiki continued to fuel construction without giving sufficient consideration to infrastructure and other necessary improvements.<sup>46</sup>

As noted in chapter 3, under Hawaii's Land Use Law, lands in the urban district fall under local control. As part of the urban district, lands in Waikiki are under the jurisdiction of the City and County of Honolulu, which in 1976 responded to the rapid pace of development by adopting a land use ordinance designating Waikiki as a "Special Design District" (later renamed the "Waikiki Special District" or "WSD").<sup>47</sup> However, the new ordinance ironically accelerated the pace of development at first by a liberal grandfather clause allowing more than forty projects to be constructed under the previous, more permissive zoning regulations; however, the pace of development subsequently slowed dramatically.<sup>48</sup>

In addition, as discussed further in chapter 3, subsequent amendments to the Waikiki Special District in 1996 were designed to provide greater flexibility in replacing nonconforming structures and uses in the district in order to encourage renovation. Some argue that the 1996 changes are counterproductive by allowing for greater building densities, which could once again allow for uncontrolled growth. For example, Mr. Donald Bremner, a city planner and former chief executive officer of the Waikiki Improvement Association during the time that the Waikiki Special Design District ordinances were enacted, has argued that the 1996 amendments threaten "the attractive environment of Waikiki with over-crowding by fostering population densities like those found in New York City and Tokyo."<sup>49</sup> Others maintain that the 1996 WSD amendments now make it possible for hoteliers to renovate their properties with fewer restrictions, and that overhauling obsolescent properties is needed to update 1950s and 1960s hotels to the standards now expected by today's vacation and business travelers.<sup>50</sup>

The challenge for policy makers is to balance the need for streamlining regulations affecting Waikiki to permit updating of older facilities and infrastructure with the need to protect environmental quality in Waikiki. This is becoming increasingly difficult, both by Waikiki's growing population and the millions of tourists who visit Waikiki every day, both of which "impose enormous burdens on the resources that serve to attract these tourists to Hawai'i. In short, potential conflicts exist between, on the one hand, the need to continue the development of an infrastructure to accommodate residents and visitors and, on the other hand, the desire to accommodate massive tourism with a clean and healthy environment. How Hawaii addresses these issues will determine its ecological fate."<sup>51</sup>

**4. Political Issues.** Political issues with respect to streamlining regulations affecting Waikiki relate primarily to state vs. county responsibility. This interjurisdictional tension in Waikiki is a reflection of the broader issue of where state and county responsibilities lie in the implementation of the State's Land Use law.<sup>52</sup> The federal government also plays an important role in Waikiki's land use and development policies. Professor Callies maintains that "[n]owhere is federal land policy more an issue than over use and disposal in critical urban areas like Waikiki where desirable oceanfront land is sought for development by the private sector and for park or open space by the public."<sup>53</sup> However, while the federal government also shares

some responsibility for public facilities and services, neither the State nor City and County have jurisdiction over the federal government, and must seek its cooperation with respect to overlapping jurisdictional issues. Federal, state, and local jurisdictions in Waikiki include the following:

- Federal. The federal government (the Department of the Army) has jurisdiction over Fort DeRussy, which is strategically located near the center of Waikiki and is now Waikiki's largest open space, and the U.S. Post Office occupies a site on Saratoga Road. The Waikiki Master Plan noted that while the Army "has sought to work cooperatively with the State and City governments with respect to the planning of facilities and the provision of services in Fort DeRussy, ... there are elements of the current plans for Fort DeRussy which are in conflict with the goals of the Waikiki Master Plan."<sup>54</sup>
- State. The state government is responsible for several major facilities in Waikiki, including: the Ala Wai Canal and Ala Wai Yacht Harbor, under the jurisdiction of the Department of Land and Natural Resources (DLNR);<sup>55</sup> Ala Moana Boulevard, under the jurisdiction of the Department of Transportation; Thomas Jefferson Elementary School, under the joint jurisdiction of the Department of Education and Department of Accounting and General Services; and various state health and social welfare programs affecting Waikiki residents. In addition, the regulation of activities and uses on Waikiki Beach and nearshore waters are under the jurisdiction of the DLNR.<sup>56</sup> Finally, the State provides direct support for the Hawaii Visitors and Convention Bureau and its subsidiary, the Waikiki Oahu Visitors Association, which are involved in market research and the promotion of Waikiki.<sup>57</sup>
- City and County. The City and County government is responsible for most public services and facilities in Waikiki, including the following:
  - Public safety services, including police, fire, ambulance, and beach lifeguards;
  - Sewer and potable water supply systems;
  - Transportation system, including public transit, public parking, traffic control, street lighting and signage, and most sidewalks and roadways, with the exception of Ala Moana Boulevard;
  - Public recreational facilities, including Kuhio Beach Park and several small parks within Waikiki;
  - Refuse collection for single family dwellings and small apartment buildings;
  - Housing assistance and programs for the elderly and disabled; and
  - General government functions, including regulation of development through zoning and building codes.<sup>58</sup>

The issue of state-county responsibility in Waikiki touches on the parallel issue of home rule.<sup>59</sup> Home rule issues have been raised concerning state-county jurisdictional disputes over the future development, direction, and control of Waikiki. On one side are those who believe that the City and County should have primary responsibility and control over Waikiki's future. For example, former City and County of Honolulu Mayor Frank Fasi in the early 1990s opposed plans for the creation of a state-created Waikiki task force as violating the City and County's home rule authority.<sup>60</sup> Former state legislator Fred Hemmings has argued that state efforts at regulating Waikiki would tend to duplicate county government efforts.<sup>61</sup> Others regard the State's interest in Waikiki as a positive step towards collaboration on improving Waikiki or as a catalyst for state-county competition.<sup>62</sup> Still others, including former Honolulu City Council Chair Arnold Morgado, have maintained that the State is the proper entity to regulate Waikiki.<sup>63</sup> Proposals to merge the responsibilities of the State and City and County with respect to Waikiki have not been pursued, however, apparently for lack of interest by government offices in ceding authority over their respective jurisdictions. For example, the Waikiki Master Plan rejected a plan to consolidate planning and services relating to Waikiki under a new authority.<sup>64</sup>

Another concern is that developers in Waikiki may be caught in the middle of an inter-jurisdictional dispute as to the appropriateness of a particular project. "A developer must thoroughly analyze the political climate of the various levels of government to ascertain whether they advocate no growth, controlled growth, or new development before undertaking a project."<sup>65</sup> A developer planning a project in Waikiki may be required to obtain government approval for permits on the federal, state, and city and county levels. It is possible that a developer can obtain the necessary approvals from two of the levels and still not be able to proceed because of failure to obtain the necessary permits at the third level of government. "How is it then possible for a developer to accurately and adequately plan for a project in an atmosphere where politics may be the ultimate controlling factor? It is one more risk factor to be considered."<sup>66</sup>

**5. Cultural issues.** Cultural issues affecting Waikiki relate primarily to the emphasis on creating, or recreating, a "Hawaiian sense of place" in Waikiki (as required under 1996 amendments to the Waikiki Special District ordinances), and issues relating to Native Hawaiians. Dr. George Kanaha, a local authority on Hawaiian history and culture, noted the growing sense of urgency on the part of many in the visitor industry that Waikiki be made more "Hawaiian".<sup>67</sup> Dr. Kanaha further noted that while Waikiki had become "de-Hawaiianized" by the year 1900,<sup>68</sup> a number of steps could be taken to make Waikiki more Hawaiian, as outlined in his 1994 work "Restoring Hawaiianness to Waikiki".

The City and County of Honolulu has also recognized the need for restoring Waikiki's Hawaiianness. For example, in reviewing ways to ensure the long-term health and vitality of Waikiki, the City Planning Department in 1996 noted that there was a need for the availability of adequate infrastructure; an efficient, reliable transportation system; a perception of Waikiki as a clean, comfortable, and safe place to live; and, "perhaps most importantly, Waikiki must retain and enhance its history, spirit, culture, and a 'Hawaiian sense of place.'"<sup>69</sup> Dr. Kanaha has been credited with developing and interpreting the concept of a Hawaiian sense of place, which recently received wide publicity in the design of the Hawaii Convention Center.<sup>70</sup> A 1996



amendment to the City's Waikiki Special District ordinance provides that one of the objectives of that district is to "[p]romote a Hawaiian sense of place at every opportunity."<sup>71</sup>

One of the primary reasons for developing a Hawaiian sense of place is to lure the "contemporary traveler [who] now wants to learn about Hawaii's history, wants to understand Hawaii's culture and wants to experience Hawaii's unique qualities which can be found nowhere else on this earth."<sup>72</sup> Efforts to implement this approach include public/private partnerships to establish a Waikiki Historic Trail and Marker program as well as cultural and entertainment programs featuring authentic Hawaiian music and dance, and by emphasizing the positive assets in Waikiki's environment.<sup>73</sup> Dr. Kanahale has maintained that qualified ethnic Hawaiians should be invited to take an active part in Waikiki-related organizations, including the Waikiki Improvement Association, Hawaii Hotel Association, and the Hawaii Visitors Bureau, and should be placed on boards of directors or trustees of these and other organizations.<sup>74</sup>

Others argue that Waikiki fails to nurture or protect the tangible and intangible qualities that make Hawaii unique: "Hawaiian music is an example. It is now the biggest regional music selling in the United States. But Waikiki showrooms host Las Vegas-style Elvis impersonator shows and magic acts. Those who seek authentic Hawaiian would do better to travel to Carnegie Hall in New York City, where it is often showcased."<sup>75</sup> Some Native Hawaiians' concerns for Waikiki, however, go well beyond whether new or renovated buildings in Waikiki comply with the Waikiki Special District's "Hawaiian sense of place." For example, Haunani-Kay Trask argues that Native Hawaiians have been subject to the theft of both their culture and lands by "the foreign, colonial country called the United States of America..."<sup>76</sup> Historically, Native Hawaiian opposition to private and government plans for Waikiki date back to (at least) the last half of the 19<sup>th</sup> century and the establishment of the Ala Wai Canal in the 1920s.<sup>77</sup>

Other potential cultural conflicts in Waikiki, mostly between Native Hawaiian groups and developers who are concerned about project delays and rising construction costs, include the following:

- Historic preservation and the protection of inadvertently discovered Hawaiian burial grounds and cultural and other archaeological sites;<sup>78</sup>
- Traditional and customary Native Hawaiian rights, including access, water, and gathering rights;<sup>79</sup>
- Alteration of seaward boundaries, and ownership claims of submerged lands or newly created beach front lands in Waikiki, such as by accretion or avulsion;<sup>80</sup> and
- Issues relating to ceded lands in Waikiki (public trust lands once belonging to the Hawaiian Monarchy), including the State's payment of a portion of revenues derived from the Waikiki Duty Free outlet – which is not located on ceded lands – to the Office of Hawaiian Affairs.<sup>81</sup>

**6. Tourism issues.** Waikiki is said to be “the heart of the visitor industry in the State of Hawaii”,<sup>82</sup> and the economic engine that drives the State’s economy. In 1996, the City’s Planning Department noted Waikiki’s importance to the State’s economy:

Today Waikiki hosts up to 70,000 visitors daily and has a direct work force for tourism of 38,800 persons. Waikiki generates 45% of all State visitor expenditures, nearly \$4.9 billion annually. It generates 60% of all hotel room taxes, 16% of our state’s gross excise tax, and 14% of the City real property taxes. It comprises 18% of the gross state product (GSP).

Even if these impressive statistics may underestimate Waikiki’s economic contribution. It is likely that many other parts of the state would lose their visitor appeal if Waikiki were not also available to visit.<sup>83</sup>

While Waikiki’s appeal to both domestic and international travelers “remains the allure of its natural beauty and native culture”,<sup>84</sup> there is a growing realization that Waikiki is in danger of losing its strong market position due to a lack of reinvestment and renovation. For example, the Waikiki Planning Working Group, a collaborative intergovernmental project convened by the Governor in 1996, reported in 1998 that despite Hawaii’s competitive strengths, it was also beginning to experience some of the problems associated with a “maturing” visitor destination: “Waikiki is the State’s largest and best known visitor destination, but it is also our oldest. With Waikiki’s visibly aging infrastructure, steps need to be taken to retain Waikiki’s image as our flagship destination.”<sup>85</sup> The City Planning Department further noted the need for the upgrading of Waikiki’s aging physical plant, noting that investment and reinvestment in Waikiki were necessary to prevent decline, since “[u]rban decline would be disastrous to Waikiki’s competitiveness and to the State’s economy.”<sup>86</sup>

While Waikiki remains the State’s premier visitor attraction and the gateway for first time visitors, the Neighbor Islands are drawing increasing numbers of visitors. These destinations, many of which are master planned developments, are less urban and generally newer than Waikiki. For example, in Waikiki, ninety percent of the room inventory in Waikiki is ten years or older, while about fifty-five percent of Waikiki’s hotels are over twenty years old. This compares to the visitor plant on the Neighbor Islands, “where only about 55 percent of visitor plant inventory exceeds 10 years, with many new developments still being planned. This is indicative of the development boom that the Neighbor Islands enjoyed during the 1980s as each Neighbor Island increasingly became a more distinctive Hawaii destination apart from Waikiki.”<sup>87</sup>

In addition to aging infrastructure and dated resort facilities, other problems facing Waikiki tourism include “overcrowding, traffic congestion, obliteration of views and landscape, and urban decay.... Much of the charm, culture, beauty of the idealized Hawaii is disappearing from Waikiki.”<sup>88</sup> While Mr. Clem Judd, the former President of the Hawaii Hotel Association has argued that “Waikiki has probably been the one resort that has defied the traditional resort decline syndrome”,<sup>89</sup> others argue that “...Waikiki has been deemed obsolete, decaying, a candidate for long-term rehabilitation by Resorts Anonymous.”<sup>90</sup> Some of the less desirable aspects of Waikiki may even be discouraging repeat visits to Hawaii.<sup>91</sup> The increasingly urban character of Waikiki, the imbalance between Waikiki’s built and natural environments, and the

lack of cultural and recreational facilities for local residents has led some to characterize Waikiki as a “concrete jungle” and a “tourist ghetto”.<sup>92</sup> There is a recognition that new investment is necessary “in order to keep pace with changing tourist preferences, capture new markets, and match the attractions offered by competing tourist destinations.”<sup>93</sup>

Waikiki’s status as a maturing visitor destination is not unexpected: “Most products on the market are subject to a product life cycle which begins with a surge of interest in a new product (assuming the product fills a need), followed by a mature stage of slower growth as competitive products are introduced and the product’s long-term market share is reached. This phase may be followed by declining market share if the product cannot adapt to changing consumer desires and tastes.”<sup>94</sup> The challenge is to repackage Waikiki as a new and vibrant destination to attract new markets: “Sometimes a product in the mature stage can be ‘reinvented’ to widen its appeal and stimulate growth by broadening its market. Services such as tourism may be particularly adept at this kind of transformation. For instance, in response to the proliferation of gaming activity in other states, Las Vegas has developed theme parks and family-oriented entertainment to reposition itself and attract new markets.”<sup>95</sup>

One type of transformation may be the reinvention of Waikiki as a meeting and convention-oriented visitor destination following the recent opening of the Hawaii Convention Center.<sup>96</sup> Business travelers, who typically travel for shorter periods of time and often combine business with some pleasure travel, bring somewhat different expectations from other types of travelers.<sup>97</sup> While the Convention Center is expected to help boost business travel to the State and generate new jobs,<sup>98</sup> meeting planners maintain that Hawaii has “only a brief window of opportunity to establish itself as a premier meeting and convention destination” and must move aggressively against competition to attract business to the State, including addressing the perception among planners who “consider Hawaii to be only a fun destination where serious business cannot be conducted.”<sup>99</sup> It is also argued that “simply having a convention center or spending millions of dollars on expensive television advertising is not enough to sell a visitor destination”; rather, “it is customer satisfaction that brings people back. People want nice hotels, their personal safety assured and interesting attractions.”<sup>100</sup>

#### **D. Other Factors**

In addition to the issues discussed in section 3 of this chapter, other factors affecting the pace of development in Waikiki include the following, many of which are not limited to Waikiki, but affect the State as a whole:

- **Stagnant state economy.** Although the United States is currently in its seventh year of economic expansion, and the revenue picture for most states is bright,<sup>101</sup> Hawaii’s economy has been stagnant during roughly the same time period. “For three straight years, Hawaii has led the nation in an annual cost-of-doing-business survey by Regional Financial Associates, and last year it ranked fourth highest in the rate of business failures. Even the \$11.6 billion tourism industry has suffered, with more than half of the state’s 770 hotels currently operating in the red.”<sup>102</sup> The head of the Federal Reserve Bank for the 12<sup>th</sup> District, which includes Hawaii, has noted that “Hawaii’s eight-year economic malaise likely has been the longest

regional downturn in the nation”, and that Hawaii’s economy is not likely to rebound until Asian economies, particularly that of Japan, improve.<sup>103</sup>

- **Japan’s economic crisis.** Japanese investment and tourism plays a large role in Hawaii’s economy. In 1997, Japanese visitors contributed forty percent of total expenditures; Japanese tourism generates \$240 million in annual payroll spending in the State, while Japanese spending at duty-free shops and other services produces \$150 million a year of the annual airport concession fees received by the State. However, there are already indications that spending by Japanese tourists could be as much as \$130 million lower than in 1997, mostly because of Japan’s financial and banking crises and the sliding yen. Visitors from Japan and Asia have already dropped thirteen percent over 1997. International economic experts maintain that Japan’s financial crisis is more firmly rooted than most people realize, and that Hawaii’s already troubled economy is at risk because of it: “... a major fall in Japan – making the Japanese unwilling to travel and exacerbating the economic meltdown already happening in much of Asia – would be a major setback for the islands.”<sup>104</sup> In May, occupancy rates in Waikiki fell below seventy percent for the first time since 1985,<sup>105</sup> while in August, usually one of Hawaii’s strongest tourism months, “[t]he continuing plummet in the number of visitors from Japan pushed Hawaii’s hotel-occupancy rate to its lowest level in 15 years.... In Waikiki, the number of occupied hotel rooms tumbled 3.8 percent in August to 78.9 percent. It was the lowest occupancy rate on Oahu in nearly 20 years....”<sup>106</sup>
- **Stock market uncertainty.** Just as Hawaii’s tourism industry is trying to recover from a drop in Asian visitors, who are also spending less money while in Hawaii, combined with a summer strike by Northwestern Airlines’ pilots that cost the State about \$2.5 million per day, concerns about the stock market and foreign economic problems “could shake consumers’ confidence on the Mainland, and bite into a visitors’ market that has so far helped to prop up Hawaii’s sagging arrival numbers, according to local experts. It also could take a toll on local consumer’s confidence, causing even further tightening of purse strings.”<sup>107</sup>
- **Unfriendly business climate.** A widely-held perception is that the State has an unfriendly regulatory atmosphere and antidevelopment attitude. This perception is held in part because Hawaii’s “taxes, regulations, and worker mandates are among the most onerous in the country. Its judiciary often stifles development. ... Many locals blame the state’s woes on the lingering ‘plantation mentality,’ a holdover from the 1950s and 1960s when strong unions protected agricultural workers from the power of corporations.”<sup>108</sup> Perceived shortcomings in the State’s collective bargaining and civil service systems have also contributed to the view of an inefficient government bureaucracy.<sup>109</sup> Employee mandates, “many of which are the most stringent in the nation”, include the requirement that employers pay virtually all of their workers’ health insurance premiums.<sup>110</sup>
- **Land speculation.** The Chair of the Department of Urban and Regional Planning at the University of Hawaii, Professor Karl Kim, maintains that land speculation in

the 1980s and the current correction in prices arguably plays a much larger role in Waikiki's development problems than that of government red tape. Land speculation, by both Japanese and other foreign investors in the 1980s, resulted in price escalation in Waikiki. As patterns of foreign investment changed, Waikiki became more globalized. Essentially, people paid too much money for Waikiki properties, and many of Waikiki's current land problems may be due to a correction in prices. Recent reports of hotel sales in the Waikiki area appear to support Kim's arguments: "On a price-per-room basis, Waikiki hotels are selling on average for half of what they were going for in the peak year of 1989..."<sup>111</sup> In addition, Kim argues, during the period of price escalation, there was little attempt to manage or mitigate foreign investment in Waikiki, such as requiring the build up infrastructure reserves through exactions or development agreements, or by assembling parcels of land through better planning, and marketing them to investors.<sup>112</sup>

- **Leasing commercial property and high lease rents.** Most businesses in Hawaii do not own the land underneath their properties, but instead pay rents to landowners, which increases the cost of doing business. Generally, the practice of leasing commercial property, rather than allowing direct business ownership, "continues to scare off business investment."<sup>113</sup> A related problem is that in the renegotiation of lease rents, land values may be exaggerated under appraisal methods that use comparable properties financed with Japanese funds during the so-called "Japanese bubble period" in the late 1980s.<sup>114</sup>
- **Resort life cycle.** The Dean of the School of Travel Industry Management at the University of Hawaii, Professor Chuck Gee, maintained after extensive study that resorts, like most products, have life cycles, and generally progress through the following four phases:
  1. *Discovery.* A newly developed area becomes a destination as the more adventuresome travelers find it and tell their friends. Tourist infrastructure and services are developed to a moderately high level, enabling high levels of patronage.
  2. *Transfer of Ownership.* The pioneers cash in on their high risk investments. Locals lose control to absentee owners. There is substantial expansion of tourist infrastructure and services, and solid market growth.
  3. *Maturity.* Characterized by full occupancy and only occasional reinvestment.
  4. *Harvesting and Decline.* The "milking mode" where owners and operators capitalize on an established market base with little or no reinvestment, leading to a full-fledged decline.<sup>115</sup>

Industry experts generally characterize Waikiki as a "mature" or "maturing" resort destination, which is recently beginning to experience some of the problems associated with that label, including aging infrastructure and lack of reinvestment.<sup>116</sup>

- **High hotel room taxes.** Hawaii’s transient accommodations tax has been used to shift a portion of the State’s tax burden to visitors. That tax was recently raised, upon the recommendations of the Economic Revitalization Task Force, to establish a dedicated source of funds for tourism.<sup>117</sup> The President of the Hawaii Hotel Association has argued, however, that high hotel room taxes are counterproductive in Hawaii as opposed to other cities. Hotel guests in highly taxed mainland cities, such as Los Angeles and New York, are predominantly on business trips that are paid for by corporate expenses accounts, so that a hotel room tax does little to deter those travelers from doing business in those cities. Hawaii, on the other hand, differs from these destinations “in that almost all of our visitors have a choice where to go for their vacations, which are paid for out of their own savings. If they feel taxes imposed on them are too high here, they can simply choose to seek a less-expensive option, or at the very least, reduce the length of their Hawaii stay or their spending while they are here.”<sup>118</sup> High hotel room taxes are part of Hawaii’s overall high prices that some mainland and Japanese visitors say they dislike most about Hawaii.<sup>119</sup>
- **Waikiki hotel room cap and moratorium on hotel construction.** It has been argued that because of the 1977 “visitor unit cap” placed on the total number of rooms allowed in Waikiki by the Honolulu City Council, combined with the more recent five-year moratorium on new hotel construction,<sup>120</sup> “there has been a 20-year disincentive for investors to build anew. There have been several renovations due to new tax credits, but only on a few properties. As a result, the hotel stock lost its freshness and Waikiki has gone down-market, with the attendant social problems of street crime, prostitution, litter and social alienation.”<sup>121</sup> Waikiki’s hotel room cap, according to some,<sup>122</sup> has discouraged renovation in an industry that requires continual updating to draw back visitors.<sup>123</sup>
- **Ordinances discouraged renovation of nonconforming structures.** Another reason given for Waikiki’s deterioration is that the Waikiki Special Design District ordinance, which was enacted by the Honolulu City Council in 1976 to regulate land uses in Waikiki (later changed to the “Waikiki Special District”, or WSD), “made 90 percent of the buildings in Waikiki nonconforming, so any remodeling would require a complete teardown.”<sup>124</sup> In 1996, the City and County Planning Department also found that the existing WSD ordinance, whose goal was to maintain Waikiki’s current and future economic viability, was actually a major impediment working *against* improvement.<sup>125</sup> As discussed in chapter 3, the WSD ordinance was subsequently amended in 1996 to address the problems identified by the City’s Planning Department.
- **Trend toward neighbor islands resort areas.** Tourists have begun to expand their sights away from Waikiki to the neighbor islands: “American visitors, many of whom have been here before, increasingly bypass Waikiki, heading straight to newer, more laid-back Neighbor Island Resorts. Some Japanese are beginning to follow them.”<sup>126</sup> Many repeat visitors to Waikiki have expressed a “been there,

done that” attitude towards Waikiki and have gravitated to Maui, which has catered to high-end demographics of professionals and corporate executives, or to smaller, select markets on the Big Island, Kauai, and Lanai.<sup>127</sup> Waikiki’s declining appeal is reflected in visitor trends: while statewide visitor arrivals and hotel occupancy rates are down compared to 1997, and Waikiki hotel occupancy rates showed their worst July in five years despite aggressive discounting programs by Waikiki hotels, the Big Island and Kauai had increases in visitor arrivals from the previous June. July occupancy of Kauai’s and Maui’s hotels and resort condominiums also rose in July, although average Maui and Kauai room rates declined slightly. The Big Island’s success has been attributed in part to the corporate market, including meetings, conventions, and incentive travel, while Kauai’s growth has been attributed to United Airline’s new daily service from Los Angeles to Lihue.<sup>128</sup>

## Endnotes

<sup>1</sup> Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998), p. 2, lines 29-32.

<sup>2</sup> See *infra* note 77 and accompanying text.

<sup>3</sup> Don Hibbard and David Franzen, The View from Diamond Head: Royal Residence to Urban Resort (Honolulu, HI: Editions Limited, 1986), p. 216. In 1938, Mumford found Waikiki “already too intensely developed, and predicted that the district soon would become a ‘Hawaiian type of Coney Island.’” *Id.* at 218.

<sup>4</sup> For example, “the Waikiki Plan” was formulated by a citizens advisory committee appointed by the City Planning Department on April 22, 1963 to meet the public demand for citizen participation in planning the future of the Waikiki-Diamond Head area. The plan’s economic goal was to “preserve and promote Waikiki’s functional role as the primary resort area in Hawaii” through such means as effective land use planning and controls; expansion of visitor and resident facilities; planned development of commercial, service, and other facilities; and efficient and convenient local traffic circulation. The plan, which was adopted before the enactment of the City and County’s Comprehensive Zoning Ordinance, found that the proposed ordinance would “provide some discouragement to land speculation and overbuilding”, but that the “existing pattern of small landholdings is a major obstacle to the satisfactory development of Waikiki.” See City and County of Honolulu, The Citizens Advisory Committee to the Waikiki-Diamond Head Development Plan, The Waikiki Plan: Recommendations on Goals and Objectives, Land Use, Transportation, and Implementation (Honolulu, HI: Aug., 1966) at 1, 3.

<sup>5</sup> In particular, Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998) found that Waikiki was “in jeopardy of losing its strong competitive position in the global market due to a lack of investment in revitalization and renovation projects both from the public and private sectors” and that it was “imperative that Waikiki and surrounding areas be revitalized, revamped, and improved in order for it to remain a major tourist destination in the future...”. The Concurrent Resolution resolved that State and City and County of Honolulu form a Joint Waikiki Task Force consisting of public and private members to discuss and coordinate issues relating to Waikiki; serve as a forum to coordinate plans for public and private investment to encourage revitalization; develop an master plan relating to tourism-related infrastructure construction, beautification projects, and capital improvement projects proposed for Waikiki and surrounding areas; and report findings and recommendations to the Legislature in the years 1999 and 2000.

<sup>6</sup> State of Hawaii, Waikiki Tomorrow: A Conference for the Future (Final Report to the 1990 Legislature pursuant to Act 316, Session Laws of Hawaii 1989; sponsored by the Waikiki Improvement Association) (Honolulu, HI: Oct. 12, 1989). In particular, the report noted the need for increased open space, including considering offering economic incentives on existing fully developed property in exchange for more open space and landscaping at ground level. *Id.*, Executive Summary at 2. The report also noted the need “to foster an

understanding of Hawaii's multi-cultural background and values, to encourage tourism as a 'keeper of the culture,' and to highlight historic features and resources of Waikiki...." *Id.*, Executive Summary at 4.

Post-conference survey results showed that the most common concern, whether for business, residents, or government agency respondents, was with respect to funding for Waikiki improvements: "The top 'issue' emerging from the survey involved fundamental problems in State-County governmental relationships resulting in tourism being treated 'like a political football.' The top 'action priority' was the need to secure reliable funding mechanisms for tourism improvements in the face of such problems." *Id.*, Post-Conference Survey Summary, [p. i]. The report further noted that "[t]he division between the State and County of responsibilities and resources for supporting Waikiki has often meant inadequate and untimely attention to the infrastructure of the district." *Id.*, Executive Summary at 6.

The Waikiki Improvement Association, a private, nonprofit organization devoted to preserving and improving Waikiki for residents and visitors, established Waikiki Improvement Now (WIN) as the Association's action arm in implementing the ideas of the Waikiki Tomorrow Conference. One of WIN's Waikiki projects following that conference was the Ala Moana Gateway project. For additional information on this project, see Waikiki Improvement Association, Waikiki Gateway Improvements: Ala Moana Gateway Project (Prepared by Helber, Hastert, & Kimura, Planners, for the Waikiki Improvement Association for submittal to the 1991 Hawaii Legislature) (Honolulu, HI: Jan. 1991).

<sup>7</sup> Vision for Waikiki 2020, Planning Recommendations for Waikiki (Honolulu, HI: January 1992) (hereinafter, "Waikiki 2020") and Kathryn Wylde and Sally Goodgold, A Public-Private Partnership for Waikiki (Honolulu, HI: Vision for Hawaii 2020, December 1992) (hereinafter, "Hawaii 2020"). Many of the ideas generated through Waikiki 2020 are contained in the City's Master Plan for Waikiki, published in July, 1992. Hawaii 2020 at I-1. In particular, the reports include the following:

- Visions for Waikiki 2020 included the following recommendations: return a sense of Hawaiiiana to Waikiki; provide for "no growth" in traffic and parking above present levels; give residential areas priority attention; create new open spaces throughout Waikiki; provide major public improvements through coordinated public-private efforts; implement a Waikiki Urban Design Plan to link land use and intensity to architectural design, site planning, and implementation; create performance-oriented urban design guidelines; and form a new development management entity to implement plans. Waikiki 2020 at 7-10. The report also noted that there was a need for a "fast-track regulatory system" for Waikiki: "In a development environment as dynamic as Waikiki's, it is essential that certainty and understanding are built into the permit and review process, in terms of the steps to be taken, the time that will be required, and what is to be expected of prospective developers. A streamlined, 'one-stop' permit and review process is recommended to ensure that developers will not have to go through an unreasonably lengthy and costly process." *Id.* at IV-15.
- Visions for Hawaii 2020 sought to follow through to implement key objectives emerging from the Master Plan process through a formal collaboration among state and city governments, the private sector, and the community in the form of a private, nonprofit entity known as the "Waikiki Partnership." The functions of this joint public-private partnership, which would serve as an intermediary between government and the private sector, would be, among other things, to build community consensus; bring independent expertise to resolve development and planning decisions; generate new financial resources and financing strategies to implement improvements; and assist local government in the management of services and enforcement of economically viable design and development guidelines, while reintroducing Hawaiiiana features and affirming the Aloha spirit. Hawaii 2020 at I-1 to I-7, IV-1 to IV-12.

<sup>8</sup> City and County of Honolulu, Department of General Planning, Waikiki Master Plan (Honolulu, HI: May 15, 1992). See also City and County of Honolulu, Planning Department, Waikiki Master Plan: Technical Reference Reports (Honolulu, HI: May 15, 1993); Benjamin B. Lee, "Task Force Develops Master Plan for Waikiki," Hawaii Architect, vol. 21, no. 9 (Sept. 1992), pp. 30-33. Unlike the City and County's General and Development Plans, as discussed in chapter 3, the Waikiki Master Plan is essentially an advisory document intended to establish guidelines for the future physical development of Waikiki, and does not require approval by the City Council. Telephone interview with Calvin Azama, City and County Office of Council Services, August 6, 1998;



see Mayor's Message No. 78 (Letter from Mayor Jeremy Harris to City Council Chair John DeSoto, dated August 1, 1994).

The Master Plan first noted a number of problems facing Waikiki, including overcrowded and eroded beaches, poor pedestrian environment, little accessible open space, and underfunded and poorly coordinated management. Waikiki Master Plan at 1-2; see also The Queen Emma Foundation, Waikiki Master Plan Workshop (Executive Summary prepared by Harrison Price Co. of Torrance, CA) (Honolulu, HI: Nov. 1989) at 1, citing "aging infrastructure, dated resort facilities, overcrowding, traffic congestion, obliteration of views and landscape, and urban decay...". The overall goals of the Master Plan were to:

- Enhance the financial viability of Waikiki's visitor industry by enhancing the physical environment of Waikiki;
- Provide incentives to stimulate redevelopment and creation of more public open space;
- Accommodate moderate growth in visitor unit inventory while observing the principle "no substantial increase in density";
- Preserve and enhance existing residential neighborhoods, accommodating moderate growth in the number of residential units and encouraging affordable housing where feasible; and
- Stabilize vehicular traffic and parking at or below current levels. Waikiki Master Plan at 29.

Other urban design goals and policies in the Master Plan included developing variety and contrast among districts and neighborhoods, including developing a name and identity for each district and neighborhood that reflects its history; increasing open space within Waikiki; promoting building design that responds to Hawaii's climate and reduces perceptions of crowding; and creating architectural design standards "to enhance the aesthetic of Waikiki and impart a greater sense of Hawaiiiana in the built environment." Id.

<sup>9</sup> City and County of Honolulu Planning Department, Waikiki Planning & Program Guide (Honolulu: Feb. 1996), p. i (hereinafter, "WPPG"). In recognizing the need to take a comprehensive approach to Waikiki, the report noted three major themes in working toward Waikiki's improvement and enhancement, namely:

- The importance of orderly growth and renewal of the physical plant;
- The necessity for economic strength; and
- The creation of a "Hawaiian sense of place." Id. at ii.

The guide reviewed ongoing efforts on ways to improve Waikiki, including updating Waikiki Special District Ordinances; city transportation, parking, and people mover studies; draft design guidelines for Waikiki; the historical Hawaiian marker program; and new and expanded cultural programs. Id. at iii.

<sup>10</sup> Waikiki Planning Working Group, Waikiki: Hawaii's Premier Visitor Attraction (Honolulu, HI: State Department of Business, Economic Development, and Tourism, Office of Planning, March 1998) (hereinafter, "WPWG"). In particular, the Group developed a focus and strategy to address:

- State infrastructure projects for Waikiki;
- Legislative funding issues and priorities for Waikiki; and
- County development plans for Waikiki. Id. at 1.

The Working Group supported the three major themes outlined in the Waikiki Planning & Program Guide, and also considered the interaction of planning efforts for Waikiki, Kakaako, and the convention center areas with private interest groups and neighboring communities. The Group noted that it was "vitaly important for Waikiki to be maintained and continuously upgraded as a premier attraction for visitors", and that the new convention center was a "demonstration of Hawaii's commitment to Waikiki and tourism." Id. at iii. Other suggested improvements include enhancing underutilized assets, such as the Ala Wai Canal and Boat Harbor; making

improvements to Waikiki Beach; improving transportation infrastructure; and other projects, including reconstructing the Waikiki War Memorial and preserving and protecting Diamond Head. *Id.* at iii-iv.

<sup>11</sup> Thus, for example, this report makes recommendations in chapter 6 regarding the “Waikiki trigger” in Hawaii’s Environmental Impact Statement law that includes retaining that trigger but limiting its application. It is anticipated that this proposal will displease those groups which seek to retain the status quo on the one hand, i.e., retaining the Waikiki trigger in its present form, while displeasing those groups that seek the repeal of that trigger.

<sup>12</sup> David L. Callies, Preserving Paradise: Why Regulations Won’t Work (Honolulu: University of Hawaii Press, 1994), p. 3.

<sup>13</sup> *Id.* at 59.

<sup>14</sup> For example, a commercial developer in Hilo has spent six years in trying to develop a commercial complex near Liliuokalani Gardens in Hilo, and has appeared three times before the Hawaii Redevelopment Agency, which has apparently neither accepted nor rejected the proposed plans. Hugh Clark, “Developer Frustrated by Inaction in Hilo,” The Honolulu Advertiser, August 23, 1998, p. A25. Red tape is also common in land use conversion, adding to the already high cost of living in Hawaii: “The bureaucracy is so thick ... that it can take anywhere from five to seven years to receive approval to convert farmland to commercial or residential use. Part of the problem is that businesses go through a hearing at the state level, then a similar process with individual counties. Wali Osman, an economist at the Bank of Hawaii, estimates that red tape adds a 30 percent premium to the cost of homes; many developments don’t even get off the ground.” Timothy M. Ito, “Down and Out in Waikiki,” U.S. News and World Report, October 13, 1997, p. 46.

<sup>15</sup> Callies, Preserving Paradise, *supra* note 12, at 57-58 (footnotes omitted):

Experts and other commentators have railed against the delays permeating the land development process and have suggested all manner of ‘permit simplification’ schemes to alleviate them. Sometimes the delay results from the sophistication and complication of the land development process. Other delays are the result of purposeful local government action to temporarily halt development either while new planning or regulatory controls are developed and implemented (the ubiquitous development moratorium), or while the local government decides how and where to proceed with a public facility. ... Hawaii’s multilayered land development permission process is particularly vulnerable. Estimates vary, but many agree that it can easily take seven years ‘from blueprint to bulldozer,’ particularly if the land to be developed needs to be reclassified under state and county land-use laws. Whether such a time period is justified under the due-process clause, ... is not at all clear.

<sup>16</sup> Fred Bosselman, Duane A. Feurer, and Charles L. Siemon, The Permit Explosion: Coordination of the Proliferation (Washington, DC: The Urban Land Institute, 1976), p. vi (Foreword by Donald E. Priest, ULI Director of Research): “Lack of coordination between the increasing number of agencies and jurisdictions with permitting authority over development leads to inordinate delays and consequent development cost increases. This situation also makes it extremely difficult to achieve the public policy objectives of any individual agency, since the objectives are often in conflict and there are few areas with institutional mechanisms for resolving these conflicts.” See also Keith H. Fukumoto, Bends in the Road: Problems Affecting the Implementation of Capital Improvement Projects (Honolulu, HI: Legislative Reference Bureau, Report No. 16, 1992), pp. 92-111.

<sup>17</sup> Dennis J. Getman, “Effects of the Evolving Approval Process on Developers,” The Approval Process: Recreation and Resort Development Experience (ed. Frank Schnidman) (Washington, DC: The Urban Land Institute, 1983), p. 7: “The intricacy, number, and diversity of ... permit requirements mandate that a number of professional consultants be retained for advice and assistance. The choice of these professional consultants may be one of the most important decisions that a developer makes in helping obtain all necessary government approvals.... Although the cost for professional consultants to developers is often staggering, their advice not only can save the developer money, but also ... may be the difference between approval or nonapproval.”

<sup>18</sup> Getman further noted: “For developers proposing to undertake a major development under today’s environmental regulations, the availability of financing is a must. The cost of undertaking and preparing the

reports and studies needed to obtain government approvals is considerable. A developer must be prepared to carry the project for many years before any type of return is possible.... Obviously, the developer must pass on these costs to the buyer. The small developer may not have the staying power to become involved in a major development that requires running the permitting gauntlet.” *Id.* at 7-8.

<sup>19</sup> Mr. Lee Sichter of Belt Collins Hawaii, a Honolulu planning firm that prepared the Final Environmental Impact Statement (EIS) for Hilton Hawaiian Village’s Kalia Tower Project in 1991, noted that the development process in Waikiki generally takes up to approximately five years for the permitting and EIS process, another year or more to obtain project financing, and several additional years for project construction. In the development process, funding generally takes place about half way through the project, after permitting is completed and before construction has begun. However, changes in development plans may occur between the time that permits are obtained and construction has begun.

For example, Sichter noted that the owner of the property may seek to obtain permits for the development of the property, and then sell the property at a higher value once permits are acquired. In this scenario, if the purchaser of the land is a developer who seeks to make changes to the project design, for example, by moving a driveway to another location, the new developer may be required to return to the appropriate agency to make changes to the permits as may be necessary. Those seeking permits must therefore anticipate possible changes that may arise several years in the future. For similar reasons, developers often prefer not to specify as much detail up front in order to avoid costly changes. Those who are providing project financing may also seek to influence project design. Changes in market conditions may further affect the length of time needed to obtain permits. For example, according to Sichter, the Kalia Tower project originally called for the construction of tennis courts. Changes in market conditions made this a waste of money. Belt Collins was able to change the permits for another use. Telephone interview with Mr. Lee Sichter, Belt Collins Hawaii, August 11, 1998.

<sup>20</sup> See Act 164, Session Laws of Hawaii 1998.

<sup>21</sup> Ian Y. Lind, “Aina Haina Wedding Site Approved; 12 Conditions Imposed,” *Honolulu Star-Bulletin*, August 6, 1998, p. A-3. For example, a controversial proposal to operate a commercial wedding facility in an historic ocean-front home in the Oahu community of Aina Haina was recently approved, but with the inclusion of twelve conditions to mitigate project impacts that were raised by the community and public. Examples of these conditions included a limit of four events per day, less than the six that were originally requested, and a maximum of thirty-two people allowed on the property at any given time. Additional conditions included a prohibition on amplified sound or music, traffic circulation and parking improvements, and the requirement that fifteen percent of gross revenues be donated to nonprofit organizations that further historic preservation.

<sup>22</sup> Donna C. Rona, *Environmental Permits: A Time-Saving Guide* (New York, NY: Van Nostrand Reinhold Co., 1988), p. 13:

The time and effort required to obtain a permit should be justified by its purpose. The protection of the environment is certainly a goal that justifies a bureaucratic process that makes government, developers, builders, and private citizens conscious of the environmental impact of their actions. It does not, however, automatically justify a permit process that is cumbersome and confusing. In the past, it was to the advantage of the governmental agencies to remain vague, omnipotent entities capable of exercising control in many areas not specifically detailed in the law but covered by the ‘spirit’ of the law. This behavior could delay a project indefinitely; it was sometimes used to kill a project economically, or force a developer into conceding with the agency personnel. Lawsuits and maturity in the permit process have helped to stop this behavior, although to the average permit applicant, the process may seem even more unclear, as published standards and established procedures are constantly deleted, updated, and in some cases, set at random by each agency, independent of the others.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* Rona further maintains that most delays or confrontations during the permitting process arise from “ill-planned, poorly located projects. Occasionally the permit process serves to point out design or location

problems. The permit process, however, was not designed to be an environmental consulting service, and its use as such is costly in time and capital.” Id. at 12.

<sup>25</sup> Id. at 13-15.

<sup>26</sup> See also Robert A. McLaren, “Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation,” [Student Comment] University of Hawaii Law Review, vol. 12, no. 1 (Summer 1990) 123 at 129, nn. 25, 28.

<sup>27</sup> Hawaii Constitution, Art. XI, § 1.

<sup>28</sup> Richard J. Tobin and Dean Higuchi, “Environmental Quality in America’s Tropical Paradise,” in Politics and Public Policy in Hawaii (Zachary A. Smith and Richard C. Pratt, eds.) (Albany, NY: State University of New York Press, 1992), p. 115:

As the only island state, many of Hawaii’s environmental problems are unique. As an illustration, natural conditions impose limits on the state’s population and the growth. Land area is obviously limited to the size of each island, and this imposes restrictions on the development of commercial, residential, and agricultural areas. With population increases and economic growth that normally exceed the national average, there are often intense pressures to convert land to more profitable uses. Thus, much agricultural land is being converted into commercial and residential developments. This squeeze on land often requires the state government to make compromises to reconcile a rising population, exceptionally high housing costs, agricultural opportunities, and a desire to preserve the appeal and attractiveness of Hawai’i’s natural environment. As might be expected, these compromises do not always benefit environmental quality.

Limited land area also compounds such problems as ensuring the availability of fresh water for both residents and visitors and the disposal of solid and hazardous wastes. Id. at 115-116. Hawaii’s courts have also developed rigorous substantive and procedural standards for the regulation and use of Hawaii’s resources, “[p]erhaps because of Hawaii’s limited land space and unique dependence on coastal resources.” Daniel P. Finn, “Hawaii Caselaw Relating to Coastal Zone Management,” in Hawaii Coastal Zone Management Program, Document 6, Volume 2: Legal Aspects of Hawaii’s Coastal Zone Management Program (Prepared for the State Department of Planning and Economic Development by Daniel R. Mandelker) (Honolulu, HI: Dec. 1976) at 63.

<sup>29</sup> David Kimo Frankel, “Enforcement of Environmental Laws in Hawai’i,” University of Hawai’i Law Review, vol. 16, no. 1 (summer 1994), 85 at 96 (footnoted omitted):

While in theory this comprehensive enforcement scheme should both deter violations and correct environmental degradation, in Hawaii enforcement has been problematic. Government has been unable to ensure compliance with its environmental and land use laws. This noncompliance is reflected in the deteriorating quality of Hawaii’s environment.... The evidence is clear: We have seriously degraded Hawaii’s environment in recent years. The causes are many: bad planning, population growth, economic development, careless resource management, inadequate funding of environmental programs and lax enforcement of environmental and land use laws.

<sup>30</sup> Tobin and Higuchi, *supra* note 28, at 116.

<sup>31</sup> Nelson M. Rosenbaum, Citizen Involvement in Land Use Governance: Issues and Methods (Washington, DC: The Urban Institute, 1976) at 71.

<sup>32</sup> Getman, *supra* note 17, at 4:

Developers were ... required to deal with many of the same development issues at five specific levels of government – federal, state, regional, county, and city. These levels of government were often unable or unwilling to approve or agree on development plans, and the developer inadvertently became the middleman in intergovernmental and interagency disputes. Early environmental protection legislation often contained unclear standards, ill-defined methods of enforcement, and vague permit procedures. Thus, the various alternatives for compliance were open to interpretation at different levels of government. Added to this was substantial diversity

among regional and local goals, which could affect the type and method of community development. Few small developers could deal with environmental problems, and large developers were forced to uncertain positions. The one, and sometimes only, avenue open to many developers under such circumstances was to seek clarification through the court system. This avenue was often impractical because of the expense of litigation, the possible effect on future relations with the defendant (government agency), the final considerations of the development itself, or the over-all time necessary for final adjudication.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> City and County of Honolulu, Planning Department, Technical Reference Reports: Waikiki Master Plan (Honolulu, HI: May 15, 1993) at 2.2-9.

<sup>36</sup> Nicholas Ordway, former director of the Hawaii Real Estate Research and Education Center at the University of Hawaii's College of Business Administration, noted in 1990, before the State's economic downturn, that the development industry as a whole was "maintaining a delicate balance between profitability and extinction, the result of mounting costs of operation and a variety of market and nonmarket constraints." Nicholas Ordway, "The Rise and Fall of Hawaii's Real Estate Developers," Hawaii Business, vol. 36, no. 2 (August 1990), p. 166. He further noted that the long-term success of Hawaii's developers "will depend on how they interact within the state's complex economic and legal environment... [and] on the general public's continued perception that real estate development is beneficial." Id. at 168.

Other challenges facing Hawaii's developers, according to Ordway, include labor shortages and rising wages; price escalation by subcontractors; increased government exactions; pressure for land zoning by public initiative, as well as other opposition by environmental activists; overbuilding in some market segments; and a significant increase in the number and scale of construction related lawsuits. Factors that could create greater opportunities for Hawaii's real estate development companies include "expediting the permit-approval process for affordable housing; density waivers; [and] the construction of a rapid transit system on Oahu, which would create development opportunities at station stops...." Id. at 168-169.

<sup>37</sup> David L. Callies, "Dealing With Scarcity: Land Use and Planning" in Politics and Public Policy in Hawai'i (ed. Zachary A. Smith and Richard C. Pratt) (Albany, NY: State University of New York Press, 1992), p. 131.

<sup>38</sup> Id. at 132. The historical roots of a centralized land-use policy date back to the Hawaiian Kingdom:

The land policy in the Hawaiian kingdom emanated from the King, who distributed large parcels of land in classic feudal fashion to nobles, or *alii*, who held that land only so long as the King permitted. After the Great Mahele, which divided the land of the state into three groups (royal, chieftain, and government), the land was still controlled by a central government. Annexation of Hawaii by the United States in 1898 did little to change this central focus. Rather than disperse the land through homesteading, the federal government was ceded about half the land area in the state. The territorial government replaced the king, and at statehood in 1959 the duly elected governor replaced the territorial governor.

Id. (footnotes omitted); see also Eric Damian Kelly, Managing Community Growth: Policies, Techniques, and Impacts (Westport, CT: Greenwood Publishing Group, Inc., 1993), pp. 104-107.

<sup>39</sup> Id.; see generally Phyllis Myers, Zoning Hawaii: An Analysis of the Passage and Implementation of Hawaii's Land Classification Law (Washington, DC: The Conservation Foundation, 1976).

<sup>40</sup> Karl E. Kim, Environmental Impact Statements in Hawaii: Problems and Prospects (Honolulu, HI: University of Hawaii, Discussion Paper No. 16, Oct. 1990), pp. 2-3:

As an island state, with limited lands and resources and an economy increasingly dependent on tourism and the service employment it produces, it is natural that there is increased public concern over development. In the space of just two decades, Hawaii has been transformed from a plantation society dependent on agriculture into a 'post-industrial playground,' in which problems

such as the low wages of residents, lack of affordable housing, traffic congestion, environmental degradation, and inadequate infrastructure threaten the overall quality of life.... Closing of beaches because of pollution, limiting access to wildlife areas because of over-exposure to humans, proposals to curb foreign investment and property speculation, and recent public referenda overturning zoning decisions which would have allowed coastal development are but a few indications of the current planning problems Hawaii faces.

- <sup>41</sup> Kent M. Keith, “Land Regulation: Is Hawaii Being Overdeveloped?”, in The Price of Paradise, vol. II (ed. Randall W. Roth) (Honolulu, HI: Mutual Publishing, 1993), p. 134:

[W]hy the many battles over development? One reason is that most of us live and work on O’ahu, where the development is the most dense. The high densities are partly the result of a state planning strategy to build ‘up’ instead of ‘out’ – to build more densely in areas already zoned instead of spreading out into agricultural or other open space. A related reason is that complex multilayered government regulation has created an artificial shortage of land available for development. The rezoning and development of land for residential or commercial purposes takes years and years, and not all applications for rezoning are approved by government agencies.

*See also* Sumner J. La Croix and Louis A. Rose, “Government Intervention in Honolulu’s Land Market,” Working Paper No. 91-17 (Honolulu, HI: University of Hawaii, Department of Economics, Aug. 1991) at 3-4: “Land ownership in Honolulu is highly concentrated. One third of the land is owned by the federal, state and local governments. Most of the remaining land is held by three landlords. Both the extent of government ownership and the concentration of private ownership are unparalleled in the U. S.”

- <sup>42</sup> Rosenbaum, *supra* note 31, at 3.

- <sup>43</sup> Rosenbaum further noted that “[t]he extreme sensitivity of land use governance has resulted in numerous instances of conflict and confrontation between citizens and government. Abetted by dramatic increases in education and income levels of the American population and by extensive political experience gained in previous social movements, citizens display extraordinary levels of mobilization and organization on land use issues. Citizen groups have demonstrated again and again that, if not satisfied with decisions, they can impede, obstruct, and delay the execution of policy for extended periods of time.” Id.

- <sup>44</sup> *See, e.g.*, Donald D. Johnson, The City and County of Honolulu: A Governmental Chronicle (Honolulu, HI: University of Hawaii Press and Honolulu City Council, 1991) at 362-363: “Mayor Neal Blaisdell, in his inaugural address in January 1955 listed ‘orderly development’ of the world-famous beach area as a top priority for consideration by his administration. But the new mayor soon found that there was no agreement, even among city specialists, as to just what orderly development demanded. Waikiki property owners, at least those who were most articulate and organized, seemed to put first emphasis on their right to derive revenue from their land, and street widening or relocation did not fit their hopes.”

- <sup>45</sup> Johnson further commented that in the late 1950s, “it was clear that planning was going to be an absolute necessity for Honolulu’s visitors as well as for its residents”:

One multistory structure after another began to crowd close to narrow streets once laid out for single-family neighborhoods. Planners began, in their frustration, to speak of ‘concrete canyons,’ including ‘Kelley’s Alley,’ in the Kalia Road-Lewers Avenue area. The supervisors and city planning and building departments repeatedly were criticized for delaying creating effective building and zoning regulations. And more than one critic echoed the Australian architect who in 1960 suggested that over-building in the hotel district would destroy the very features that had made Waikiki attractive to tourists and to local residents. Id. at 363.

- <sup>46</sup> Thomas H. Creighton, The Lands of Hawaii: Their Use and Misuse (Honolulu, HI: University of Hawaii Press, 1978), p. 295:

With none of these plans getting further than the drawing board (federal, state, and municipal governments agreed in seeing no reason to interfere with a growing, financially successful, revenue-producing tourist quarter), Waikiki had become a deteriorated part of Honolulu by the

1970s despite its new construction – with inadequate sewerage and drainage systems, narrow streets that were a dangerous maze for autos, taxis, and, most frightening, fire trucks, and plenty of cover for the prostitutes, dope peddlers, petty thieves, and more serious criminals any careless resort town attracts.

The fast pace of construction was not limited to hotels, however. For example, Creighton noted that in the mid-1970s, “an indiscriminate surge of costly apartment-house condominium construction has choked the inner streets and rimmed the canal-side Ala Wai Boulevard (witlessly overreaching its own semispeculative market by 1976, so that thousands of units were unoccupied, waiting for population to catch up to with production.” *Id.* at 294. Waikiki’s growing collection of “architecturally undistinguished high-rise hotels and condominiums” contributed to the “urban jungle” image. As developer Jack Myers of the Myers Corporation noted: “If we’re all honest with ourselves, we did a pretty bad job in Waikiki.... We rushed to beat deadlines and zoning changes, and there was so much protectionism and cronyism – particularly through the ‘60s and ‘70s, that in a way Waikiki as a planning unit was doomed. It never had a chance.” Susan Hooper, “Whither Waikiki?” *Hawaii Business*, vol. 37, no. 3 (Sept. 1991), p. 36. However, some of the responsibility for Waikiki’s uncontrolled growth during this period is shared by the City and County government, which was “ambivalent about slowing Waikiki’s development. Waikiki property taxes bring in \$12 million (one-seventh of Honolulu’s total receipts), and the Waikiki Improvement Association estimates the area generates \$92 million in total public revenue.” Myers, *supra* note 39, at 90.

<sup>47</sup> John Heckathorn, “Does Waikiki Have a Future?”, *Honolulu*, vol. 28, no. 1 (July 1993), p. 30:

As late as 1960, there was more residential housing in Waikiki than visitor units. But the number of visitor units tripled between 1960 and 1970, and doubled again by 1980. The pace of development was so breakneck that in 1970 the Waikiki Improvement Association forged a consensus to cap growth in Waikiki to a maximum daily census of 65,000 – 42,000 visitors and 23,000 residents. The city and county responded in 1976 by creating a Waikiki Special Design District (WSD), which limited the density of new development, reduced heights to preserve views of Diamond Head, mandated more open space and setbacks along the beach and major streets.

<sup>48</sup> *Id.*; WPPG at 1-3.

<sup>49</sup> Donald A. Bremner, Written Testimony to the Senate Committee on Health and Environment and the Senate Committee on Transportation and Intergovernmental Affairs regarding Senate Bill No. 2665, Relating to Environmental Impact Statements in Waikiki, dated Feb. 19, 1998; *see also* Donald A. Bremner, “Waikiki Faces its Uncertain Future: Time to Reclaim the Area From Overbuilding,” *The Honolulu Advertiser*, July 26, 1998, p. B3. Mr. Bremner further commented that “[e]ven the completion of the Convention Center dictates against an increase in density in Waikiki. The center was built to fill the gaps in Waikiki hotel occupancies. Why undercut such help with more hotel rooms?” *Id.* at B3.

<sup>50</sup> Paula Gillinham, “Some Waikiki Hotels Switch From Patching to Overhauling,” *Pacific Business News*, August 31, 1998, p. 23:

Prior to the [1996] revision, property owners had a choice of either tearing down and starting over with less floor area and more open space – and risking a loss of about two-year’s worth of revenues – or they could patch and repair the best they could.

‘Most took the patch and repair approach,’ said Mel Kaneshige, chief operating officer of Outrigger Properties. ‘But as the years went by, physical deterioration took place and Waikiki has become dilapidated and run down.’ ...

The expectations of the traveling public have changed too. Tourists are looking for larger rooms, they want air conditioning, public amenities, swimming pools and spacious lobbies. On the Mainland, all-suite properties are growing in popularity among travelers who want kitchenettes and laundry facilities.

‘When they come to Hawaii, they find higher prices and compare our accommodations with what is available on the Mainland,’ Kaneshige said. ‘The challenge to Hawaii’s visitor industry is to match the expectations of the public with our hotel inventory. And that expectation will probably be brought to the forefront when the convention center is in full operation.’

The convention traveler who travels on the company dime wants bigger first-class rooms and although the Hawaii Convention Center is first rate, Kaneshige said Waikiki's accommodations are not.

Hawaii's construction industry is also interested in the effect the revised WSD ordinance will have on job creation in that industry as more properties look to larger renovation plans. *Id.*

<sup>51</sup> Tobin and Higuchi, *supra* note 28, at 114.

<sup>52</sup> Myers, *supra* note 39, at 76:

The meshing of powers between the state and the counties is, in many ways, the most difficult problem in implementing the land-use law. At first glance, it seems hard to understand why. On the mainland, the overlapping jumble of local, county, and special jurisdictions is usually blamed for disputes and fragmentation of responsibility. Hawaii's centralized governmental structure and four counties would seem to be a model. Not so. The same tensions, the same lack of communication, and the same passing of the buck exist despite the simplicity of governmental structure. Nowhere is this more evident than in the urban districts. Basically, the controversy is over where the state's role ends and where the counties' begins.

See also Cynthia Yokono, "Land Use/Planning: A Question of State-County Roles" (Honolulu, HI: Government Organization Commission, Research Memo No. 13, May 4, 1976).

<sup>53</sup> David L. Callies, Regulating Paradise: Land Use Controls in Hawaii (Honolulu, HI: University of Hawaii Press, 1984) at 5.

<sup>54</sup> City and County of Honolulu, Department of General Planning, Waikiki Master Plan (Honolulu, HI: May 15, 1992) at 97.

<sup>55</sup> In 1997, the Legislature enacted a law to create a task force in the DLNR to evaluate the feasibility of, and make recommendations regarding, the establishment of a community-based management pilot program for one or more state small boat harbors to assist in streamlining government services. See Act 160, Session Laws of Hawaii 1997.

<sup>56</sup> The Board of Land and Natural Resources has primary responsibility for administering the ocean recreation and coastal areas programs and performing functions formerly performed by the state Department of Transportation and Department of Public Safety relating to boating safety, conservation, search and rescue, and security for small boat harbors. Hawaii Revised Statutes, §200-2.

<sup>57</sup> Waikiki Master Plan at 98.

<sup>58</sup> Waikiki Master Plan at 99. Waikiki-related projects within the approved City and County budget for FY 97-98 totaled \$28,825,000, while Waikiki-related projects with the State CIP budget for the 1997 legislative session totaled \$41,465,000. See WPWG at 24-25. However, both of these figures contain costs for projects located outside of Waikiki, as defined in chapter 1 of this report. For example, the City and County figure includes projects related to the Waikiki War Memorial Complex and Kapiolani Park, while the State figure includes projects relating to the Diamond Head State Monument and Summit Trail, Interstate Route H-1 improvements, and Convention Center Facility improvements.

<sup>59</sup> Generally, the counties have limited home rule authority under Article VIII, Section 2 of the Hawaii Constitution ("Local Self-Government; Charter"), which provides in part: "Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions." That section further states that "[a] law may qualify as a general law even though it is inapplicable to one or more counties by reasons of the provisions of this section." In addition, Section 6 of that article provides that Article VIII "shall not limit the power of the legislature to enact laws of statewide concern."

<sup>60</sup> Kathy Titchen "Can Waikiki Be Saved", Hawaii Investor, vol. 12, no. 6 (June 1992), p. 40: "Mayor Frank Fasi, unhappy with a state legislative bill proposing a Waikiki task force, announced plans to create his own task force,



accusing the Legislature of usurping home rule powers by trying to pass bills that asserted planning and redevelopment authority in Waikiki. In its closing hours, the Legislature passed a compromise bill that would allow the state to create its own task force and pick up the ball if the mayor and city didn't have a task force in operation by this September." A joint Waikiki task force, composed of representatives of both State and City and County agencies and the private sector, was adopted by the Legislature in the 1998 Regular Session. *See* Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998).

<sup>61</sup> Fred Hemmings and John Bickel, "Save Waikiki Beach", Honolulu, vol. 27, no. 1 (July 1992), p. 30: "We have to make hard decisions soon on some very politicized issues. First and foremost, who should control the future of Waikiki? Conservatives believe that a government closest to the people governs best, and therefore, the city and county of Honolulu should remain the chief regulator and protector of public rights in Waikiki. Recent efforts on the part of the state to interlope in this area have been unproductive and would duplicate the efforts of county government."

<sup>62</sup> Id. at 41: "Optimists in the community believe the [state-county] upheaval will have positive results by leading to a genuinely cooperative redevelopment effort by all entities that have a stake in Waikiki's future. As Dr. Richard Kelley, president of Outrigger Hotels, put it, 'I've served on some of these task forces. Some people were getting frustrated because things take so long. When it [the Waikiki issue] went to the state, it was a good thing, because it provided a little competition. Now the mayor has come up with ideas and we have a lot of people focused on it.'"

<sup>63</sup> Id.: "[Former] City Council Chairman Arnold Morgado sees no home rule issue at stake. He says the state has a legitimate stake in the planning of Waikiki and can create a 'unique agency' with authority only the state can enforce. 'The Special Design District has failed miserably,' says Morgado. 'We need an entity that can transcend politics and implement the plans on the books.'"

<sup>64</sup> Waikiki Master Plan at 100:

The creation of a new, semi-autonomous development authority under the aegis of either the City or State government is not recommended. While the concept may seem attractive as a way to consolidate planning and services, it is very unlikely that any of the three levels of government would be willing to relinquish planning or regulatory control over their respective jurisdictions. As a practical matter, the development decisions for Waikiki have a direct and significant effect on the City which surrounds it. The establishment of a separate redevelopment authority would tend to weaken the coherence of comprehensive planning for the City and County of Honolulu, to the detriment of both Waikiki and the island as a whole. (Emphasis added.)

<sup>65</sup> Getman, *supra* note 17, at 6.

<sup>66</sup> Id.

<sup>67</sup> George S. Kanahale, Restoring Hawaiianness to Waikiki (Honolulu, HI: The Queen Emma Foundation, July 1994), Introduction [n.p.]:

In the welter of recent plans, recommendations and ideas for improving the quality of the Waikiki experience, there is a recurring theme: make it Hawaiian. For example, The Waikiki Master Plan recommends the use of "Hawaiian motifs" and architecture that imparts "a greater sense of Hawaiiiana." The Vision for Waikiki 2020 laments Waikiki's "serious loss of Hawaiian character and identity." And Christina Kemmer of the Waikiki Improvement Association writes, "Waikiki needs to reflect a sense of place, a Hawaiian sense of place." Never before have such concepts been unstintingly expressed by more people with a greater sense of importance than now.

They are also being expressed with a growing sense of urgency as more and more people realize that Waikiki cannot remain competitive in international tourism unless it maintains its uniqueness, the realization being that uniqueness ultimately comes from its being Hawaiian. While economics may drive efforts to make Waikiki more Hawaiian, it also happens to be the right or *pono* thing to do. We are all heirs to Waikiki's historical and cultural legacy that goes

back nearly 2,000 years and, therefore, bear some responsibility to preserving its integrity, its ambience, its *mana*.

Dr. Kanahale defines “Hawaiian” as referring to “any part of the environment, people or culture whose origins in form, content, meaning or ambience can be traced back to Hawaii prior to 1778.” Id.

<sup>68</sup> George S. Kanahale, Waikiki, 100 B.C. to 1900 A.D.: An Untold Story (Honolulu, HI: The Queen Emma Foundation, 1995), p. 155: “... Waikiki gradually lost its Hawaiian character – first its people to disease, then its taro and fish pond systems, its games, its birds, its plants and trees, its adzes and other tools, its huts, its trails and lands, its royalty and its sovereignty.... People may argue about the degree to which it had been de-Hawaiianized or the means by which that happened, but the fact remains that Waikiki in 1900 was a far different place from what it was in 1778.”

<sup>69</sup> WPPG at ii.

<sup>70</sup> Id.

<sup>71</sup> Revised Ordinances of Honolulu, § 21-7.80-1(a). The Waikiki Special District Guidelines noted that while there was no universally accepted definition of Hawaiian sense of place, the meaning of that term could be “seen and experienced within the physical form of Waikiki’s historical, architectural and environmental elements. ... However, it is only through a combination of physical improvements, ongoing social and cultural programs and activities, as well as our people’s attitude, that truly create this experience....” William Kresnak, “Sense of place’ definition in dispute,” The Honolulu Advertiser, September 10, 1997, p. B3. The concept of a Hawaiian sense of place in the visitor industry includes at least the following elements:

- Integration of the Hawaiian host culture;
- A balance between economic needs and environmental and cultural preservation;
- Respect for and inclusion of nature at all levels possible;
- Availability of forums for art and multi-cultural experiences; and
- Creation of a sense of community for residents, employees and visitors by considering each group’s needs and concerns, involving them in planning efforts, and by developing proactive programs to resolve their concerns. WPPG at 4-1.

<sup>72</sup> Id. at 2-6 to 2-7.

<sup>73</sup> Id. at 2-7.

<sup>74</sup> Kanahale, Restoring Hawaiianness to Waikiki, *supra* note 67, goal nos. 135 & 136 (no page numbers).

<sup>75</sup> Mike Markrich, “What Ails Tourism: Marketing Continued But Assets Weren’t Protected,” The Honolulu Advertiser, May 17, 1998, p. B4. The State’s stagnant economy and “Waikiki’s drift away from Hawaii-themed shows” has also seriously affected the careers of several prominent local entertainers. See Wayne Harada, “Waikiki Stage Lights Dim,” The Honolulu Advertiser, September 29, 1998, pp. A1, A8.

<sup>76</sup> Haunani-Kay Trask, “Kupa‘a ‘Aina: Native Hawaiian Nationalism in Hawai‘i,” in Politics and Public Policy in Hawai‘i (ed. Zachary A. Smith and Richard C. Pratt) (Albany, NY: State University of New York Press, 1992), p. 244:

Visible in garish “Polynesian” revues, commercial ads using Hawaiian dance and language to sell vacations and condominiums, and the trampling of sacred *heiau* (temples) and burial grounds as tourist recreation sites, a grotesque commercialization of everything Hawaiian has damaged Hawaiians psychologically, reducing their ability to control their lands and waters, their daily lives, and the expression and integrity of their culture. The cheapening of Hawaiian culture (e.g., the traditional value of *aloha* as reciprocal love and generosity now used to sell everything from cars and plumbing to securities and air conditioning) is so complete that non-Hawaiians, at the urging of the tourist industry and the politicians, are transformed into “Hawaiians at heart,” a

phrase that speaks worlds about how grotesque the theft of things Hawaiian has become. Economically, the statistic of thirty tourists for every Native means that land and water, public policy, law and the general political attitude are shaped by the ebb and flow of tourist industry demands. For Hawaiians, the inundation of foreigners decrees marginalization in their own land.

<sup>77</sup> At that time, a conflict was developing in Waikiki between wet agriculture and aquaculture on the one hand, and urbanization on the other: “Urbanization was adversely affecting the good and proper drainage of surface water flowing from the mountains to the sea. This restricted water, in turn, was labeled unsightly and unsanitary by those who wished to see wet agriculture and aquaculture at Waikiki destroyed. Much of the drainage problems of Waikiki were caused, in fact, by poor planning.” Barry Seichi Nakamura, The Story of Waikiki and the “Reclamation” Project (University of Hawaii Master’s Thesis) (Honolulu, HI: May, 1979), pp. 34-35. Waikiki subsequently began to be viewed as a potentially profitable resort destination on an international scale. Id. at 39-44.

The 1896 Legislature of the Republic of Hawaii subsequently passed Act 61 “to Provide for the Improvement of Land in the District of Honolulu Deleterious to Public Health...”, ostensibly as a solution to sanitation problems, but in fact establishing the legal basis for the compulsory filling in of low-lying wet lands in the District of Honolulu, including Waikiki: “In reality, ... this law ... provided an excuse for the oligarchy to fill and destroy the taro pondfields and fishponds in the Honolulu district as well as to alienate land from people who could not afford the costs of government mandated improvements.” Id. at 43. Under Act 61, if a landowner whose wet lands were found to be unsanitary did not wish to fill in the owner’s lands or could not afford to do so, the government had a right to have the lands filled in at the owner’s expense. If the owner could not repay the costs to the government, the government attached a lien to the lands, which could then be auctioned off to satisfy the lien. Id. at 52.

In 1906, the president of the Board of Health for the Territory of Hawaii, Mr. Lucius Pinkham, issued a report aimed at urbanizing Waikiki by urging its reclamation by filling in wet lands. Pinkham claimed that “Waikiki was ‘insanitary’ and ‘deleterious to the public health,’ and could, with ‘reclamation,’ be made into an attractive urban environment, which would ‘otherwise remain of only agricultural value for rice and banana culture or valueless....’” Id. at 53. Two subsequent sanitary commission reports also encouraged the involuntary “improvement” of land in Waikiki by stressing the dangers of mosquitoes breeding in Waikiki’s wet lands, leaving Hawaii vulnerable to dangerous introduced diseases such as yellow fever and malaria. Id. at 61-68. The dredge and fill project for Waikiki finally began in 1920 with the establishment of a Waikiki drainage district and the Ala Wai drainage canal, which was finally completed in the late 1920s. *See also* Donald D. Johnson, The City and County of Honolulu: A Governmental Chronicle (Honolulu, HI: University of Hawaii Press and the Honolulu City Council, 1991) at 314-315.

<sup>78</sup> Hawaii’s historic preservation program is contained in chapter 6E, Hawaii Revised Statutes. That chapter was amended by Act 306, Session Laws of Hawaii 1990, among other things, to create island burial councils (section 6E-43.5) and to establish procedures for the inadvertent discovery of burial sites (section 6E-43.6), to address the vulnerability of Native Hawaiian traditional prehistoric and unmarked burials. *See also* Edwin Tanji, “Protecting Sites Can Lead to Fights: Archaeological Conflicts Raise Building Costs,” The Honolulu Advertiser, June 1, 1998, p. A1.

<sup>79</sup> *See* Hawaii Revised Statutes, §7-1 (miscellaneous rights of the people); Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Haw. 425, 903 P.2d 1246 (1995), *cert. denied*, \_\_\_ U.S. \_\_\_, 116 S.Ct. 1559, 134 L.E.2d 660. In addition, during fiscal year 1997-1998, federal funds under Section 309 of the federal Coastal Zone Management Act – a voluntary coastal zone enhancement grants program that encourages states to develop program changes to achieve certain national objectives – have been used in part to fund a project “that complements ongoing efforts to define the manner in which traditional and customary Native Hawaiian rights and practices in land use and natural resources management decisions are addressed.” State of Hawaii, Department of Business, Economic Development, and Tourism, Office of Planning, Annual Report to the Nineteenth Legislature, Regular Session of 1998, Hawaii Coastal Zone Management (Honolulu, HI: Dec. 1997), p. 4.

<sup>80</sup> *See* Melody Kapilialoha MacKenzie (ed.), Native Hawaiian Rights Handbook (Honolulu, HI: Native Hawaiian Legal Corporation, 1991), at 201-205.

- <sup>81</sup> Although the Duty Free outlet in Waikiki is not located on ceded lands, a 1996 Circuit Court ruling by Judge Daniel Heely found that since Duty Free Shoppers operates at Honolulu International Airport, which is partially located on ceded lands, and because shoppers must pick up their purchases at the airport, the Waikiki Duty Free outlet would not exist without the airport store; accordingly, the State must pay the Office of Hawaiian Affairs 20 percent of the income generated from the Waikiki outlet under state law. See Ken Kobayashi, “Court to Review OHA Claim,” The Honolulu Advertiser, April 20, 1998, pp. A1, A2; Ken Kobayashi, “State, OHA Urged to Arbitrate,” The Honolulu Advertiser, April 21, 1998, p. A1; Pat Omandam, “A Sacred Settlement,” Honolulu Star-Bulletin, September 24, 1998, pp. A-1, A-8.
- <sup>82</sup> Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998).
- <sup>83</sup> WPPG at 2-3.
- <sup>84</sup> Ward Research, Reactions to the Waikiki Master Plan Among Key Waikiki Visitor Groups: A Focus Group Study (Prepared for the City and County of Honolulu, Department of General Planning; State Department of Business, Economic Development, and Tourism; and the Hawaii Visitors Bureau) (Honolulu, HI: July 1993) at 5.
- <sup>85</sup> WPWG at 2. The WPWG also found that while the benefits provided to the State from the visitor industry “cannot be underestimated in this time of economic downturn and unprecedented uncertainty... the visitor industry is not the panacea for the economy and greater efforts are needed at all levels of government and the private sector to [diversify] and strengthen Hawaii’s economy.” Id.
- <sup>86</sup> WPPG at 3-5.
- <sup>87</sup> City and County of Honolulu, Planning Department, Technical Reference Reports: Waikiki Master Plan (Honolulu, HI: May 15, 1993) at 2.2-1. At a recent tourism forum in Waikiki sponsored by the University of Hawaii, it was noted that Hawaii’s Neighbor Islands “emerged as the No. 1 dream destination for 69 percent of respondents in a 1997 Mainland survey conducted by Yesawich, Pepperdine & Brown, an Orlando, Fla.-based marketing firm”, but that national trends are focusing on shorter, more budget conscious travel. Michele Kayal, “Is Hawaii Too Stale and Too Far?”, The Honolulu Advertiser, October 16, 1998, p. B8. Other visitor industry experts noted that “Hawaii suffers from a ‘one-dimensional’ image centered exclusively on sun and surf, and that many tourists perceive its hotels and beaches as ‘tired’”, and suggested that Hawaii “market itself as a unique destination by seizing on its history and culture that no other place can copy. They also urged the industry to focus on specific types of tourists – for instance, those interested in educational experiences – and on finding new niches.” Id.
- <sup>88</sup> The Queen Emma Foundation, Waikiki Master Plan Workshop (Executive Summary); held on Nov. 2, 3, and 4, 1989 (Torrance, CA: Harrison Price Co., 1989), p. 1.
- <sup>89</sup> Susan Hooper, “Whither Waikiki?” Hawaii Business, vol. 37, no. 3 (Sept. 1991), p. 38.
- <sup>90</sup> Titchen, *supra* note 60, at 40. “In the new climate of environmental awareness, Waikiki’s style is officially passé. Its concrete jungle madness is no longer perceived as environmentally sound, politically correct, socially acceptable, or even economically good for Hawaii’s future.”
- <sup>91</sup> State Department of Business, Economic Development, and Tourism, Office of Tourism, State of Hawaii Strategic Tourism Plan (1995-1999) (Honolulu, HI: August 13, 1997), available on the Internet at [www.state.hi.us/tourism/STP/Source.html](http://www.state.hi.us/tourism/STP/Source.html) (“What is the Source of the Recent Decline?”):

[V]isitors who are currently repeaters had their first experiences with Hawaii more than 10 years ago when Hawaii had a different ambiance than it does today. They have developed a sense of habit, loyalty, and experience with Hawaii that allows them to still return and find those pockets of Hawaii that are desirable for them. However, current first, second, and third-timers had their first Hawaii experience in more recent years after Hawaii, and Waikiki, in particular, had become a much more cosmopolitan place. Waikiki is the first Hawaii experience for most first-timers and some of the less desirable aspects of Waikiki may discourage first-timers from returning.

<sup>92</sup> Vision for Waikiki 2020, Planning Recommendations for Waikiki (Honolulu, HI: January 1992) at III-41, pp. 2-3. (Planning recommendations of Goody, Clancy & Associates/David Dixon & Associates):

The lush landscaping and vibrant, urban resort quality along parts of Kalakaua and within the splendid private worlds created by several major hotels contrast sharply with the hard urban character of many of the mauka to makai cross streets and major avenues such as Kuhio and Ala Moana. Throughout Waikiki, the rapid pace of development has left very few opportunities to enjoy Waikiki's wonderful tropical nature and climate.... Although Waikiki is surrounded by beach and public parks, these great natural assets are in need of repair and renewal and are underutilized....

More than 25 million square feet of building, consisting of towers and near-continuous development at the pedestrian level, and accommodating a tourist and residential population of approximately 100,000, is crowding Waikiki. Within Waikiki, more than 28,000 above-grade parking spaces, together with excessive traffic, are displacing public open space and pedestrian-oriented life and activity. The most notable problem is the spread of a 'concrete jungle' of blank walls and bland buildings masking Waikiki's unique tropical character and cultural traditions....

The lack of cultural, recreational and performance facilities discourages residents of the greater Oahu community from using Waikiki. It is rapidly becoming a 'tourist ghetto' in which many locals take no interest or pride. This trend, a gradual erosion of culture and values, is perhaps the most threatening and critical factor to Waikiki's renewal and future.

See also the following two "Our Honolulu" columns by Bob Krauss: "Waikiki Needs Shift in Attitude," The Honolulu Advertiser, May 17, 1998, p. A23, and "Our Tourist Ghetto Needs Ocean Views," The Honolulu Advertiser, October 4, 1998, p. A21.

<sup>93</sup> Id. at III-41, p. 1. Other factors in marketing Waikiki include:

- Reduced lead times, shorter vacations and increased price sensitivity in the recovering North American market.
- Changing buying patterns in the Japanese market...
- As an island destination, we are critically [affected] by the airline industry – lift capacity, pricing and labor disputes...
- Marketing in today's cluttered and competitive media environment is becoming more costly and complex.
- Competitive destination activity, particularly in our core West Coast markets, is continuing to erode our 'share of voice'.

Waikiki/Oahu Visitors Association, State Funded Marketing Action Plan (Honolulu, HI: July 1995 – Jun 1996), p. 3.

The State has recently begun to take steps to coordinate its tourism efforts and establish a dedicated source of funds for tourism through the establishment of the Hawaii Tourism Authority, which is to create and update a strategic tourism marketing plan, and by raising the transient accommodations (hotel room) tax and earmarking part of the total revenue to create a special fund for tourism. See Act 156, Session Laws of Hawaii 1998.

<sup>94</sup> State Department of Business, Economic Development, and Tourism, "Hawaii Tourism in Transition", in Hawaii's Economy, First Quarter 1996, at 3; see also discussion of resort life cycles, *infra* note 115 and accompanying text.

<sup>95</sup> Id. A similar reinvention also recently occurred in New York's Times Square district:

In 1991, New York's Times Square was looked at as a lost cause. Once a popular visitor attraction, it had deteriorated to a seedy porno district with a high crime rate. Investors fled and

tourism was in a terminal spin. Efforts to change it into yet another financial district or shopping complex failed.... But visionary leaders of New York City and New York state refused to give up. They recalled what brought people there originally: exciting theater and music. They pushed out the peep shows and enticed Disney with tax incentives to renovate an old theater. Soon, Times Square boomed, bringing back tourists to the middle of New York City and creating what is today one of the world's most popular retail, theater and restaurant districts.

Markrich, *supra* note 75, at B4.

- <sup>96</sup> See, e.g., Susan Hooper, "The Gathering Place: \$350 Million Facility Opens Doors," The Honolulu Advertiser, June 8, 1998, p. 1 (Special Report). As noted in chapter 1, although the Convention Center lies outside of the Waikiki Special District, the Center may have a substantial impact on tourism in Waikiki.
- <sup>97</sup> WPPG at 2-5: "Business travelers will demand state of the art communications, business services, convenience and comfort within the hotels. The extent of these visitor's non-business travel will depend upon the availability of unique experiences in food, entertainment and relaxation." The new Convention Center incorporates state-of-the-art technology to accommodate business travelers, including satellite video conferencing, fiber optic and coaxial cables, E-mail and Internet access, multilingual translation capability, a simultaneous interpretation room, and a high-tech press room. Hawaii Newspaper Agency, Hawaii Convention Center: Grand Opening (Newspaper Advertising Supplement) (Honolulu, HI: June 8, 1998), p. 4. Even before the construction of the Convention Center, however, it was noted that "[c]orporate business travel to Hawaii is increasing, coinciding with Hawaii becoming a strategic economic crossroads in the Pacific. While the majority of business travelers stay in Waikiki, a number of hotels targeted more specifically for the business travel market are being planned outside of Waikiki." City and County of Honolulu, Planning Department, Technical Reference Reports: Waikiki Master Plan (Honolulu, HI: May 15, 1993) at 2.2-6.
- <sup>98</sup> WPWG at iii. Currently, only eight percent of visitors to Hawaii are business travelers. *Id.* The 1998 World Travel & Tourism Council Hawaii Tourism Report predicts that in its first full year of operation, the Convention Center will not only make a cash profit, it will generate nearly \$183,000,000 in additional inbound visitor expenditures, create 1,809 new jobs in Hawaii in 1998, and continue to generate new jobs, growing to 4,316 by the year 2003. Richard R. Kelley, "What Ails Tourism: Groundwork in Place for More Industry Growth," The Honolulu Advertiser, May 17, 1998, p. B4.
- <sup>99</sup> Michele Kayal, "Competition for Conventions Increasing, Hawaii Warned," The Honolulu Advertiser, October 6, 1998, p. B5. The amount of exhibit space across the United States is expected to double by the year 2008. *Id.*
- <sup>100</sup> Markrich, *supra* note 75, at B4. Other Convention Center-related concerns include noise levels, traffic impacts, and the aesthetics of the surrounding area, since many Hawaii convention attendees will walk or take public transportation between Waikiki hotels and the Convention Center. See [Advertiser Staff], "The Hawaii Convention Center: Beauty, Blight Compete in Waikiki," and Suzanne Roig, "First Events Provide Lessons in Traffic Flow," The Honolulu Advertiser, June 7, 1998, pp. A1, A7; see generally Hawaii Convention Center: Final Environmental Impact Statement, Vol. 1 (Prepared by NORDIC/PLC, Wilson Okamoto & Assoc., Inc.) (Honolulu, HI: Hawaii Convention Center Authority, July 1995).
- <sup>101</sup> "Preserving State Sovereignty in the Information Age," The State's Advocate, a newsletter of the National Conference of State Legislatures (NCSL), in State Legislatures, vol. 24, no. 6 (June 1998), magazine insert at p. 1; see also "Leader's Letter," NCSL, vol. 18, no. 7 (Sept. 23, 1997), p. 1: "State finances are booming. A strong national economy has boosted revenues well above original projections in most states. At the same time, spending has been on target. The result is that states are awash in cash.... At the end of this fiscal year, more than half of the states had ending balances in excess of 5 percent.... There are only two exceptions: Hawaii and Tennessee are not enjoying the economic jackpots paying off elsewhere around the country."
- <sup>102</sup> Ito, *supra* note 14, at 46.
- <sup>103</sup> Susan Hooper, "Isles Really in Slump That Won't Quit," The Honolulu Advertiser, September 16, 1998, p. B10.
- <sup>104</sup> Russ Lynch, "Japan's Woes Put Hawaii at Risk," Honolulu Star-Bulletin, August 5, 1998, pp. A-1, A-8; Suzanne Roig, "Big Isle Lures Visitors," The Honolulu Advertiser, August 4, 1998, p. B8; see also Bill Wood, "When the

- Party is Over,” Hawaii Investor, vol. 12, no. 6, June 1992, pp. 23-24, 28, 32-34, 36; “Turmoil in Asia Deepens; Japan Declared in Recession, Markets Reeling,” The Honolulu Advertiser, June 12, 1998, p. A1-A2; “Japan Not Alarmed As Yen Dives,” The Honolulu Advertiser, June 13, 1998, p. B6; Editorial, “Sliding Yen Threatens Bad Times for Hawaii,” The Honolulu Advertiser, June 26, 1998, p. A10; “Analysts Foresee Yen at 150 to Dollar”, The Honolulu Advertiser, July 24, 1998, p. B8; Suzanne Roig, “What’s to Lure Them? Japan Torn Between Saving, Spending,” The Honolulu Advertiser, July 26, 1998, pp. G1, G2; Susan Hooper, “Tourism Summit Focuses on New Lures,” The Honolulu Advertiser, June 30, 1998, p. B8 (discussing ideas from the Japan-Hawaii Economic Council’s first tourism summit, including developing new niche markets of Japanese tourists, including a market for corporate incentive travelers); and Michele Kayal, “Islands Lose Some of Their Luster; Japan Visitors Less Enthusiastic,” The Honolulu Advertiser, August 18, 1998, pp. A1, A10.
- <sup>105</sup> Suzanne Roig, “Occupancy Below 70% in Waikiki,” The Honolulu Advertiser, June 24, 1998, p. B7.
- <sup>106</sup> Frank Cho, “Hotel Occupancy Hits 15-Year Low; Grim Season For Waikiki Is Forecast,” The Honolulu Advertiser, September 22, 1998, p. A1. *See also* Frank Cho, “Visitor Lag Costs State \$15 million; Weak Yen Hits Waikiki Hardest,” The Honolulu Advertiser, September 26, 1998, p. B6. Mr. Murray Towill, President of the Hawaii Hotel Association, “said the industry has taken its biggest hit in occupancy rates in Waikiki, which accounts for more than half the hotel rooms in the state.” *Id.* A related trend in the decline in the number of Japanese visitors is that the Japanese visitor market is becoming a more mature market due to the increase in repeat visitors. Pamela Martin, et al., Aloha: The Heartbeat of Our Land – A Study of Selected Tourism Issues (Honolulu, HI: Legislative Reference Bureau, Report No. 1, 1998), available on the Internet at [www.state.hi.us/lrb/rpts98/tour.pdf](http://www.state.hi.us/lrb/rpts98/tour.pdf).
- <sup>107</sup> Karen Peterson, “Scope of Market Plunge Rattles U.S. Investors; For Hawaii, Just More Bad News,” The Honolulu Advertiser, September 1, 1998, p. A1; *see also* Michele Kayal, “Markets, Strike May Slow Tourism,” The Honolulu Advertiser, September 1, 1998, p. B8: “Weak visitor arrival numbers for July could get weaker in coming months if the Northwest Airlines strike continues to shake travelers to Hawaii and the falling stock market takes a toll on tourists’ wallets and financial confidence.”
- <sup>108</sup> Ito, *supra* note 14, at 46.
- <sup>109</sup> *See, e.g.*, Rob Perez, “Forsaking Change: Making Government More Efficient Is a Tough Task,” Honolulu Star-Bulletin, October 13, 1998, pp. A-1, A-8.
- <sup>110</sup> Ito, *supra* note 14, at 47; *see* chapter 393, Hawaii Revised Statutes (Hawaii Prepaid Health Care Act).
- <sup>111</sup> Russ Lynch, “Isle Hotels Selling Cheap,” Honolulu Star-Bulletin, August 6, 1998, p. C-1. Nevertheless, despite the stalled local economy, the fact that hotel owners are selling their overpriced properties at comparatively bargain prices, combined with very low interest rates, may appear to some as a good opportunity to establish a toe-hold in Waikiki that, for a number of years, has been out of the reach of many investors.
- <sup>112</sup> Telephone interview with Professor Karl Kim, Chair of the Department of Urban and Regional Planning, University of Hawaii, August 24, 1998. The City and County of Honolulu General Plan (1992 revision) contains several provisions that may help to reduce speculation in land and housing (objective IV.B.). For example, policy 1 encourages the State government to coordinate its urban-area designations with the development policies of the City and County; policy 2 seeks to discourage private developers from acquiring and assembling land outside of areas planned for urban use; and policy 3 seeks public benefits from increases in the value of land owing to City and State development policies and decisions. City and County of Honolulu, Department of General Planning, General Plan: Objectives and Policies (Honolulu: 1992), pp. 23-24.
- <sup>113</sup> Ito, *supra* note 14, at 46.
- <sup>114</sup> *Id.* at 47: “In the 1980s, the price of land skyrocketed as many Japanese investors bought heavily into commercial and residential leases. That pushed up rents for homeowners and businesses alike as many key lease contracts ran out in the midst of the run-up and had to be renegotiated at higher rates. In 1996, during renegotiations of its lease with the Queen Emma Foundation, another large trust, the Waikiki Beachcomber Hotel, saw its rent increase from \$150,000 to \$3.5 million annually. The Beachcomber says it may not be able to survive at such rent levels.”

- <sup>115</sup> The Queen Emma Foundation, Waikiki Master Plan Workshop (Executive Summary); held on Nov. 2, 3, and 4, 1989 (Torrance, CA: Harrison Price Co., 1989), p. 3.
- <sup>116</sup> See, e.g., id. at 3-4; City and County of Honolulu, “Waikiki: Preserving the Past, Preparing for the Future” (Honolulu: Office of Waikiki Development, et al., 1996); State of Hawaii, Office of Planning, Department of Business, Economic Development, and Tourism, Waikiki: Hawaii’s Premier Visitor Attraction (Honolulu: March 1998), p. 2.
- <sup>117</sup> See Act 156, Session Laws of Hawaii 1998.
- <sup>118</sup> Murray Towill, “Hike in Hotel Room Tax Is Counterproductive,” The Honolulu Advertiser, June 26, 1998, p. A11. The newly constructed convention center, however, will likely increase the number of business travelers to Hawaii.
- <sup>119</sup> Michele Kayal, “Islands Lose Some of Their Luster; Japan Visitors Less Enthusiastic,” The Honolulu Advertiser, August 18, 1998, p. A10. The decline in value in the yen may also contribute to less spending by Japanese tourists.
- <sup>120</sup> Section 24-2.2(b)(2)(B), Revised Ordinances of Honolulu (“Urban design principles and controls for the primary urban center”), reads: “Resort facilities shall be developed to support a destination area of about 32,800 visitor units in the Waikiki special area. This figure shall be an absolute cap and shall be reviewed in 1997 and every five years thereafter to assure that the economic viability of Waikiki as a tourist destination area is maintained.” The visitor unit cap for Waikiki is discussed further in chapter 3.
- <sup>121</sup> Markrich, *supra* note 75, at B4.
- <sup>122</sup> Others, however, argue that the visitor unit cap has not discouraged reinvestment in Waikiki, arguing that the cap itself offers the illusion of restraint without actually decreasing expansion capability; see, e.g., George Cooper and Gavan Daws, Land and Power in Hawaii: The Democratic Years (Honolulu, HI: Benchmark Books, 1985), at 161:

... [E]ven when the [Honolulu City] Council was giving the appearance of restraint, this was not necessarily the case. For example, in early 1976, following several years of environmentalist and community agitation over development standards, the Council adopted the Waikiki Special Design District. There were then in Waikiki 22,500 hotel rooms, and under existing standards a further 68,000 could have been built. The Special Design District cut the number of allowable new rooms from 68,000 to 26,000, and reduced hotel building densities – units per acre – by 30%. This might have seemed like a dramatic downzoning. But there were no real objections from Waikiki’s large landowners and builders, because even with the reductions they could still double the number of rooms, meaning they still had as much expansion capability as they could possibly use for the foreseeable future – and this in an area which most independent commentators said was already overdeveloped.

- <sup>123</sup> Ito, *supra* note 14, at 46-47:

In the 1970s, the county of Honolulu adopted severe building restrictions on existing hotels and imposed a city-wide, 33,000-room cap on hotel accommodations in Waikiki in a bid to slow development. The move discouraged many hotels from undertaking necessary upgrades; by the 1990s, Hawaii’s showcase resort area had a shabby, faded look. “We’ve got a number of hotels about six stories high that are totally obsolete in today’s market,” says Richard Kelley, owner of the islands’ Outrigger Hotel chain. “In this business, you need to keep on changing and improving, but this was just not possible in Waikiki.” Following the election of a pro-business mayor last year, the harshest ordinances were temporarily lifted, giving hoteliers a five-year window to make structural improvements. Still, Kelley says, many of his properties in Waikiki are struggling.



Hotel room inventory in Waikiki reached a peak of 34,650 in 1986 before declining to 31,033 in 1994 and 1995. Construction in Hawaii 1996, Thirtieth Annual Report on Hawaii's Construction Industry (Honolulu, HI: Bank of Hawaii, 1996), p. 22.

<sup>124</sup> “Outrigger’s Face-Lift Complete,” The Honolulu Advertiser, July 27, 1998, p. B6.

<sup>125</sup> WPPG at 2-1 to 2-2:

Current planning analyses indicate[ ] the need for major renovation of Waikiki’s physical plant. Ironically, the necessary physical upgrade of Waikiki may inadvertently be inhibited by the current Waikiki Special District (WSD) ordinance. ... Ninety percent of Waikiki’s buildings predate 1976, the year the existing WSD was adopted. Many lack open space and adequate parking, or have densities greater than now allowed, and are therefore considered ‘non-conforming uses.’ If renovated, many of these structures would not be allowed to re-build to their existing densities under the current zoning. Therefore, renovation may not be seen as economically viable by the landowners, and the properties are allowed to deteriorate.

<sup>126</sup> [Editorial], “Visitor Survey Hints at Slipping Waikiki,” The Honolulu Advertiser, August 19, 1998, p. A10.

<sup>127</sup> Markrich, *supra* note 75, at B4.

<sup>128</sup> Russ Lynch, “Hotel Occupancy Falls Again,” Honolulu Star-Bulletin, August 20, 1998, pp. C-1, C-4; Suzanne Roig, “Big Isle Lures Visitors,” The Honolulu Advertiser, August 4, 1998, pp. B5, B8; Michele Kayal, “Hotel Occupancy Falls 3.4 Percent on Oahu,” The Honolulu Advertiser, August 12, 1998, p. B5.

## Chapter 3

### REGULATIONS AFFECTING WAIKIKI

This chapter reviews the major state, county, and federal laws affecting Waikiki, beginning with the laws cited in Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998) and state and county planning laws, namely:

- The Environmental Impact Statement (EIS) law, which includes requirements for the filing of environmental assessments (EAs) and environmental impact statements (EISs);
- The Coastal Zone Management (CZM) law, which includes Special Management Area (SMA) permit requirements;
- State and county planning laws, including the City and County's General Plan (GP) and Development Plan (DP) relating to Waikiki; and
- The City and County of Honolulu ordinance relating to the Waikiki Special District (WSD), which is part of the City's Land Use Ordinance (LUO).

State and City planning laws and other laws affecting proposed projects in Waikiki are also reviewed. However, this chapter is not intended to provide an in-depth coverage of these laws, but rather to give a brief outline of their requirements, particularly in relation to their application to Waikiki, and the need, if any, to streamline those laws. Readers who are interested in further information on these and related areas are referred to the sources cited in the endnotes at the end of this chapter.

#### A. Environmental Impact Statement Law

Hawaii's Environmental Impact Statement (EIS) law, which was enacted in 1974 and codified as chapter 343, Hawaii Revised Statutes (HRS), is patterned after the federal National Environmental Policy Act of 1969 (NEPA).<sup>1</sup> In 1979, the Legislature found that Hawaii's environmental review process would, among other things, "integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions", and that this process was desirable "because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole."<sup>2</sup> Accordingly, the Legislature declared as the purpose of the EIS law "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."<sup>3</sup>

The EIS law is administered by the state Office of Environmental Quality Control (OEQC),<sup>4</sup> which publishes a semi-monthly bulletin, The Environmental Notice, which includes

information for each county regarding proposed actions, public review periods for EAs and EISs, agency determinations regarding final EAs and EISs, including findings of no significant impact (FONSI), and related information.<sup>5</sup> The Environmental Council, a fifteen-member citizen board appointed by the Governor to advise the State on environmental concerns, adopts administrative rules governing the EIS process.<sup>6</sup> The rules relating to the EIS law are found in chapter 11-200, Hawaii Administrative Rules.

According to the OEQC, the EIS is not a permit, but is rather an informational document; the intent of chapter 343 is to provide information in making decisions on whether to grant permits.<sup>7</sup> The EIS process “offers many opportunities to prevent environmental degradation and protect human communities through increased citizen involvement and informed decision making”, and by requiring government to “give systematic consideration to the environmental, social and economic consequences of proposed development projects before granting permits that allow construction to begin” and assuring the public “the right to participate in planning projects that may affect the community.”<sup>8</sup> The following abbreviated overview of the process is derived from OEQC’s latest (1997) guidebook outlining the EIS process. Flowcharts of the environmental review system and the environmental review decision making process are included as Appendices E and F, respectively.

- The first step is to determine whether a proposed action is subject to the EIS law. The following eight actions will “trigger” the EIS law:
  1. Use of state or county lands or funds other than for feasibility studies or the purchase of raw land;
  2. Use of any land classified as Conservation District by state law;
  3. Use within the Shoreline Setback Area, usually forty feet inland from the certified shoreline;
  4. Use within any Historic Site or District designated in the National or Hawaii Register of Historic Places;
  5. Use within the Waikiki Special District as designated by the City and County of Honolulu;
  6. Any amendment to county general plans that would designate land as other than agricultural, conservation, or preservation, except comprehensive plan amendments initiated by the county;<sup>9</sup>
  7. Reclassification of state Conservation District lands; and
  8. Construction or modification of helicopter facilities that may affect conservation land, the shoreline area, or historic properties.

At issue in this study is the fifth trigger, the so-called “Waikiki trigger”, which is codified in section 343-5(a)(5), Hawaii Revised Statutes.

- Once an agency finds that a proposed action “triggers” the EIS law, it must decide if the action is:
  1. Exempt from preparing a review document. There are currently ten classes of exempt action under the EIS administrative rules. These are actions that are deemed to be of a minor or routine nature by the state or county agency having oversight over the project. Thus, even if a proposed action triggers chapter 343, the agency may still declare the activity to be exempt from environmental review.
  2. Will require a relatively brief review by means of an environmental assessment (EA); or
  3. Will require a full environmental impact statement (EIS).
- If a proposed action triggers the EIS law and is not exempt, a draft EA must be prepared. The EA is an informational and disclosure document, not a permit, that is prepared by the applicant, whether an agency or private party, which is used to evaluate the possible environmental effects of the proposed action and determine if an EIS is required. The EA must provide a detailed description of the action and evaluate direct, indirect, and cumulative effects, including alternatives to the project and measures to minimize potential impacts. There is a 30-day period for the public to review and comment on the draft EA.
- After the draft EA is finalized and public comments are responded to, the agency proposing or approving the action reviews the final assessment and determines whether there may be any significant environmental impact. There are thirteen significance criteria which must be addressed in the EA, including whether the project involves an irrevocable commitment to loss or destruction of any natural or cultural resource, substantially affects public health, or involves substantial degradation of environmental quality.
- If the agency finds that the project will not have a significant environmental impact, it issues a “FONSI”, or finding of no significant impact, which allows the project to proceed without further review. The public may challenge an agency’s FONSI determination by filing an action in Circuit Court within 30 days of the notice of the finding.
- If the agency finds that the action may have a significant impact, it may require the preparation of a more detailed EIS, which assesses the project by identifying environmental concerns, obtaining relevant data, conducting necessary studies, receiving public input, evaluating alternatives, and proposing measures to minimize adverse impacts. The decision to prepare an EIS can be made after reviewing the

EA or at the project's inception. An EIS preparation notice is issued and undergoes a 30-day comment period to define the scope of the draft EIS. The notice also initiates a 60-day period during which an aggrieved party may challenge that determination in court.

- Upon publication, the draft EIS is subject to a 45-day review by the public and governmental agencies. After responses are made to public comments, the draft is revised and submitted as the final EIS. The acceptability of the final EIS is made by the accepting authority. The accepting authority for state agency actions is the Governor, while the respective county mayor or designated department director accepts the EIS for county actions. Privately initiated EIS documents are accepted by the agency that is empowered to issue permits for the project. After acceptance of the final EIS, the project may proceed. An aggrieved party may challenge the acceptance by filing suit within the 60-day period following publication of the final EIS.<sup>10</sup>

The statutory time periods for public participation in the EIS review process may be summarized as follows:

- 30-day Draft EA comment period (for anticipated FONSI);
- 30-day EIS preparation notice consultation period; and
- 45-day Draft EIS review period.<sup>11</sup>

In addition, judicial proceedings may be initiated within the following time periods by aggrieved parties regarding any of the following actions in the process:

- 120-day period to challenge lack of assessment. An aggrieved party may file suit within 120 days from the initiation of a proposed action if that action is applicable to the EIS law but is undertaken or initiated without an EA or a formal determination on the requirement of an EIS;
- 30-day period to challenge FONSI. An aggrieved party has 30 days from the date of publication of the FONSI in the OEQC Bulletin to file suit;
- 60-day period to challenge EIS. An aggrieved party has 60 days from the date of publication of the EIS preparation notice in the OEQC Bulletin to file suit; and
- 60-day period to challenge acceptance of EIS. An aggrieved party has 60 days from the date of publication of the notice of acceptance in the OEQC Bulletin to file suit.<sup>12</sup>

## B. Coastal Zone Management Law

The Hawaii Coastal Zone Management (CZM) law, codified as chapter 205A, Hawaii Revised Statutes, regulates public and private development in the coastal zone of the State.<sup>13</sup> The state (CZM) program was adopted in 1978 following the enactment of the federal CZM law:

The federal Coastal Zone Management Act of 1972 was passed during the heady days of national land use and environmental activism in response to competing development and preservation demands on the nation's coastal areas. Congress found that population growth and development in coastal areas resulted in destruction of marine resources, wildlife, open space, and other important ecological, cultural, historic, and esthetic values. In response, Congress created a management and regulatory framework and appropriated money for the development and implementation of state-run coastal zone management programs. The framework is imposed if, but only if, a state chooses to accept the money – and most of the thirty-five eligible coastal states and territories have so chosen.<sup>14</sup>

Under the National Environmental Policy Act, an EIS was prepared for approval of Hawaii's CZM program.<sup>15</sup> The final EIS in 1978 noted in part that “[m]uch of Hawaii's coastal open space and the scenic vistas associated with the open space is being lost or reduced because of extensive development along the shoreline, often of rather massive scale (such as large, high-rise development).”<sup>16</sup> That EIS further noted that “[d]ecisions about the appropriate location of such uses have enormous implications both for the current economic health of the State and the long-term attractiveness of the islands as a place to live and to visit. Relatedly, because of increasing concern about the implications of the operation and siting of various economic activities, the State of Hawaii has enacted over the past several years a number of permit requirements which have themselves become a coastal issue because they are time-consuming, costly and sometimes duplicative.”<sup>17</sup> Two federal incentives eventually persuaded Hawaii to join the federal CZM program in 1978. These were substantial federal funding to create and administer a state CZM program if selected federal guidelines are followed, and a “consistency” review, which allows the State to review federal activities on federal lands that are otherwise exempt from state and local regulations to ensure consistency with the CZM program's objectives and policies.<sup>18</sup>

The objectives and policies of the State's CZM program focus on ten specific areas, namely, recreational resources, historic resources, scenic and open space resources, coastal ecosystems, economic uses, coastal hazards, managing development, public participation, beach protection, and marine resources.<sup>19</sup> For example, policies relating to economic uses include concentrating coastal dependent development in appropriate areas; ensuring that coastal dependent and related development are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the CZM area; and directing the location and expansion of coastal dependent developments to areas that are presently designated and used for those developments and permit reasonably long-term growth in those areas, or allow development outside of designated areas when the use of presently designated locations is not feasible, adverse environmental effects are minimized, and the development is important to the State's economy.<sup>20</sup>

Management development policies in the coastal zone include using, implementing, and enforcing existing law effectively to the maximum extent possible in managing present and future development in the coastal zone; facilitating “timely processing of applications for development permits and resolv[ing] overlapping or conflicting permit requirements”; and communicating the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle in terms that are understandable to the public in order to facilitate public participation in the planning and review process.<sup>21</sup> The program’s objectives and policies apply to all parts of the CZM law,<sup>22</sup> and are binding on actions within the CZM area by all agencies within the scope of their authority.<sup>23</sup> In addition, in implementing these objectives, agencies are to give “full consideration to ecological, cultural, historic, esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development.”<sup>24</sup>

Under Hawaii’s CZM program, the Office of Planning is designated as the lead agency responsible for administering the State’s CZM program,<sup>25</sup> while each of the counties is responsible for designating special management areas (SMAs) and shoreline setbacks, and regulating development in those areas.<sup>26</sup> The SMA is coastal land designated by each county, ranging from one hundred yards inland to several miles.<sup>27</sup> A map of the SMA for Waikiki is attached as Appendix G, while a map of Waikiki’s SMA superimposed on the Waikiki Special District, discussed later in this chapter, is attached as Appendix H. Development in the SMA requires the issuance of a Special Management Area Use Permit (“SMA permit” or “SMP”). “Development” is defined broadly: “Aside from routine maintenance of shoreline and roadways, development includes virtually everything from building a house to developing a resort hotel.”<sup>28</sup>

SMA permits are divided into three categories:

- SMA Use Permit, which authorizes development valued at over \$125,000, “or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects”;
- SMA Minor Permit, which allows development valued not in excess of \$125,000, “and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects”; and
- SMA Emergency Permit, which allows development in cases of emergency “requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form...”<sup>29</sup>

On the neighbor islands, SMA use permit applications are processed by the planning departments and issued by those counties’ planning commissions. In Honolulu, SMA use permits are processed by the Department of Planning and Permitting (DPP), and issued by the City Council, except in Kakaako, in which the Office of Planning has permit authority. The DPP also processes and issues SMA minor permits, except in Kakaako. The DPP requires an environmental assessment or and environmental impact statement before rendering a decision on an SMA use permit.<sup>30</sup> However, as discussed in chapter 5, the City’s environmental review

criteria are based on the objectives and policies in chapter 205A (the CZM Act), rather than chapter 343 (the EIS law), Hawaii Revised Statutes.<sup>31</sup>

County authorities must consider certain SMA guidelines in reviewing developments proposed in the SMA. For example, all development in the SMA must ensure adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves to the extent consistent with sound conservation principles; reserve adequate and properly located public recreation areas; make provisions for solid and liquid waste treatment, disposition, and management; and ensure that alterations to existing land forms and vegetation, and construction of structures, causes minimum adverse effects to water resources and scenic and recreational amenities and minimum danger of floods, wind damage, storm surge, and other dangers.<sup>32</sup> In addition, no development may be approved unless the county authority has first found that the development will not have any substantial adverse environmental or ecological effect, except if that effect is minimized and clearly outweighed by public health, safety, or compelling public interests. The development must also be consistent with the county general plan and zoning, which “does not preclude concurrent processing where a general plan or zoning amendment may also be required.”<sup>33</sup>

The county authority is required to provide adequate notice to persons whose property rights may be adversely affected, and to others who have requested in writing to be notified of SMA use permit hearings or applications. The authority also provides written notice once in a newspaper of general circulation in the State at least twenty days before the hearing.<sup>34</sup> Citizens may sue an agency to ensure that its activities in the SMA comply with the objectives and policies of chapter 205A anywhere in the State.<sup>35</sup>

Hawaii’s CZM program also provides for the regulation of development within shoreline setback areas. The State’s shorelines and appeals of shoreline determinations are handled by the state Board of Land and Natural Resources.<sup>36</sup> The planning departments in the neighbor island counties, and the DPP in Honolulu, may adopt setbacks along shorelines between 20 and 40 feet inland of the shoreline.<sup>37</sup> Development within the shoreline setback area requires a variance from the established setbacks. The county authority is required to provide public notice to abutting property owners and persons who have requested notice, and hold a public hearing before acting on a variance.<sup>38</sup> The county is responsible for enforcing setbacks; any prohibited structure or activity, that has not received a variance or complied with conditions on a variance, must be removed or corrected. No other state or county permit or approval is to be construed as a variance. In addition, any unauthorized structure on private property that affects the shoreline is construed to be entirely within the shoreline area for enforcement purposes.<sup>39</sup>

## **C. Planning Laws**

### **1. State Plan.**

On the State level, chapter 226, Hawaii Revised Statutes, establishes the Hawaii State Plan to “serve as a guide for the future long-range development of the State; identify the goals, objectives, policies, and priorities for the State; provide a basis for determining priorities and allocating limited resources, such as public funds, services, human resources, land, energy,



water, and other resources; improve coordination of federal, state, and county plans, policies, programs, projects, and regulatory activities; and to establish a system for plan formulation and program coordination to provide for an integration of all major state, and county activities.”<sup>40</sup>

The state Office of Planning is required to provide technical assistance in administering the State Plan.<sup>41</sup> The Office is also generally responsible for engaging in state comprehensive planning and program coordination and cooperation, including collecting and analyzing data to further effective state planning, policy analysis and development, and the delivery of government services; providing land use planning, including conducting periodic reviews of the classification and districting of all lands in the State; carrying out the lead agency responsibilities for the Hawaii coastal zone management program, including developing and maintaining an ocean and coastal resources information, planning, and management system; and conducting regional planning and studies.<sup>42</sup>

The Hawaii State Plan further provides that state goals include a strong, viable economy; a desired physical environment; and physical, social, and economic well-being for Hawaii’s individuals and families.<sup>43</sup> It is not clear from the plan, however, how economic development activities are to be reconciled with environmental preservation activities, since the objectives of each may not always be mutually compatible. Planning for the State’s economy is to be directed toward increased and diversified employment opportunities to achieve full employment and improved living standards, and “[a] steadily growing and diversified economic base that is not overly dependent on a few industries, and includes development and expansion of industries on the neighbor islands.”<sup>44</sup> A priority guideline to stimulate economic growth is to “[s]treamline the building and development permit and review process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where public health, safety and welfare would not be adversely affected.”<sup>45</sup>

Tourism, the industry most associated with Waikiki, has its own planning requirements. In particular, planning with respect to the visitor industry is to be directed towards achieving “a visitor industry that constitutes a major component of steady growth for Hawaii’s economy.”<sup>46</sup> This objective is to be achieved through such policies as improving the quality of existing visitor destination areas, encouraging cooperation and coordination between the private sector and government “in developing and maintaining well-designed, adequately serviced visitor industry and related developments which are sensitive to neighboring communities and activities”, and developing the visitor industry in a manner that continues to provide new job opportunities and steady employment for Hawaii’s people.<sup>47</sup>

Priority guidelines to promote the economic health and quality of the visitor industry include encouraging “the development and maintenance of well-designed, adequately serviced hotels and resort destination areas which are sensitive to neighboring communities and activities and which provide for adequate shoreline setbacks and beach access”, supporting “appropriate capital improvements to enhance the quality of existing resort destination areas and provide incentives to encourage investment in upgrading, repair, and maintenance of visitor facilities”, and maintaining and encouraging “a more favorable resort investment climate” consistent with the State Plan.<sup>48</sup>

These economic development policies may at times come into conflict with the State Plan's objectives and policies regarding Hawaii's physical environment. For example, environmental objectives include achieving prudent use of the State's land-based, shoreline, and marine resources and effective protection of Hawaii's "unique and fragile environmental resources."<sup>49</sup> Policies to achieve these objectives include the exercising an "overall conservation ethic in the use of Hawaii's natural resources", ensuring compatibility between land- and water-based activities and natural resources and ecosystems, managing natural resources and environs "to encourage their beneficial and multiple use without generating costly or irreparable environmental damage", and providing public incentives to encourage private actions that protect significant natural resources from degradation or unnecessary depletion.<sup>50</sup> Other objectives and policies are specified for the enhancement of Hawaii's scenic assets, natural beauty, and cultural and historic resources, as well as for the maintenance and pursuit of improved land, air, and water quality and greater public awareness and appreciation of Hawaii's environmental resources.<sup>51</sup>

## 2. County Plans.

County plans include both general and development plans.<sup>52</sup> According to the Hawaii State Plan, county general and development plans must be formulated with input from the state and county agencies as well as the general public; must indicate desired population and physical development patterns for each county and regions within each county; and must address the unique problems and needs of each county and region.<sup>53</sup> The State Plan further requires that county general or development plans "further define the overall theme, goals, objectives, policies, and priority guidelines" that are contained in the Hawaii State Plan,<sup>54</sup> and must contain objectives and policies as required by each county's charter.<sup>55</sup>

General Plan. Under the City's Charter, as recently amended at the November 3, 1998 general election, the general plan must set forth the City's objectives and broad policies for the City's long range development, and must contain "statements of the general social, economic, environmental and design objectives to be achieved for the general welfare and prosperity of the people of the city and the most desirable population distribution and regional development pattern."<sup>56</sup> The general plan for the City and County, which was adopted in 1977, was last amended by the City Council in 1992. With respect to its economic activity objectives to maintain the viability of Oahu's visitor industry (objective II.B.), the general plan sets forth the following five policies that are specifically related to Waikiki:

- Policy 1: Provide for the long-term viability of Waikiki as Oahu's primary resort area by giving the area priority in visitor industry related public expenditures.
- Policy 2: Provide for a high quality and safe environment for visitors and residents in Waikiki.
- Policy 3: Encourage private participation in improvements to facilities in Waikiki.
- Policy 4: Prohibit major increases in permitted development densities in Waikiki.

- Policy 5: Prohibit further growth in the permitted number of hotel and resort condominium units in Waikiki.<sup>57</sup>

The City and County's general plan further provides a number of policies to protect and preserve Oahu's natural environment (objective III.A.), although without specifically mentioning Waikiki. For example, policy 1 seeks to protect Oahu's natural environment, especially its shoreline, from incompatible development; policy 2 seeks the restoration of environmentally damaged areas and natural resources; policy 4 requires development projects to give due consideration to natural features such as flood and erosion hazards; and policy 5 requires sufficient setbacks of improvements in unstable shoreline areas to avoid the future need for protective structures.<sup>58</sup>

Finally, the City's general plan includes physical development and urban design objectives to ensure that all new developments are "timely, well-designed, and appropriate for the areas in which they will be located." Policy 1 of objective VII.A. establishes the primary urban district (PUC), of which Waikiki is a part, as the area given the top priority for the construction of new public facilities and utilities. Policy 2 seeks the coordination of the location and timing of new development with the availability of adequate water supply, sewage treatment, drainage, transportation, and public facilities. Policy 4 requires new developments to provide or pay the cost of all essential community services, including utilities, schools, and parks, while policy 5 seeks to provide for more compact development and intensive use of urban lands where compatible with the social and physical character of existing communities.<sup>59</sup>

Development plans. The City's development plans, which were first adopted in the years 1981-1983, cover eight geographic sub-regions of Oahu, and consist of detailed maps and text. The sub-region affecting Waikiki is the Primary Urban Center (PUC). The development plan's urban design principles and controls for the PUC were amended by the City Council in 1996 in order "to guide future planning and development of the Primary Urban Center in order to both promote Waikiki as Hawaii's premier tourist destination and meet the needs of Waikiki residents."<sup>60</sup> In particular, the development plan's principles and controls were amended, among other things, to add the following objectives:

- Activities, sites and facilities that create and perpetuate a "Hawaiian sense of place" shall be encouraged through a partnership of the community, business and government;
- A pedestrian trail system shall be established with markers to identify the location of significant cultural and historic sites. Programs and activities that accurately and respectfully exhibit or portray Hawaiian culture and the history of Waikiki shall be encouraged;
- The Ala Wai Canal and adjacent area is an important natural, recreational, and open space resource to be protected, preserved and enhanced for its scenic, environmental, and recreational qualities;
- Actions shall be promoted that are consistent with the long-term economic strength and viability of Waikiki;

- Actions shall be encouraged and undertaken that integrate Waikiki’s cultural and historic heritage with its physical improvement and future development so as to promote and maintain Waikiki as a unique world class tourist destination;
- A viable residential community shall be supported in Waikiki and a compatible mixture of resident and visitor activities shall be permitted so as to preserve the integrity of residential communities;
- The special circumstances in Waikiki that tend to increase criminal activities shall be recognized, and enhanced public safety measures and programs shall be provided to assure a safe environment for Waikiki residents and visitors alike; and
- Infrastructure for Waikiki shall be provided and maintained through public and private partnerships, to the extent feasible, so as to provide adequate capacity for existing and planned visitor, residential and commercial needs.<sup>61</sup>

Other changes made by the 1996 amendments included qualifying the provision that “[a]ny additional high-density development shall be discouraged” by adding “unless accompanied by public amenities”, and by deleting references to a people-mover system and instead encouraging “[a]lternative modes of transportation and pedestrian-oriented amenities”.<sup>62</sup> In addition, a ranking that placed Waikiki below other infrastructure priorities was amended to place Waikiki as the top development priority in the Primary Urban Center with respect to “infrastructure improvements to facilitate the future development of Waikiki, including facilities to support the convention center.”<sup>63</sup> The intent of these 1996 amendments was to “improve Waikiki’s image as a world class destination through a variety of physical, economic and social programs.”<sup>64</sup>

The pre-1996 development plan with respect to Waikiki also provided a visitor unit cap of 32,800 visitor units in Waikiki. This figure was an “absolute cap” that was to be reviewed in 1997 and every five years thereafter “to assure that the economic viability of Waikiki as a tourist destination area is maintained.”<sup>65</sup> The City Planning Department found that in 1995, “there have been calls to increase the number of hotel rooms allowed, from as few as 1,000 – 2,000 to as many as 15,000.”<sup>66</sup> The Planning Department has tentatively concluded that, following the five-year moratorium on new hotel construction, the existing number of visitor units is 31,300, which leaves an excess capacity of 1,500 units, or the equivalent of three new 500-room hotels in Waikiki.<sup>67</sup>

Substantial changes were made to Honolulu’s development plans by the 1992 general election charter amendments, which intended to change DPs from relatively detail-oriented, parcel-specific plans to more conceptual or visionary plans. One of the principal intentions behind this change was the streamlining of the development plan amendment process. The Primary Urban Center development plan, which includes Waikiki, is currently being revised to bring it into conformance with the conceptual orientation provided in the 1992 City Charter revision.<sup>68</sup> Recent streamlining efforts by the City and County Department of Planning regarding the PUC development plan revision program are further discussed in chapter 5.

While Honolulu’s development plans provide a conceptual scheme for implementing the development objectives and policies of the City’s general plan, however, the development plans “themselves don’t restrict development; the zoning regulations that must conform to them do. Obviously, Honolulu may not permit, by zoning, uses that are more intense than the area’s development plan would allow.... This is the purview of the Land Use Ordinance.”<sup>69</sup>

#### **D. Land Use Laws**

Land use controls have evolved in the last half century from zoning and subdivision regulations enacted by municipalities governing the size, location, and bulk of structures, to more sophisticated growth management regulations including growth timing controls, building permit limits, impact fees, historic site regulation, and other growth control devices.<sup>70</sup> While Hawaii’s land use law – described as “one of the most analyzed, summarized, eulogized, and criticized statutes in the country”<sup>71</sup> – increases land use control powers at the state level, that law gives to the counties the power to exercise traditional local land use controls in the urban district, of which Waikiki is a part.<sup>72</sup> This section focuses primarily on traditional zoning measures enacted by the City and County of Honolulu affecting Waikiki.<sup>73</sup>

Land use regulations in Hawaii must be in conformity with comprehensive planning, as discussed in the previous section.<sup>74</sup> State law requires that zoning in all of the counties be accomplished “within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner.”<sup>75</sup> Planning is also emphasized in the City’s Revised Charter, which requires the City Council to enact zoning ordinances after public hearings “which shall contain the necessary provisions to carry out the purposes of the general plan and development plans.”<sup>76</sup> The Charter further provides that in enacting zoning ordinances, the City Council “shall take into consideration the character of the several parts of the city and their peculiar uses and types of development with a view to encouraging the most appropriate use of land throughout the city.”<sup>77</sup>

The City and County of Honolulu implements its development plans “through a comprehensive amendment to its local zoning ordinance called the Land Use Ordinance. Effective since late 1986, the LUO is a complex and sophisticated local land-use code in which virtually all uses of any consequence pass through some sort of administrative review before (and if) they are approved.”<sup>78</sup>

In 1986 Honolulu replaced its venerable and much-amended Comprehensive Zoning Code (CZC) with the more general and flexible LUO. The product of planners rather than lawyers, the LUO is easier to comprehend, but more difficult to apply. There are fewer landowner “rights” and vastly more administrative discretion in the permitting of land use. There is also more administrative review of proposed uses, and more power concentrated in the hands of zoning administrators like the director of DLU and the chief planning officer, head of the Department of General Planning (DGP). Nevertheless, in its broadest sense, the LUO is a local zoning ordinance that divides the island of Oahu into zoning districts with permitted, special, and conditional uses under each, and accompanying bulk, parking, and other land-use standards. The rest of the LUO text – and there is a lot – consists of administrative provisions governing the permit process.<sup>79</sup>

The part of the LUO most directly concerning Waikiki is the Waikiki Special District (WSD). (Adopted by the City in 1976 as the “Waikiki Special Design District” (WSDD), the name was amended in 1986 by dropping the word “Design”.)<sup>80</sup> In its 1996 “Waikiki Planning & Program Guide” (WPPG), the City Planning Department found that while zoning must be in conformance with development plans, the WSD, as the zoning ordinance for Waikiki, had never been brought into conformance with the 1992 development plan changes: “the urgency behind this need for a changed WSD is that new investment and reinvestment are necessary to prevent decline. Urban decay would be disastrous to Waikiki’s competitiveness and to the State’s economy.”<sup>81</sup> As noted in chapter 2, the Planning Department found that the existing WSD ordinance, whose goal was to maintain Waikiki’s current and future economic viability, was actually a major impediment working *against* improvement by discouraging renovation and replacement of nonconforming structures:

A significant land use issue that needs to be addressed immediately is the high incidence of non-conforming uses and structures. According to the Department of Land Utilization, as many as 52% of all parcels in Waikiki now contain non-conforming densities and 24% contain non-conforming uses. When a property is non-conforming, there are severe limitations on the ability to improve the property. This, in turn, leads to properties being allowed to deteriorate and decline as they age. The only avenue now available to property owners is the variance process which can be expensive, time consuming and unpredictable.<sup>82</sup>

The Planning Department further noted that although Waikiki is viewed primarily as a resort hotel and commercial area, 309 of Waikiki’s 500 acres are zoned for public open space or residential apartment districts: “In 1995, Waikiki had a housing stock of 17,000 units and was home to 19,800 residents. Ongoing efforts are needed to protect Waikiki’s residential apartment districts and to improve and enhance all public and open spaces.”<sup>83</sup> Accordingly, the City administration in 1995, working with an advisory task force, identified amendments to the WSD ordinance that would “address impediments to renovation, offer incentives for refurbishment and renewal, and at the same time improve the pedestrian environment and open spaces”; the Planning Department accordingly recommended that the amended WSD “contain incentives to accomplish the primary planning objectives of physical revitalization and economic strength in ways which also help to create a Hawaiian sense of place.”<sup>84</sup>

In 1996, the WSD ordinance was subsequently amended that sought to address the problems identified by the City’s Planning Department.<sup>85</sup> The five zoning precincts were changed to four (apartment, resort mixed use, resort commercial, and public) and one subprecinct (apartment mixed use).<sup>86</sup> Specific design controls were added to specify that buildings and structures in the WSD were to “always reflect a Hawaii sense of place”.<sup>87</sup> The 1996 amendments also provided for Planned Development-Resort (PD-R) projects in the resort mixed use precinct and Planned Development-Commercial (PD-C) projects in the resort commercial precinct “to provide opportunities for creative redevelopment not possible under a strict adherence to the development standards of the special district. Flexibility may be provided for project density, height, precinct transitional height setbacks, yards, open space and landscaping when timely, demonstrable contributions benefitting the community and the stability, function, and overall ambiance and appearance of Waikiki are produced.”<sup>88</sup>

In addition, greater flexibility was allowed for replacing nonconforming structures and uses to encourage renovation. The 1996 amendments provided that in the resort mixed use and resort commercial precincts, and for hotels in the apartment mixed use subprecinct, a nonconforming use or structure may be replaced by a new structure with up to the maximum permitted floor area of the precinct for similar uses or existing floor area, whichever was greater, so long as all other special district standards were met.<sup>89</sup> In addition, a new provision specified that nonconforming uses were not limited to “ordinary repairs” or subject to value limits on repairs or renovation work performed; exterior repairs and renovations which would not modify the arrangement of buildings on a zoning lot were permitted, subject to meeting all special district standards.<sup>90</sup>

The 1996 WSD amendments also made the following specific findings regarding Waikiki:

- (a) To the world, Waikiki is a recognized symbol of Hawaii; and the allure of Waikiki continues, serving as the anchor for the state's tourist industry. In addition to its function as a major world tourist destination, Waikiki serves as a vital employment center and as a home for thousands of full-time residents.
- (b) The creation of the Waikiki special district was largely a response to the rapid development of the 1960s and 1970s, and the changes produced by that development. Now, Waikiki can be described as a mature resort plant and residential locale. Waikiki needs to maintain its place as one of the world's premier resorts in an international market; yet, the sense of place that makes Waikiki unique needs to be retained and enhanced.
- (c) Because of the city's commitment to the economic, social and physical well-being of Waikiki, it is necessary to guide carefully Waikiki's future and protect its unique Hawaiian identity.<sup>91</sup>

The following new objectives were also added to guide Waikiki's future development and redevelopment:

- (a) Promote a Hawaiian sense of place at every opportunity.
- (b) Guide development and redevelopment in Waikiki with due consideration to optimum community benefits. These shall include the preservation, restoration, maintenance, enhancement and creation of natural, recreational, educational, historic, cultural, community and scenic resources.
- (c) Support the retention of a residential sector in order to provide stability to the neighborhoods of Waikiki.
- (d) Provide for a variety of compatible land uses which promote the unique character of Waikiki, emphasizing mixed uses.
- (e) Support efficient use of multimodal transportation in Waikiki, reflecting the needs of Waikiki workers, businesses, residents, and tourists. Encourage the use of

public transit rather than the private automobile, and assist in the efficient flow of traffic.

- (f) Provide for the ability to renovate and redevelop existing structures which otherwise might experience deterioration. Waikiki is a mature, concentrated urban area with a large number of nonconforming uses and structures. The zoning requirements of this special district should not, therefore, function as barriers to desirable restoration and redevelopment lest the physical decline of structures in Waikiki jeopardize the desire to have a healthy, vibrant, attractive and well-designed visitor destination.
- (g) Enable the city to address concerns that development maintain Waikiki's capacity to support adequately, accommodate comfortably, and enhance the variety of worker, resident and visitor needs.
- (h) Provide opportunities for creative development capable of substantially contributing to rejuvenation and revitalization in the special district, and able to facilitate the desired character of Waikiki for areas susceptible to change.
- (i) Encourage architectural features in building design which complement Hawaii's tropical climate and ambience, while respecting Waikiki urbanized setting. The provision of building elements such as open lobbies, lanais, and sunshade devices is encouraged.
- (j) Maintain, and improve where possible: mauka views from public viewing areas in Waikiki, especially from public streets; and a visual relationship with the ocean, as experienced from Kalakaua Avenue, Kalia Road and Ala Moana Boulevard. In addition, improve pedestrian access, both perpendicular and lateral, to the beach and the Ala Wai Canal.
- (k) Maintain a substantial view of Diamond Head from the Punchbowl lookouts by controlling building heights in Waikiki that would impinge on this view corridor.
- (l) Emphasize a pedestrian-orientation in Waikiki. Acknowledge, enhance and promote the pedestrian experience to benefit both commercial establishments and the community as a whole. Walkway systems shall be complemented by adjacent landscaping, open spaces, entryways, inviting uses at the ground level, street furniture, and human-scaled architectural details. Where appropriate, open spaces should be actively utilized to promote the pedestrian experience.
- (m) Provide people-oriented, interactive, landscaped open spaces to offset the high-density urban ambience. Open spaces are intended to serve a variety of objectives including visual relief, pedestrian orientation, social interaction, and fundamentally to promote a sense of "Hawaiianness" within the district. Open spaces, pedestrian pathways and other ground level features should be generously supplemented with landscaping and water features to enhance their value, contribute to a lush, tropical setting and promote a Hawaiian sense of place.
- (n) Support a complementary relationship between Waikiki and the convention center.<sup>92</sup>



Generally, if a use is not permitted in the Waikiki Special District as a principal, special accessory, or a conditional use, then a change of zone classification may be necessary. The Honolulu City Council is ultimately responsible for such a change, after amendments have been made to the appropriate development plans.<sup>93</sup> The Honolulu Department of Planning and Permitting has recently proposed amendments to the LUO to streamline procedures for zoning changes and adjustments and other procedures under the LUO, as discussed in chapter 5.

## E. Other Laws

In 1977, the Legislature required each county to designate a Central Coordinating Agency (CCA) to establish and maintain a repository of all laws, rules, and regulations, procedures, permit requirements and review criteria of all federal, state, and county agencies having any control or regulatory powers over land development projects within each county.<sup>94</sup> The City and County of Honolulu subsequently designated the Department of Land Utilization as the CCA for the City.<sup>95</sup> The City’s most recent permit register – a guide to general requirements and procedures involved in the processing of land developments in Honolulu – contains a listing of nearly 100 federal, state, and county permit and other procedural requirements.<sup>96</sup> While many are clearly not applicable to Waikiki, such as those relating to agricultural clusters and airport permits, the number of land use related permits and procedural requirements for Waikiki developments can be overwhelming. The following outlines some of the more important federal, state, and county laws affecting Waikiki development.

1. Federal Laws. Developments in Hawaii are subject to various federal environmental protection statutes, ranging from CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act) to the Toxic Substances Control Act. A list of federal environmental statutes for which compliance was required with respect to one recent Waikiki project – the development of the Armed Forces Recreation Center at Fort DeRussy – is contained in Appendix I.<sup>97</sup>

However, the federal permitting processes that are perhaps the most applicable to Hawaii land development are the federal permit requirements based on the Clean Water Act, of which “the most important in Hawaii is the authority of the Army Corps of Engineers to require permits for the discharge of dredged or fill material into the navigable waters of the United States, including wetlands.”<sup>98</sup> The permit process includes an optional preapplication consultation with a district engineer, a detailed application form, public notice, comment period, public hearing, and a public interest review, which balances a broad range of environmental and economic factors.<sup>99</sup> In addition, any party seeking to discharge any pollutant into a waterway must obtain a permit under the federal government or a federally certified agency under the National Pollutant Discharge Elimination System (NPDES); “[s]ince intensive use of land anywhere in Hawaii is impossible without some provision for sewage and other waste disposal (usually in waterways), the administration of this federal program is another critical permit process.”<sup>100</sup>

2. State Laws. State laws affecting Waikiki developments include both constitutional and statutory law. Several provisions in the Hawaii Constitution provide for the broad protection of environmental resources. For example, Article IX, Section 8 (“Preservation of a Healthful Environment”) gives the State the power “to promote and maintain a healthful environment,

including the prevention of any excessive demands upon the environment and the State's resources." Other constitutional provisions provide for the conservation and protection of Hawaii's natural resources,<sup>101</sup> including marine, seabed, and water resources,<sup>102</sup> and guarantee to each person "the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."<sup>103</sup>

Other constitutional provisions affecting Waikiki relate to county home rule. While Article VIII, Section 2 of the Hawaii Constitution ("Local Self-Government; Charter") gives to the counties the power to adopt charters for their own self-governance, the home rule power is not absolute. That section provides that only those charter provisions relating to a political subdivision's "executive, legislative, and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions." That constitutional provision further provides that "[a] law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section."

In 1970, the Legislature enacted the environmental quality control law, which established the OEQC, the Environmental Council, and the University of Hawaii Environmental Center "to stimulate, expand and coordinate efforts to determine and maintain the optimum quality of the environment of the State."<sup>104</sup> In enacting that law, the Legislature found that "the quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State. The legislature further finds that the determination of an optimum balance between economic development and environmental quality deserves the most thoughtful consideration, and that the maintenance of the optimum quality of the environment deserves the most intensive care."<sup>105</sup>

In 1974, the same year that the EIS law took effect, the Legislature also passed a law regarding state environmental policy, codified as chapter 344, Hawaii Revised Statutes, "to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii."<sup>106</sup> In addition to establishing state policy, that law requires, "insofar as practicable," all state and county executive agencies to consider guidelines relating to population, natural resources, parks, open space, economic development, and other areas, in the development of agency programs.<sup>107</sup> While it has been argued that these policy considerations should be taken into account when evaluating an EIS,<sup>108</sup> Hawaii's EIS law contains no requirement that chapter 344's policies be considered in reviewing EISs.<sup>109</sup>

The Hawaii Revised Statutes also contains numerous environmental laws that potentially affect Waikiki development. These include a variety of pollution controls, including provisions regarding air pollution (chapter 342B, Hawaii Revised Statutes), ozone layer protection (342C), water pollution (342D), nonpoint source pollution management and control (342E), noise pollution (342F), integrated solid waste management (342G), solid waste pollution (342H), special wastes recycling (342I), hazardous waste (342J), underground storage tanks (342L), and

asbestos and lead (342P). Hawaii's Administrative Procedure Act, codified in chapter 91, establishes procedures for the adoption of administrative rules as well as contested case hearings and judicial review.

3. City and County Laws. In addition to the Waikiki Special District, the City and County's General and Development Plans, and the issuance of permits under the Coastal Zone Management program, Waikiki is affected by the City's land use ordinances relating to flood hazard districts, since some areas of Waikiki are within the flood hazard district.<sup>110</sup> Developments within these districts must comply with federally-sponsored guidelines. The City and County's ordinances, which were enacted pursuant to the U. S. National Flood Insurance Act of 1968 and the U. S. Flood Disaster Protection Act of 1973, provide generally that development in the flood districts is restricted depending on the degree of hazard for the protection of public health, safety, and property. Like the federal Coastal Zone Management Act, the federal government provides money to state and local governments, together with other inducements, to persuade them to enact floodplain regulations; the City and County, as well as the other counties, have each passed appropriate floodplain regulations and are participating in the federal flood hazard program.<sup>111</sup>

In addition to various land use or special management area permits reviewed or issued by the Department of Planning and Permitting for Waikiki, other permits that may be required for Waikiki developments include those issued by the Department of Public Works, such as grubbing permits, grading permits, construction dewatering permits, excavation permits, and permits to excavate a public right-of-way; Department of Wastewater Management permits, including those for sewer connections and sewer extension, oversizing and relief sewer requirements; water and water system requirements from the Board of Water Supply; and Building Department permits, including building, electrical, plumbing, sidewalk and driveway work, demolition, and certificate of occupancy permits.

## Endnotes

<sup>1</sup> See 42 United States Code §§4321 – 4370c (Public Law 91-190, as amended). NEPA, which became law in 1970, provides national policy, establishes a framework for federal agencies to review environmental impacts before taking actions, and created the Council on Environmental Quality. State of Hawaii, Office of Environmental Quality Control, A Guidebook for the Hawaii State Environmental Review Process (Honolulu: Oct. 1997), App. D, p. 28 (hereinafter, "OEQC Guidebook"). See also Daniel R. Mandelker, NEPA: Law and Litigation (St. Paul, MN: Clark, Boardman, Callaghan, 1997); see *id.* at 12-2 for a discussion of state environmental policy acts, or "little NEPAs"; Peter S. Knapman [student author], "A Suggested Framework for Judicial Review of Challenges to the Adequacy of an Environmental Impact Statement Prepared Under the Hawaii Environmental Policy Act," University of Hawai'i Law Review, vol. 18, no. 2 (Summer/Fall 1996), pp. 719-764; George F. Carpinello, SEQRA and Local Land Use Decision Making: The Lessons From Other States (Albany, NY: Government Law Center, Albany Law School, Aug. 1991); Paul N. Cheremisinoff and Angelo C. Morresi, Environmental Assessment and Impact Statement Handbook (Ann Arbor, MI: Ann Arbor Science Publishers, Inc., 1977). According to David Callies, Professor of Law at the University of Hawaii's Richardson School of Law, few private land development proposals in Hawaii trigger federal NEPA involvement; rather, "[I]t is the Hawaii version of a state environmental protection act that has the greatest impact on private development projects in Hawaii because of the breadth of development activity it includes." David L. Callies, Preserving Paradise: Why Regulations Won't Work (Honolulu: University of Hawaii Press, 1994), p. 63.

<sup>2</sup> Hawaii Revised Statutes, §343-1.

<sup>3</sup> Id. For a general discussion of chapter 343, Hawaii Revised Statutes, see David Kimo Frankel, Protecting Paradise: A Citizen's Guide to Land & Water Use Controls in Hawai'i (Kailua, HI: Dolphin Printing & Publishing, 1997), pp. 73-78.

<sup>4</sup> The OEQC, which was created pursuant to section 341-3, Hawaii Revised Statutes, is attached to the state Department of Health for administrative purposes and serves the Governor in an advisory capacity on all matters relating to environmental quality control. Among other things, the Office conducts research or contracts out research projects, recommends programs for long-range implementation of environmental quality control, and conducts public educational programs. Hawaii Revised Statutes, §341-4(b).

<sup>5</sup> The OEQC also prints notices of Oahu Special Management Area EAs and EISs in The Environmental Notice, as well as shoreline certification applications, shoreline certifications and rejections, coastal zone area news, pollution control permits, federal notices, and Environmental Council notices, and related materials. The Notice is accessible on the Internet through the OEQC's website at: <http://www.hawaii.gov/health/oeqc/eioeqc00.htm>.

<sup>6</sup> See State of Hawaii, Office of Environmental Quality Control, The Environmental Notice, September 8, 1998, p. 2. The Environmental Council, which like the OEQC is established pursuant to section 341-3, Hawaii Revised Statutes, and attached to the state Department of Health for administrative purposes, serves as a liaison between the Director of the OEQC and the general public by soliciting information, opinions, complaints, recommendations, and advise concerning ecology and environmental quality through public hearings or other means and by publicizing those matters. Hawaii Revised Statutes, §341-6. See also Jensen M. Uchida, Declaratory Rulings and the Environmental Council (Honolulu: Legislative Reference Bureau, Report No. 13, 1989).

<sup>7</sup> Interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, July 2, 1998.

<sup>8</sup> OEQC Guidebook at 1, 4.

<sup>9</sup> "County general plan" in this context refers not only to a county's denominated general plan, but more broadly to "the county's planning process, which finds expression in, is implemented by, and is identified with various maps, plans, and other documents, however denominated." Hawaii Attorney General Opinion No. 85-30, Dec. 20, 1985, at 7.

<sup>10</sup> OEQC Guidebook at 4-12.

<sup>11</sup> Id. at 9. The state Attorney General has recently commented in an unofficial letter opinion that there is no legal basis for extending the deadline for public comment on a draft EIS. While state agencies have apparently extended the comment period on occasion through letters of consent with the applicant, together with a public notice extension published in the OEQC's Bulletin, the Attorney General found that there was no statutory or regulatory provision for extending the 45-day period: "Our department recognizes that extending the public comment period ... allows the public more time to comment on complicated project proposals with the agreement of the parties most likely to be burdened.... Unfortunately, while this would appear to be reasonable from a policy perspective, our department is unable to opine that this or any other procedure for extending the public comment period on a draft EIS beyond 45 days is authorized under existing law." "AG Finds No Legal Basis for Extension of Draft EIS Public Comment Periods," Environment Hawai'i, vol. 8, no. 9, March 1998, p. 11.

<sup>12</sup> Id. at 35 (App. E).

<sup>13</sup> Hawaii Revised Statutes, §205A-21 ("findings and purpose") provides: "The legislature finds that, special controls on developments within an area along the shoreline are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure that adequate access, by dedication or other means, to public owned or used beaches, recreation areas, and natural reserves is provided. The legislature finds and declares that it is the state policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawaii."

- <sup>14</sup> David L. Callies, Regulating Paradise: Land Use Controls in Hawaii (Honolulu: University of Hawaii Press, 1984), pp. 87-88.
- <sup>15</sup> See United States Department of Commerce, Draft Environmental Impact Statement and Proposed Coastal Management Program for the State of Hawaii (Washington, DC: Office of Coastal Zone Management, 1978).
- <sup>16</sup> United States Department of Commerce, Final Environmental Impact Statement and Proposed Coastal Zone Management Program for the State of Hawaii (Washington, DC: Office of Coastal Zone Management, 1978), p. 5.
- <sup>17</sup> Id. at 6.
- <sup>18</sup> David L. Callies, Preserving Paradise, *supra* note 1, at 75.
- <sup>19</sup> Hawaii Revised Statutes, §205A-2.
- <sup>20</sup> Hawaii Revised Statutes, §205A-2(c)(5).
- <sup>21</sup> Hawaii Revised Statutes, §205A-2(c)(7).
- <sup>22</sup> Hawaii Revised Statutes, §205A-2(a).
- <sup>23</sup> Hawaii Revised Statutes, §205A-4(b).
- <sup>24</sup> Hawaii Revised Statutes, §205A-4(a).
- <sup>25</sup> Hawaii Revised Statutes, §205A-1 (definition of “lead agency”), §205A-3 (“lead agency”); *see also* §225M-2(b)(6), regarding the Office of Planning’s responsibilities regarding coastal and ocean policy management.
- <sup>26</sup> See generally Lisa Woods Munger et al., Hawaii Environmental Law Handbook (by the law firm of Goodwill Anderson Quinn & Stifel) (Rockville, MD: Government Institutes, Inc., 1993), pp. 206-214.
- <sup>27</sup> Frankel, Protecting Paradise, *supra* note 3, p. 62.
- <sup>28</sup> Callies, Preserving Paradise, *supra* note 1, p. 75; *see* Hawaii Revised Statutes, §205A-22 (definition of “development”).
- <sup>29</sup> Hawaii Revised Statutes, §205A-22 (definitions of “special management area use permit”, “special management area minor permit”, and “special management area emergency permit”).
- <sup>30</sup> Frankel, Protecting Paradise, *supra* note 3, at 63; *see* Hawaii Revised Statutes, §205A-1 (definitions of “authority” and “department”).
- <sup>31</sup> As discussed in chapter 5, the OEQC maintains that the criteria in the EIS law, rather than the CZM law, should be used by the DPP in reviewing SMA applications.
- <sup>32</sup> Hawaii Revised Statutes, §205A-26(1).
- <sup>33</sup> Hawaii Revised Statutes, §205A-26(2).
- <sup>34</sup> Hawaii Revised Statutes, §205A-29(a).
- <sup>35</sup> Frankel, Protecting Paradise, *supra* note 3, p. 67.
- <sup>36</sup> Hawaii Revised Statutes, §§205A-42 (“determination of the shoreline”) and 205A-43 (“establishment of shoreline setbacks and duties and powers of the department”); *see also* Hawaii Administrative Rules chapter 13-222 (“shoreline certifications”).
- <sup>37</sup> Hawaii Revised Statutes, §205A-43(a).
- <sup>38</sup> Hawaii Revised Statutes, §205A-43.5.

- <sup>39</sup> Hawaii Revised Statutes, §205A-43.6.
- <sup>40</sup> Hawaii Revised Statutes, §226-1. State functional plans in such areas as conservation lands, housing, and tourism are also prepared by various state agencies. See Hawaii Revised Statutes, §§226-52(a)(3), 226-55, 226-56, and 226-57.
- <sup>41</sup> Hawaii Revised Statutes, §226-53.
- <sup>42</sup> Hawaii Revised Statutes, §225M-2.
- <sup>43</sup> Hawaii Revised Statutes, §226-4.
- <sup>44</sup> Hawaii Revised Statutes, §226-6(a)(1) and (2).
- <sup>45</sup> Hawaii Revised Statutes, §226-103(a)(5).
- <sup>46</sup> Hawaii Revised Statutes, §226-8(a).
- <sup>47</sup> Hawaii Revised Statutes, §226-8(b).
- <sup>48</sup> Hawaii Revised Statutes, §226-103(b).
- <sup>49</sup> Hawaii Revised Statutes, §226-11(a).
- <sup>50</sup> Hawaii Revised Statutes, §226-11(b).
- <sup>51</sup> Hawaii Revised Statutes, §§226-12 and 226-13.
- <sup>52</sup> The Waikiki Master Plan, which is not required by the Honolulu City Charter, is discussed in chapter 2 of this report.
- <sup>53</sup> Hawaii Revised Statutes, §§226-52(a)(4), 226-58(a).
- <sup>54</sup> Hawaii Revised Statutes, §226-52(a)(4).
- <sup>55</sup> Hawaii Revised Statutes, §226-58(b).
- <sup>56</sup> Revised Charter of the City and County of Honolulu (1998), §6-908.
- <sup>57</sup> City and County of Honolulu, Department of General Planning, General Plan: Objectives and Policies (Honolulu: 1992), p. 17.
- <sup>58</sup> Id. at 20.
- <sup>59</sup> Id. at 32-33.
- <sup>60</sup> City Council Ordinance No. 96-70 (1996), Section 1 (Council findings and purpose). Section 1 further provided that “it is the purpose of this ordinance to provide planning guidelines and priorities that will strengthen the economic viability of Waikiki by setting forth certain principles and controls for the Waikiki Special Area and reordering the development priorities that guide public plans and programs in the Primary Urban Center.”
- <sup>61</sup> Revised Ordinances of Honolulu, §24-2.2(b)(2)(O) to (V).
- <sup>62</sup> Revised Ordinances of Honolulu, §24-2.2(b)(2)(C) and (N), respectively.
- <sup>63</sup> Revised Ordinances of Honolulu, §24-2.3(a).
- <sup>64</sup> City and County of Honolulu, Development Plan Annual Report, Fiscal Year 1997 (Honolulu: Sept. 1, 1997), p. 30.
- <sup>65</sup> Revised Ordinances of Honolulu, §24-2.2(b)(2)(B).

- <sup>66</sup> City and County of Honolulu Planning Department, Waikiki Planning & Program Guide (Honolulu: Feb. 1996), p. 8-1 (hereinafter, “WPPG”).
- <sup>67</sup> City and County of Honolulu Planning Department, “Primary Urban Center Development Plan Revision Program”, No. 4 (March 1998), p. 37; telephone interview with Mr. Bob Stanfield, Chief, Plans Evaluation & Revision Branch, City and County Planning Department, Aug. 27, 1998.
- <sup>68</sup> WPPG at 3-4; *see* Revised Charter of the City and County of Honolulu (1998), §6-909. The only amendment made by the November 3, 1998, general election to the 1992 provision relating to development plans was to change the section number of that provision.
- <sup>69</sup> Callies, Preserving Paradise, *supra* note 1, p. 24.
- <sup>70</sup> *See, e.g.*, Peter A. Buchsbaum, “Federal Regulation of Land Use: Uncle Sam the Permit Man,” The Urban Lawyer, vol. 25, no. 3 (Summer 1993), p. 589.
- <sup>71</sup> Callies, Regulating Paradise, *supra* note 14, p. 6. For further discussion of Hawaii’s land use laws, *see generally id.* at 6-21; Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (Washington, DC: United States Council on Environmental Quality, 1971), pp. 5 –53; Daniel R. Mandelker, Environmental and Land Controls Legislation (New York, NY: The Bobbs-Merrill Co., Inc., 1976), pp. 269-284; *see also* Isaac D. Hall, Jr., Donna Y.L. Leong, and Sandra P. Schutte, Major Land Use Laws in Hawaii (Eau Claire, WI: National Business Institute, Inc., 1992); Hawaii Institute for Continuing Legal Education, Recent Developments in Land Use Law (Honolulu: 1993); Phyllis Myers, Zoning Hawaii: An Analysis of the Passage and Implementation of Hawaii’s Land Classification Law (Washington, DC: The Conservation Foundation, 1976).
- <sup>72</sup> Callies, Regulating Paradise, *supra* note 14, p. 7; *see* Hawaii Revised Statutes, §205-2(b): “Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.” Although Waikiki is in the urban district, certain submerged lands in Waikiki are deemed conservation lands. Waikiki’s conservation lands generally include submerged lands that lie seaward of the high water mark, or “upper reaches of the wash of the waves” (section 205A-1, definition of “shoreline”), including submerged lands at the mouth of the Ala Wai Canal. The designation of these lands as conservation lands impacts Waikiki in a only a small number of projects, however, such as the construction of a salt water intake facility on submerged lands to circulate water, or the placement of submerged habitat structures, such as artificial reefs, sunken vessels, or other attractions on the sea floor in conjunction with the operation of submersibles. Since construction on these lands is within the state conservation district and therefore under the jurisdiction of the state Department of Land and Natural Resources, these projects require a Conservation District Use Permit. In addition to other required permits, the placement of submerged habitat structures and permanent moorings may also require a Section 10 (Rivers and Harbors Act) permit from the U. S. Army Corps of Engineers, and may be subject to review by the U. S. Environmental Protection Agency and the U. S. Coast Guard. *See* Atlantis Submarines, Inc., Final Environmental Impact Statement: The Operation of Submersibles as a Public Attraction in the Waters Off Waikiki, Oahu, Hawaii (Kailua, HI: AECOS, Inc., 1987), p. 41.
- <sup>73</sup> Zoning is rooted in the State’s “police power” – the power of the state to enact laws for the protection of the public health, safety, morals, and general welfare of the community. That power is generally delegated from the State to units of local government to regulate land use through a zoning enabling act. However, in Hawaii, “local governments are under ‘home rule,’ that is, they derive some of their governmental authority from the State Constitution rather than from state enabling legislation, including substantial land use control powers as set out in various county charters.” Callies, Regulating Paradise, *supra* note 14, p. 22 and n. 10. Home rule issues are discussed further in chapters 2 and 5.
- <sup>74</sup> Callies, Regulating Paradise, *supra* note 14, p. 24; *see also* Edward J. Sullivan, “The Plan as Law,” Report of the Committee on Land Use, Planning and Zoning Law, The Urban Lawyer, vol. 24, no. 4 (Fall 1992), pp. 881-887; Daniel R. Mandelker and Edith Netter, “Comprehensive Plans and the Law,” in Land-Use Law: Issues for the Eighties (Edith Netter, ed.) (Chicago, IL: American Planning Association, 1981), pp. 55-84.
- <sup>75</sup> Hawaii Revised Statutes, §46-4(a).
- <sup>76</sup> Revised Charter of the City and County of Honolulu 1973 (1994 Ed.), §6-907.

<sup>77</sup> Id. The same Charter provision requires zoning ordinances to contain “permitted densities of buildings and other structures, the area of yards and other open spaces, off-street parking and loading spaces, and the use of buildings and lots.”

<sup>78</sup> Callies, Preserving Paradise, *supra* note 1, at 24.

<sup>79</sup> Id. at 68.

<sup>80</sup> Unlike other special districts that overlaid additional controls on underlying zoning standards, the original WSDDD contained “its own unique requirements and precincts” and special zoning requirements, including:

- Large on-site open space (typically 50% of a lot);
- Deep front yards (20-30 feet);
- Building height limits to preserve the view corridor from Punchbowl to Diamond Head;
- Lower floor area ratios (FAR); and
- Separation of districts into residential (Apartment Precinct), commercial (Resort-Commercial Precinct), and visitor accommodations (Resort-Hotel Precinct).

WPPG at 3-4 to 3-5.

<sup>81</sup> Id. at 3-5.

<sup>82</sup> Id.

<sup>83</sup> Id. at 2-2.

<sup>84</sup> Id. at 2-2, 3-6.

<sup>85</sup> City and County of Honolulu Ordinance No. 96-72 (approved on Dec. 18, 1996).

<sup>86</sup> Revised Ordinances of Honolulu §21-2.20.

<sup>87</sup> Revised Ordinances of Honolulu §21-7.80-4.

<sup>88</sup> Revised Ordinances of Honolulu §21-7.80-4(d).

<sup>89</sup> Revised Ordinances of Honolulu §21-7.80-4(e)(1).

<sup>90</sup> Revised Ordinances of Honolulu §21-7.80-4(e)(3).

<sup>91</sup> Revised Ordinances of Honolulu §21-7.80.

<sup>92</sup> Revised Ordinances of Honolulu §21-7.80-1.

<sup>93</sup> Callies, Preserving Paradise, *supra* note 1, at 68-69.

<sup>94</sup> Hawaii Revised Statutes, §46-18.

<sup>95</sup> City and County of Honolulu Ordinance No. 77-73.

<sup>96</sup> City and County of Honolulu, Department of Land Utilization, Permit Register (Honolulu: Oct. 1996).

<sup>97</sup> United States, Department of the Army, Final Environmental Impact Statement, Development of the Armed Forces Recreation Center – Fort DeRussy, Waikiki, Hawaii (Honolulu: 1991), pp. S-13, S-14.

<sup>98</sup> Callies, Preserving Paradise, *supra* note 1, p. 64, citing 33 U.S.C.A. §1251 *et seq.*; sec. 404 corps wetland permits, 33 U.S.C.A. §1344; and sec. 402 National Pollutant Discharge Elimination System (NPDES) permits, 33 U.S.C.A. §1342.

<sup>99</sup> Id. at 64-67.



- <sup>100</sup> Id. at 66, citing 33 U.S.C.A. §1342 *et seq.* Hawaii, whose pretreatment program was approved on August 12, 1983, has full authority to operate the federal NPDES program for all facilities. See Deborah H. Jessup, Guide to State Environmental Programs, 2d ed. (Washington, DC: The Bureau of National Affairs, Inc., 1990), p. 162.
- <sup>101</sup> Article XI, Section 1 (“Conservation and Development of Resources”).
- <sup>102</sup> Article XI, Sections 6 (“Marine Resources”) and 7 (“Water Resources”).
- <sup>103</sup> Article XI, Section 9 (“Environmental Rights”). That section further allows any person to enforce this right “against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.” Id.; see generally Robert A. McLaren [student author], “Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation,” University of Hawai‘i Law Review, vol. 12, no. 1 (Summer 1990), pp. 123-152.
- <sup>104</sup> Hawaii Revised Statutes, §341-1.
- <sup>105</sup> Id.
- <sup>106</sup> Hawaii Revised Statutes, §344-1.
- <sup>107</sup> Hawaii Revised Statutes, §344-4.
- <sup>108</sup> Knapman, *supra* note 1, University of Hawai‘i Law Review, vol. 18, no. 2 (Summer/Fall 1996), pp. 733-734 (footnote omitted).
- <sup>109</sup> See, e.g., Helene Y. Takemoto, The Environmental Impact Statement as a Decision-Making Process in Hawaii (M.S. in Public Health Thesis) (Honolulu: University of Hawaii, Aug. 1992), p. 59.
- <sup>110</sup> Revised Ordinances of Honolulu, §21-7.10 *et seq.*; telephone interview with Department of Planning and Permitting staff, September 9, 1998.
- <sup>111</sup> See Callies, Preserving Paradise, *supra* note 1, pp. 76-77, 88-90; Revised Ordinances of Honolulu, §21-7.10-1.

## Chapter 4

### STREAMLINING THE REGULATORY PROCESS

#### A. Introduction

In 1977, the Hawaii Legislature made the following finding:

The legislature finds that a major impediment to the orderly processing of needed construction projects is the existing network of state and county land use and planning controls, which are in most instances repetitive and uncoordinated. These controls consume unnecessary amounts of time and result at best in increases in cost of new projects and at worst in abandonment of needed projects.<sup>1</sup>

Flash forward twenty years. In 1997, the Legislature stated:

The legislature recognizes that a vigorous construction industry is essential to the overall economic health of the State. Any effort to stimulate Hawaii's construction industry would invigorate the state economy.

There are several ways government can facilitate construction growth, such as reducing the paperwork, red tape, and time required to obtain licenses, permits, and approvals required by the State for county building projects. Greater coordination of state and county regulatory processes is also necessary to reduce the time it takes for applicants to obtain the required approvals from state and county agencies to begin construction.<sup>2</sup>

Superficially, it would appear that little has changed in the last twenty years with respect to reducing red tape. As the Legislative Reference Bureau noted in its 1992 study regarding problems affecting the implementation of capital improvement projects:

Despite nearly two decades of in-depth analyses by seemingly knowledgeable and well-intentioned individuals from state and county governments, public interest and special interest groups, and the regulated community, neither regulatory agencies nor the regulated community appear to be very happy with Hawaii's permitting process. Generally speaking, regulatory agencies feel they are being unfairly blamed for the woes of agencies in the regulated community and agencies in the regulated community feel they are being unreasonably burdened by the requirements imposed on permits and approvals by regulatory agencies.<sup>3</sup>

These perceived failures in streamlining the permitting process are not for lack of trying to improve that process, however. State laws have been enacted during that period that strongly encourage streamlining. For example, in 1986, the Hawaii State Plan was amended to establish as state policy the promotion of the consolidation of state and county government functions to increase the effective delivery of government programs and services and to eliminate duplicative services wherever feasible.<sup>4</sup> That plan was further amended to establish the following state economic priority guideline: "Streamline the building and development permit and review

process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where public health, safety and welfare would not be adversely affected.”<sup>5</sup> State law also requires the State Office of Planning to facilitate coordinated and cooperative planning and policy development and implementation activities among state agencies, and between state, county, and federal governments, by “formulating mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes”.<sup>6</sup>

In addition, there already exist several laws that seek to streamline various aspects of the permitting process that potentially apply to proposed Waikiki developments. These include laws regarding county ordinances for nonsignificant zoning changes;<sup>7</sup> concurrent processing for county housing projects,<sup>8</sup> special management area guidelines;<sup>9</sup> permits and site plan approvals in the conservation district,<sup>10</sup> and federal-state cooperation on environmental impact statements, including joint statements with concurrent public review and processing.<sup>11</sup> In addition, a 1998 law established maximum time periods for business or development-related permits, including provisions for automatic approvals.<sup>12</sup>

Two state streamlining laws in particular may be used by applicants of proposed Waikiki projects to reduce delays and avoid duplication of hearings and paperwork, namely, the central coordinating agency and consolidated application process (CAP):

1. The central coordinating agency (CCA) law, which is codified in section 46-18, Hawaii Revised Statutes, requires each county to designate an existing agency as a “central coordinating agency” to perform various streamlining functions, including, when requested by applicants, scheduling and coordinating joint public hearings for multiple permits from state or county agencies.<sup>13</sup> The CCA law also authorizes all state and county agencies having regulatory powers over land development projects to enter into memoranda of understanding to promote joint processing of public hearings, and to consult with the CCA and adopt rules establishing the order in which multiple permits take precedence and set conditions under which joint public hearings must be held and the time periods within which the hearing and action for multiple permit processing shall occur.<sup>14</sup>
2. The consolidated application process (CAP), codified in section 201-62, Hawaii Revised Statutes, requires state agencies, and authorizes and encourages county agencies, to participate in this process, and designates the Department of Business, Economic Development, and Tourism as the lead agency for the CAP.<sup>15</sup> The Department administers and facilitates the procedure for any project that requires both county permit applications and state agency approval. The process includes such elements as the establishment of a consolidated application review team and the development of a joint agreement specifying regulatory and review responsibilities and establishing a timetable for regulatory review to minimize duplication and to coordinate agency actions. The process also provides for certain permits to be approved by administrative rule<sup>16</sup>. In addition, section 201-63 requires the Department to operate a permit information and coordination center for

public use,<sup>17</sup> and section 201-64 allows the Department to take various streamlining measures.<sup>18</sup>

Moreover, with respect to proposed developments in Waikiki and elsewhere around the State, the following agencies are statutorily required or authorized to engage in streamlining activities:

- County departments and agencies, in consultation with the CCA (the Department of Planning and Permitting for the City and County of Honolulu), are required to adopt rules regarding multiple permits (section 46-18(b), Hawaii Revised Statutes);
- The State Office of Planning is required to assist in streamlining regulatory processes (section 225M-2(b)(3)(B), Hawaii Revised Statutes);
- The State Department of Business, Economic Development, and Tourism (DBEDT) is authorized to take streamlining measures to facilitate and streamline the permitting process (section 201-64, Hawaii Revised Statutes); and
- The Permit Process Task Force was established in 1997 within DBEDT for administrative purposes “to streamline and facilitate the state permit approval process.” (Section 201-62.5, Hawaii Revised Statutes).<sup>19</sup>

Several state and county agencies and a state task force are therefore already required or authorized to review existing statutory streamlining measures to eliminate delays and reduce duplicative documentation with respect to proposed projects in Waikiki and elsewhere in the State. Why, then, is there still a problem with streamlining and why do delays continue in the processing of permits for Waikiki developments? Moreover, why don't more applicants take greater advantage of existing streamlining processes? Several reasons present themselves.<sup>20</sup>

First, many of the time delays and related problems generally attributed to lack of streamlining may simply be the result of one or a combination of the seemingly unrelated factors discussed in chapter 2 of this report. Changes in market conditions, including a stagnant state economy and international economic pressures, combined with declines in the number of Asian visitors, trends toward Neighbor Island resorts, high hotel room rates, and other factors may have contributed to stalled Waikiki developments that might otherwise have proceeded more quickly. The pre-1996 Waikiki Special District ordinances that discouraged renovation of nonconforming structures also slowed development. Construction projects may also have been discouraged because of earlier land speculation in Waikiki, raising the prices of Waikiki hotels and properties to well beyond their value, combined with an overall slowdown in the lodging industry<sup>21</sup> and difficulties in obtaining loan financing for new hotel construction.<sup>22</sup>

In addition, many applicants apparently simply choose not to use the CAP and CCA processes, which are voluntary. With respect to the CAP, for example, the State Department of Planning and Economic Development in 1987 reported that while that process had been “very helpful” to those who had used it, “there has not been extensive use of the CAP to date...”<sup>23</sup> The Department further noted that a review of CAP experiences suggested that the process may be

new uses of land and water are proposed or where new techniques and products are involved; and 2) out of State or new organizations that are not familiar with the State's regulatory

especially major landowners, who are familiar with permit and approval requirements, "traditionally rely on professional organizations for the necessary technical services to comply

24

While the CAP process continues to be of value to applicants and government agencies,

noted that the CAP is more of a facilitated *consultation* process that allows project applicants and their consultants to review which permits may be necessary for a development, rather than a process designed to facilitate and streamline the process as it currently exists.

Office of

well advertised and it duplicates what planning consultants do. In addition, the process is not mandatory; applicants can chose not to participate. The process is beneficial in getting positive

those involving land-ocean interface. Nevertheless, the process does not work as well for

25

The Office of Planning also noted several potential problems inherent in the consolidated

(A)

against another state or county agency. For example, an applicant may try to generate as much support for a project at the county level, obtain as many

project may be "too big to kill".<sup>26</sup>

obtain support at the state level first, then bring it to the county level. Other applicants use the process to "test the waters", to see the level of support for a

(B)

that has been designated to work solely on the consolidated application process. If two or more large projects were submitted, it may tie up the entire staff, leaving

(C)

personnel regarding a particular project and the permits needed.<sup>27</sup>

Harrigan-Lum, head of the State Environmental Planning Office, also noted that the CAP has not been used that often because the private sector has taken on this type of work,

advice, decide which strategies to apply, and generally do the "shopping", i.e., provide information, for applicants. Streamlining work has been undertaken successfully by the private

this sense, the streamlining of the permitting process has been privatized by private consultants. Moreover, it would be impractical to have agencies do this work, due to staff and budget cuts.<sup>28</sup>

With respect to the CCA, Kathy Sokugawa, Chief of the Zoning Division for the City's Department of Planning and Permitting, noted that the CCA process for coordinating hearings has been used by a number of applicants. However, while developments in Waikiki usually may require a number of City and County permits before construction begins, the types of projects in Waikiki do not ordinarily trigger the need or opportunity for that many public hearings at the *state* level. Therefore, there is less of a need for the coordination of joint public hearings for multiple permits on different government levels provided by the CCA process for Waikiki projects.<sup>29</sup>

Another potential problem with initiating streamlining measures by agencies is the possibility of lack of management support at the head of the agency. Heads of agencies are usually political appointees; they deal generally with complaints and may not be innovators. Absent a crisis or complaint, agency heads may be unwilling to take the initiative to reform the process. Long-time civil servants may also be reluctant to intervene to change the process, and may resist change.<sup>30</sup>

Several agencies also noted that many applicants prefer to use a piecemeal approach to permitting rather than putting everything up front ("front-loading") a project, since the latter requires more effort and money to be spent up front and increases the risks for the applicant. For example, if an architect is used to draw up plans, the applicant must still pay the architect, even if the plans are not used because of subsequent changes in the plans. Applicants generally prefer minimum up-front costs. Applicants also have different levels of information at different times, and may not be prepared to provide all of the information on all points at the same time.<sup>31</sup> Generally, if an applicant invests a significant amount of money in a project, the applicant seeks to ensure that approvals will be obtained for permit applications. Risking more money up front in a streamlined process, in which applications are filed concurrently and hearings may be held jointly, may be more costly to the applicant in the long run if the applicant is rejected, rather than drawing the process out and first obtaining a few approvals, and then seeking subsequent approvals from the State or county. Developers seek to ensure the predictability of obtaining permits to save both money and time.<sup>32</sup>

In addition, Dr. Harrigan-Lum further noted that while a large amount of attention is generally given to agencies' responsibilities, e.g., to approve or deny a permit by a certain time period, applicants also have concurrent responsibilities in the permit process – namely, to submit well-thought out plans and applications. Only then can agencies make responsible decisions.<sup>33</sup> This is especially important following the recent enactment of Act 164, Session Laws of Hawaii 1998, which provides for an automatic permit approval process. According to Arthur Challacombe of the City's Department of Planning and Permitting, that Act will require all of the parties – including applicants, staff, and the general public – to be more attentive in each step of the process, and will require the public to be more concise in its arguments during public comment periods, as there will be fewer opportunities to comment. While the public has on occasion used public comment periods as an opportunity to delay the process; however, they will no longer be able to draw it out as much under this new law.<sup>34</sup>

themselves, or for that matter, with the agencies that are statutorily mandated to implement them, but rather with various external factors, one of the chief factors being the willingness of

will explore various possible solutions to further streamline the regulatory processes affecting developments in Waikiki techniques and efforts to implement them in Hawaii.

## **B. Streamlining Techniques**

The basic purpose of streamlining regulations – whether relating to Waikiki or anywhere report, “streamlining” refers primarily to reforming *procedural* regulatory process affecting proposed Waikiki developments, rather than the *substantive* <sup>35</sup> and incorporates both simplification and coordination as <sup>36</sup> As discussed in chapter 2, despite the divisiveness of this subject, city and county levels.

The following general streamlining techniques to promote greater efficiency and communication among the parties involved, delays in the regulatory process, lack of coordination among the participants, redundancy of procedures, lack of specific decision-making objectives:<sup>37</sup>

### **Techniques to promote improved communication:**

- Permit registers or checklists are compilations of all regulatory requirements affecting proposed developments. Permit registers are already required under the consolidated application process (CAP) and the central coordinating agency (CCA) laws.<sup>38</sup>
- Permit information centers may provide checklists, permit application forms, agency rules, and summaries of permit requirements, and may offer limited advice and referrals. These centers are already required under the CAP and CCA laws.<sup>39</sup>
- Pre-application conferences or conceptual reviews provide for the sharing of information among the applicant and regulatory agencies before formal application, allowing applicants to gain a better understanding of permit requirements and providing for early recognition of potential inter-agency conflicts. While not specifically required under either the CAP or CCA laws, pre-application conferences are implied under the CAP law as a necessary component to ensure inter-agency coordination.<sup>40</sup> However, the Bureau

recommends that provisions for pre-application conferences and conceptual reviews be specifically included in a new bill as described in section C.1. of this chapter.

## 2. Techniques to reduce delay:

- Time limitations, which may be imposed on either a part or over the entire regulatory process, avoid unnecessary delays in agency responses, give the applicant greater certainty in the process, and, if mandatory, provide that failure to make a timely response results in waiver of agency jurisdiction over the project. As discussed in chapter 5, mandatory time limits for business or development-related permits, licenses, or approvals, and provisions for automatic approval, were enacted by Act 164, Session Laws of Hawaii 1998.
- Pre-application conferences or conceptual reviews (discussed earlier).
- Joint hearings bring the major parties together and generally reduce the time needed at the public hearing stage by substituting one hearing for many, leading to either a single joint decision or independent agency decisions. Joint public hearings for multiple permits are already provided for under the CCA law when requested by the applicant.<sup>41</sup>
- Completeness requirements constrain agencies to make determinations of whether the applicant has provided sufficient information, which may be tied to a time limit. Once a completeness determination has been made, the agency is limited in the amount of additional information that may be requested except in cases of fraud or misrepresentation. Neither the CCA nor the CAP laws specify completeness requirements, which are generally contained in county ordinances and administrative rules or internal agency procedures. The Bureau recommends that Act 164, Session Laws of Hawaii 1998, the mandatory time limit and automatic approval law, be amended to include completeness requirements for proposed Waikiki projects, as discussed in chapter 5.
- A permit facilitator or ombudsman is generally an agency employee who is familiar with regulations affecting proposed projects and who monitors the progress of the approval process and expedites procedures whenever possible. The ombudsman may assist the applicant through the entire process or only with respect to a particular agency. Neither the CCA nor the CAP laws provide for the appointment of a permit facilitator or ombudsman. The bill described in section C.1. of this chapter provides for the designation of a permit facilitator for proposed Waikiki developments.<sup>42</sup>
- Major and minor permit distinctions, which separate small or simple projects in terms of regulatory complexity from more complex projects, allow agencies to allocate more time and energy to major projects that are expected to have a



greater likelihood of producing more significant impacts. The major/minor distinction is implicitly recognized in the CAP law in that major projects may require a more lengthy review process than minor projects, which may be handled through permitting “by rule”.<sup>43</sup> Other Hawaii laws also recognize this distinction. For example, Hawaii’s Coastal Zone Management law provides for the issuance of “special management area use permits” (for major permits) and “special management area minor permits”.<sup>44</sup> Similarly, the proposed streamlining amendments to the City’s Land Use Ordinance provides for major and minor application processes based on the complexity of the permits involved.<sup>45</sup> The major/minor permit distinction is further discussed in the proposed amendments to the state Environmental Impact Statement law, as discussed in chapter 5.

**3. Techniques to promote coordination among participants:**

- Master or consolidated application procedures provide for the applicant to submit a general description of the proposed project to an agency or coordinator, which distributes the application to interested agencies that must respond within a specified time period. The master application may be a single application used by participating agencies. The CCA law already provides for master applications.<sup>46</sup> A sample “Zoning Division Master Application Form” from the DPP is contained in Appendix J.
- One-stop permit procedures replace existing regulatory procedures with a new, single procedure that leads to one approval action. One-stop permitting has been called “an extreme form of regulatory revision, in that it would lead to the abrogation of existing regulatory procedures, rather than a strict coordination of existing procedures as is accomplished with the use of the master, or consolidated, application.”<sup>47</sup> Although one-stop permitting is appropriate for individual state or city agencies to expedite permitting within each particular agency, including, for example, the City DPP’s optional one-stop building permit review program (see Appendix K), such a system is not used in the CCA or CAP laws, and is not otherwise recommended for multipermit projects as being politically unworkable: “‘One-stop shopping’ – the delegation of all authority over land use and environmental issues to a single ‘czar’ – cannot, realistically speaking, be accomplished. The issues are too complex; our political institutions, too varied.”<sup>48</sup>
- Liaison staffing refers to the designation by each participating agency of a staff member to work with the other agencies regarding proposed projects over which the agencies share jurisdiction. The CAP already provides for each participating agency or authority to designate a representative to serve on the consolidated application review team.<sup>49</sup>
- Permit facilitator or ombudsman (discussed earlier).

- Inter-agency committees  
granting agencies that consider applications for complex projects. The CAP already provides for the creation of inter-agency consolidated application specifying regulatory and review responsibilities and establishing a timetable for regulatory review to minimize duplication and coordinate agency<sup>50</sup>
- \_\_\_\_\_ (discussed earlier).
- \_\_\_\_\_ may receive initial information from applicants, give notice of proposed projects to interested agencies, arbitrate among agencies, applications. Pursuant to the CCA law, the City and County designated the Department of Land Utilization, changed in 1998 to the Department of County.<sup>51</sup>  
  
A lead agency is the agency having the greatest interest in a proposed project, all participating agencies. The state Department of Business, Economic Development, and Tourism has been designated as the lead agency under the consolidated application procedure for any project that requires both county permit applications and state agency approval.”
- Consolidation of regulatory functions at one level of government to promote coordination. There are several means to accomplish this objective. One way is for the State to require the counties to provide certain control, by setting standards of compliance to be enacted by the counties by ordinance or rule. The State may retain preemption powers if county agencies consolidate regulatory functions at one government level is for the State to transfer regulatory responsibility to the counties. While the State may not be example, if the federal government requires the State to retain responsibility, the State can certify county regulatory procedures, subject to state oversight
- Area-specific super-agencies  
over specified geographical areas, while controls exercised by other agencies may be either waived or subject to preemption by the area-specific super-Station Redevelopment Commission with respect to the Kalaeloa Community<sup>53</sup> and the Hawaii Community Development Authority

with respect to the Kakaako and Hamakua Community Development Districts.<sup>54</sup> As discussed in chapter 5, the Bureau recommends the creation of modified area-specific agencies for certain aspects, rather than all regulatory functions, associated with Waikiki developments, namely, the creation of a Waikiki Community Improvement Authority to guide the development of infrastructure in Waikiki, and a Waikiki Planning Commission for long-term planning in that district.

- User-specific super-agencies may be created to regulate the siting and development of specific kinds of development, often for the development of energy-related facilities, but conceivably to regulate other uses, such as tourism complexes or port facilities. Examples of this type of agency include the Aloha Tower Development Corporation<sup>55</sup> and the Convention Center Authority.<sup>56</sup> While an example of a user-specific super-agency in Waikiki could include the creation of an Ala Moana Gateway Authority,<sup>57</sup> for example, the Bureau does not recommend the creation of user-specific super-agencies for Waikiki at this time.

#### 4. Techniques to reduce redundancy of procedures:

- Permit surrender is the delegation or transfer of one agency's or level of government's power to regulate an aspect of development to another agency, for example, if the two agencies have overlapping responsibilities. The Bureau believes that in the case of overlapping agency jurisdictions involving permits that substantially duplicate each other with respect to Waikiki developments, the affected issuing agencies should work together to eliminate the need for one of the permits, and recommend legislation to that effect. Existing laws should also be reviewed systematically to allow for the waiver of jurisdiction or delegation of responsibilities in individual cases.<sup>58</sup> An example of permit surrender in Hawaii is the transfer to the Department of Land and Natural Resources of certain permitting functions of the state Land Use Commission and the Department of Transportation for purposes of geothermal and cable system development.<sup>59</sup>
- Rebuttable presumptions is another technique used to resolve situations in which the review process leading to a permit may adequately deal with the concerns of a second permit. A rebuttable presumption can be established in these cases that the approval of the first permit assures compliance with the second permit's conditions: "The presumption is made by the second permitting agency; it could be rebutted only if evidence were made available to the agency that, in fact, certain of its conditions were not considered by the first agency or if some information provided by the applicant was considered fraudulent or misrepresenting. In such cases, the second agency's review procedures would be instituted."<sup>60</sup> Rebuttable presumptions are statutorily recommended in Hawaii for incorporation in the streamlining process relating to geothermal and cable system development,<sup>61</sup> and are recommended for

inclusion in the permitting process for proposed Waikiki developments as of this chapter.

- \_\_\_\_\_, including the environmental impact statement (EIS) and EIS-equivalents, such as special management area impact  
  
Streamlining proposals regarding the EIS are discussed in chapter 5, including proposed amendments to the Waikiki trigger, the establishment of a regional proposals.
- \_\_\_\_\_ (discussed earlier).
- \_\_\_\_\_ eliminate the need for individual applications by allowing for permits that prospectively approve certain activities. These permits are most  
  
environmental impact, or in the case of a natural disaster, in which the processing of individual applications may be impractical. General permits  
  
provide design, construction, and performance standards without the need to review each individual project. General permits are already authorized under  
<sub>62</sub>

## 5. Techniques to promote more specific decision-making criteria in regulations:

### Standards determination

regulatory agencies, for example, relating to air or water quality, that must be used in decision making by any agency relating to the subject matter covered by those

While this technique provides for greater uniformity, reduces uncertainty, and eliminates conflicting interpretations on the same subject, other

technical knowledge to apply them competently, and it reduces the capacity of the public and private sectors to negotiate specific conditions related to development

With respect to this latter argument, other states have recently begun to develop programs to provide for greater permitting flexibility, including  
<sub>63</sub> Florida's ecosystems

<sup>64</sup> New Jersey's facility-wide permitting program, and Oregon's "green permits" program, as well as other innovative state environmental management laws that seek to provide a framework for businesses and individuals

solving environmental problems.<sup>67</sup>

processing times and reduced paperwork for environmental permits, but may also provide greater flexibility to implement cost-effective strategies aimed at complying

could be used as the basis for further streamlining and consolidating environmental

permitting on the State and County level for developments in Waikiki and elsewhere in Hawaii.

**6. Techniques to promote greater conformance of regulatory mechanisms with their substantive objectives:**

- Means/ends linkage. It is argued that more explicit statements of objectives of regulations should precede the development of those regulations, linking the regulatory action with the stated objectives, and that if regulatory programs cannot be justified in their current forms because of a lack of fit between their objectives and their observed consequences, they should be revised: “Such revision could promote greater regulatory efficiency in the broadest sense. The inefficiency which results from such lack of fit is related principally to an underachievement of objectives, given a level of expenditure of effort...”<sup>68</sup> As noted earlier, a review of all state agency rules pertaining to the state permit approval process is currently being performed by the Permit Process Task Force to determine the source of inefficiencies, delays, and duplications.<sup>69</sup>
- Area exemptions are waivers by an agency of its review of activities in a certain geographic area, in which the agency retains its jurisdiction and may rescind exemptions if circumstances change. Area exemptions may be used in cases in which regulation is not meaningful because the objectives of the regulation have no application in that particular geographic area.<sup>70</sup> The Bureau finds no compelling need to establish area exemptions for Waikiki at this time.

**C. Streamlining Proposals**

Although the CAP and CCA laws, as described earlier, already include a number of streamlining techniques to reduce delays and duplication of regulations for proposed projects in both Waikiki and around the State, several measures may be used in place of the CAP process to provide for greater streamlining in Waikiki. The following are examples of the types of measures that may encourage greater streamlining for Waikiki projects, emphasizing different aspects of that process as explained below. While the Bureau believes that the first proposal, which incorporates aspects of the existing CAP process, may have the greatest potential for increasing streamlining in Waikiki, the other two proposals, which are modeled after Washington and Alaska permit streamlining statutes, bring different strengths to the process and should also be considered as alternatives, based on the streamlining policies selected by decision makers. All three proposals provide for a five-year pilot program in order to allow for a review of their effectiveness.

1. Waikiki consolidated permit application and review pilot program. Modeled after the Hawaii law regarding geothermal and cable system development in chapter 196D, Hawaii Revised Statutes, which in turn incorporated portions of the CAP law, this bill (like the CAP law) designates the Department of Business, Economic Development and Tourism as the lead

agency to administer and implement the consolidated permit application and review process for proposed Waikiki developments. This bill also adds other streamlining techniques, as described in section 2 of this chapter, to increase permit consolidation, coordination, and simplification. The bill's consolidated permit application and review process, which applies only to proposed projects in Waikiki, differs from the process under the existing CAP law in that the new process:

- Requires the appointment of a project facilitator to “walk” the applicant through the process and serve as a mediator where necessary;
- Specifically requires one or more pre-application conferences and a conceptual review of the proposed Waikiki project;
- Provides for a completeness review of applications;
- Requires City and County of Honolulu participation in the process (and appropriates funds to the City and County as a county mandate under Article VIII, Section 5 of the Hawaii Constitution);
- Allows both State and City and County agencies to opt out of the process, but deems nonparticipating agencies to have approved project permits;
- Requires project monitoring by the Department to ensure the applicant's compliance with permit terms and conditions;
- Requires the incorporation of conflict resolution mechanisms to resolve conflicts arising among departments and agencies resulting from conflicting requirements, procedures, or agency perspectives;
- Provides for the consolidation of contested case hearings on permits and for appellate review directly to the to the Hawaii Supreme Court;
- Provides for joint environmental impact statements and concurrent public review and processing;
- Increases the Department's responsibilities with respect to streamlining activities and information services regarding Waikiki developments, including providing for explicit agency standards and incorporating rebuttable presumptions (and appropriates funds to the Department to allow for the efficient implementation of the consolidated permit application and review process, including hiring additional staff for this purpose)
- Provides for the transfer of permitting functions, including enforcement functions, from issuing agencies to the Department upon the written agreement of the parties; and

- Requires the Department to submit annual reports regarding the effectiveness of the consolidated permit application and review process.

In addition, the bill requires the Department to review the awarding of incentives to applicants to encourage the use of the consolidated permit application and review process for proposed Waikiki developments, including:

- A reduction in permit fees;
- A reduction in real property, general excise, or other taxes;
- Faster processing times;
- A reduction in State or City and County lease rent if the proposed project is located on public lands;
- A reduction in other user or impact fees; and
- Exemption from certain local ordinances, other than those affecting density, open space, and other land use or environmental provisions.

A proposed bill establishing the Waikiki consolidated permit application and review pilot program may be found on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix N.

2. Waikiki environmental permit assistance pilot program. An alternative pilot program, modeled after Washington's Environmental Permit Assistance law,<sup>71</sup> would establish a coordinated permit process for proposed Waikiki projects, including the appointment of a project facilitator to assist the applicant regarding which permits may be required for the project, and would allow the applicant to request that a coordinating permit agency be designated to serve as the main point of contact regarding the coordinated permit process and to manage the procedural aspects of that processing. The agency, among other things, must coordinate the review of permits and ensure that timely permit decisions are made by permitting agencies. The agency may also enter into a written agreement with the applicant to recover reasonable costs incurred by the agency in carrying out its functions.

A bill establishing the Waikiki environmental permit assistance pilot program based on Washington's Environmental Permit Assistance law may be found on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix O.

3. Waikiki permit coordination pilot program. Another proposed pilot program, modeled after Alaska's Environmental Procedures Coordination Act,<sup>72</sup> would require the state Department of Business, Economic Development, and Tourism to prepare a master application for multipermit projects; provide for notice and a public hearing within specified time periods, at which representatives of other appropriate permitting agencies must appear; and require the establishment of a specific date by which all state agencies are to forward their final decisions on

applications before them to the Department. As soon as all final decisions are received by the Department, the Department must incorporate them without modification into one document, and transmit that document to the applicant.

A bill based on Alaska's Environmental Procedures Coordination Act, as applicable only to Waikiki, may be found on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix P.<sup>73</sup>

## Endnotes

- <sup>1</sup> Act 74, Session Laws of Hawaii 1977, §1 (emphasis added).
- <sup>2</sup> Act 127, Session Laws of Hawaii 1997, Part I, §1 (emphasis added).
- <sup>3</sup> Keith Fukumoto, Bends in the Road: Problems Affecting the Implementation of Capital Improvement Projects (Honolulu, HI: Legislative Reference Bureau, Report No. 16, 1992), p. 106.
- <sup>4</sup> Hawaii Revised Statutes, §226-27(b)(8) (objectives and policies for socio-cultural advancement – government); *see* Act 276, Session Laws of Hawaii 1976, §26.
- <sup>5</sup> Hawaii Revised Statutes, §226-103(a)(5) (economic priority guidelines); *see* Act 276, Session Laws of Hawaii 1976, §30.
- <sup>6</sup> Hawaii Revised Statutes, §225M-2(b)(3)(B) (office of planning, establishment; responsibilities).
- <sup>7</sup> Hawaii Revised Statutes, §46-4.2 (nonsignificant zoning changes): Allows each county to provide by ordinance that nonsignificant zoning changes to zoning boundaries may be made administratively by the designated county agency. This section was enacted in the same Act that created central coordinating agencies. The purpose of that Act was to “improve the coordination and efficiency of the land use and planning control systems.” Act 74, Session Laws of Hawaii 1977, §1.
- <sup>8</sup> Hawaii Revised Statutes, §46-15.7 (concurrent processing): Provides that when amendments to a county community or development plan, a county zoning map, or any combination of the two, are necessary to permit the development of a housing project, requests for amendments to these plans and zoning maps shall be allowed to be processed concurrently at the applicant's request and if accepted for processing by the county. The applicant may also request that these plan and zoning map amendment requests be processed concurrently with any request to the state land use commission for the redesignation of lands which would permit the development of the housing project. (Enacted by Act 262, Session Laws of Hawaii 1994.)
- <sup>9</sup> Hawaii Revised Statutes, §205A-26(2)(C) special management area guidelines): Among the guidelines that are to be adopted by the county authority for the review of developments proposed in the special management area are that no new development shall be approved unless the authority has first found that the development is consistent with the county general plan and zoning, provided that “[s]uch a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required. Similar SMA guidelines are found in §25-3.2(b)(3), Revised Ordinances of Honolulu.
- <sup>10</sup> Hawaii Revised Statutes, §183C-6(b) (permits and site plan approvals): Requires the Department of Land and Natural Resources to render a decision on a completed application for a permit for a use within the conservation district within 180 days of its acceptance by the Department. (As noted in chapter 3 of this report, although Waikiki is in the urban district, certain submerged lands in Waikiki are deemed conservation lands; *see* note 72 in chapter 3.) If the Department fails to give notice, hold a hearing, and render a decision during that period, the owner may automatically put the owner's land to the uses requested in the application. Extensions of 90 days are allowed at the request of the applicant when an environmental impact statement is required or a contested case hearing is requested. (Enacted by Act 270, Session Laws of Hawaii 1994.) (Note: although not applicable to



Waikiki developments, a similar automatic approval provision is provided in §201G-118(a)(4), Hawaii Revised Statutes, relating to certain housing developments.)

- <sup>11</sup> Hawaii Revised Statutes, §343-5(f) (applicability and requirements): When a proposed action is subject to the requirements of both the state environmental impact statement law and the National Environmental Policy Act, the state Office of Environmental Quality Control and affected state and county agencies are required to cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements, including joint environmental impact statements with concurrent public review and processing at both government levels.
- <sup>12</sup> Hawaii Revised Statutes, §91-13.5 (maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions): requires the establishment of maximum time periods for the review and approval of all business and development-related permit approvals and licenses. While the effects of this most recent law have yet to be seen, there may be a need for some fine tuning of the statute as discussed later in this chapter. (Enacted by Act 164, Session Laws of Hawaii 1998.)
- <sup>13</sup> Hawaii Revised Statutes, §46-18(a), generally requires CCAs to:
- Maintain and update a repository of laws of federal, state, and county agencies having regulatory powers over land development in the county;
  - Study the use of a master application form to concurrently file applications for various permits required for land development projects;
  - Maintain and update a master file of all applications for building permits, subdivision maps, and land use designations for the State and county; and
  - When requested by the applicant, endeavor to schedule and coordinate public meetings or hearings with those held by other federal, state, or county agencies, as well as a single joint public hearing when multiple permits from state or county agencies require a public hearing.

*See Act 74, Session Laws of Hawaii 1977, as amended by Act 260, Session Laws of Hawaii 1994.*

- <sup>14</sup> Hawaii Revised Statutes, §46-18(b). While the CCA joint hearing process has been used by public and private applicants, no memoranda of understanding have been entered into, and no rules have been adopted pursuant to sec. 46-18(b). Telephone interview with Kathy Sokugawa, Chief, Zoning Division, City and County of Honolulu, Department of Planning and Permitting, October 28, 1998.
- <sup>15</sup> In enacting the “Permit Process Facilitation Act of 1985” of which the CAP was a part, the Legislature noted that while the operation of the CCAs in the four counties had improved the permit and approval process, improvements could be made in state permit and approval processes, including the process for projects requiring permits and approvals from different levels of government. Accordingly, the Legislature stated that the Act’s purpose was “to authorize the department of planning and economic development to facilitate, expedite, and coordinate state agency and inter-governmental permit processes. The agency may facilitate the permit process through a consolidated application procedure, through information services, and through efforts to streamline the permit process.” The Legislature further noted stated that the Act was intended “to authorize and establish procedures by which federal, state, and county agencies and authorities may consolidate their review and action on permit applications for projects in the State. These procedures for state agencies and authorities are mandatory, and for federal and county agencies voluntary.” Act 237, Session Laws of Hawaii 1985, §§2, 3; *see also Act 87, Session Laws of Hawaii 1987, part of §1.*
- <sup>16</sup> Pursuant to §201-62(c), Hawaii Revised Statutes (consolidated application process), the process allows an applicant for two or more *state* permits to apply in writing to the Department, which must notify all federal, state, and county agencies that may have jurisdiction over all or a portion of the project, and require those state agencies and invite those county and federal agencies to participate. The applicant and each such agency designates representatives to serve on a consolidated application review team to develop and sign a joint agreement identifying team members, specifying regulatory and review responsibilities, and establishing a timetable for regulatory review, including the conduct of hearings, the preparation of an EIS, and “other actions required to

minimize duplication and coordinate the activities of the applicant, agencies, and authorities”. Each agency then issues its own permit or approval based on its own jurisdiction. The applicant must apply directly to each federal or county agency not participating in the process.

The CAP further provides that if a state permit is necessary to obtain a county permit, a county agreeing to participate in the CAP may advise the applicant of the procedure. To apply, applicants for *county* permits involving state permit approvals must submit a form issued by the department. This procedure applies only to state permits that need to be approved by a state agency following a review of the plans and certifications submitted by the applicant. State permits that are approved by administrative rule require only that the licensed design professional certify that the plans and specifications are in compliance with state rules. If a state permit is approved by rule, the participating county must provide a set of drawings and specifications to the state agency that developed the rules.

Hawaii Revised Statutes, §201-61 (definitions), defines “project” as “any land or water use activity or any construction or operation which requires permits from one or more state agencies or permits from a state agency and a county or federal agency. Construction or operation of an activity may include, but need not be limited to housing, industrial, and commercial operations and developments.” “Permit” is defined by that section as “any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State, and which is required prior to constructing or operating a project.”

The consolidated application process is included under chapter 201, part IV, Hawaii Revised Statutes (facilitation of permit processing).

<sup>17</sup> Hawaii Revised Statutes, §201-63 (information services), specifies that the purpose of the center is to provide guidance on permits and procedures applying to specific projects and to maintain and update a repository of laws of federal, state, and county agencies (similar to the county CCA permit registers), having control or regulatory power over land and water use for development or the control or regulatory power over natural, cultural, or environmental resources.

<sup>18</sup> Hawaii Revised Statutes, §201-64 (streamlining activities), allows the Department to:

- Monitor permits on an ongoing basis to determine the source of inefficiencies, delays, and duplications and the status of permits in progress;
- Pursue the implementation of streamlining measures, including those measures defined in consultation with affected state agencies, county CCAs, and members of the public; and
- Design applications, checklists, and other forms essential to the implementation of approved streamlining measures in coordination with involved state and county regulatory agencies, and members of the public.

<sup>19</sup> Among other things, the Permit Process Task Force is required pursuant to §201-62.5(c), Hawaii Revised Statutes, to:

- Examine the consolidated permit process and review all state agency rules pertaining to the state permit approval process to determine the source of inefficiencies, delays, and duplications, and the status of permits in progress;
- Identify all permits and approvals that the State currently requires from applicants seeking approvals for projects that require county permit applications;
- Recommend to the Governor which permits shall be approved by administrative rule and which permits shall be approved by review (i.e., approved by the appropriate state departments), including the justification for approving each permit by rule or by review;
- Adopt a plan and make recommendations to enable all applicants seeking state agency approval for permits to undergo the permit by rule procedure rather than the permit by review procedure; and

- Provide recommendations to expedite and facilitate the permit approval process within each state agency for applicants seeking state permit approvals to start construction.

<sup>20</sup> The reasons listed were obtained primarily through interviews with agency staff and other written sources. Unfortunately, lack of time and resources did not allow for a more in-depth analysis of reasons for delays regarding specific Waikiki developments. One way to determine where specific bottlenecks lie is for state and county agencies that are statutorily required or authorized to streamline the permitting process to examine that process more closely with respect to specific major projects (over a specified dollar amount), which may include developing checklists, decision trees with time lines, flowcharts, and similar aids, for example, regarding (a) which permits must be obtained; (b) which agency issues each permit; (c) the order in which permits are processed; (d) public comment periods, etc. Interview with Dr. June Harrigan-Lum, Environmental Planning Office, State Department of Health, July 7, 1998.

<sup>21</sup> “Hotel Growth Slows: Glut of Rooms Forces Builders to Halt Projects,” The Honolulu Advertiser, November 1, 1998, p. H1:

After years of rampant growth, the lodging industry is starting to put on the brakes.

Facing a glut of hotel rooms, as well as recent declines in occupancy rates and construction financing, the industry is canceling about \$2 billion in hotel construction projects that had been scheduled through 2000, according to analysts. As much as 20 percent of projects eventually may be shelved, they say. ...

In Hawaii, hoteliers and experts said the industry slowdown is unlikely to have much direct effect because few hotel construction projects have been under way in the last few years.

Instead, Hawaii has entered a period when existing – and recently improved – hotels are being snapped up by hotel companies for much lower prices than paid for them by the owners, often Japanese companies or business people who bought them at extravagant rates.

<sup>22</sup> Id. at H2, citing turmoil in the bond market and concerns over building as reasons for difficulties in financing new hotel construction with loans.

<sup>23</sup> Hawaii Department of Planning and Economic Development, A Report on the Implementation of Act 237, Session Laws of Hawaii 1985 (Honolulu, HI: 1987), p. 2.

<sup>24</sup> Id.

<sup>25</sup> Interview with Richard Poirier, Scott Derrickson, and Lorene Maki, State Office of Planning, Department of Business, Economic Development, and Tourism, July 17, 1998.

<sup>26</sup> See Fukumoto, *supra* note 3, at 115, note 29, referring to the “too big to kill” approach to obtain permits and approvals: “The typical *modus operandi* of an applicant who uses this approach is to obtain one permit or approval at a time from different state and county agencies – never revealing the entire scope of the project to any one agency – and to claim that the project has become ‘too big to kill’ (because of the large amount of time and money invested on the project to date) if and when a subsequent agency refuses to issue a needed permit or approval.”

<sup>27</sup> Office of Planning interview, July 17, 1998, *supra* note 25.

<sup>28</sup> Interview with Dr. June Harrigan-Lum, Environmental Planning Office, State Department of Health, July 7, 1998.

<sup>29</sup> Telephone interview with Kathy Sokugawa, Chief, Zoning Division, City and County of Honolulu, Department of Planning and Permitting, October 28, 1998.

<sup>30</sup> Environmental Planning Office interview, July 7, 1998, *supra* note 28. One notable exception is the new Commissioner of the Chicago, Ill., Department of Buildings, Ms. Mary-Richardson-Lowry:

The Chicago Department of Buildings bureaucracy has always been so plodding, so inept and so unfocused on its mission of granting permits and conducting inspections that local architectural

firms, builders and developers commonly employ staffers solely dedicated to handling the nightmarish permitting process. There are even companies that do that as their primary responsibility – they are private expeditors.

Mary Richardson-Lowry's job, at least in theory, is to put those people out of business – to become, herself, the expeditor-in-chief. Appointed in June as the city's third buildings commissioner in four years, Richardson-Lowry has been charged with the task of streamlining Chicago's legendarily sluggish permitting process at a time when the troubled and detested department is struggling to keep pace with a boom in local construction.

Charles Mahtesian, "Mary Richardson-Lowry: Expediter," Governing (Nov. 1998), p. 84. In addition to seeking to change the Department's "adversarial image", Richardson-Lowry has "reached out to people in the construction industry to convince them that the city was truly committed to reform. She announced plans for a one-stop permit shop within the main Buildings Department office, neighborhood satellite branches where homeowners can apply for home-improvement permits, and self-certification of some projects built from standardized blueprints." Id.

<sup>31</sup> Telephone interview with Kathy Sokugawa, October 28, 1998, *supra* note 29.

<sup>32</sup> Office of Planning interview, July 17, 1998, *supra* note 25.

<sup>33</sup> Environmental Planning Office interview, July 7, 1998, *supra* note 28.

<sup>34</sup> Interview with Arthur Challacombe, Chief, Environmental Review Branch, City Department of Planning and Permitting, July 9, 1998.

<sup>35</sup> In discussing problems associated with the review and regulation of land development, *procedural problems* generally refer to "those which arise from the system's processing or administration of a particular permit or approval. Problems such as the number of permit applications, multiple permit hearings, unclear and complex guidelines for decision-making, and lengthy time periods for agency review of a project are some which are most commonly identified." *Substantive problems*, on the other hand, "arise not from the processing of a permit, but from the direct requirements and purposes of the permit or approval. Some examples of problems falling into this category include: information requirements of the Environmental Impact Statement; park dedication requirements for new developments; and coastal policies calling for the provision of beach access." Norman H. Okamura, "Some Thoughts on a Coordinated Approvals Process for Hawaii," Red Tape vs. Green Light: A Workshop on Government Permit Simplification, Coordination, and Streamlining (Honolulu, HI: Hawaii Coastal Zone Management Program, Department of Planning and Economic Development, 1978), p. 3. Some of the measures considered in this report, such as amending or repealing the Waikiki trigger in the state environmental impact statement law, or removing or amending the dollar threshold for SMA permits for proposed Waikiki developments in the coastal zone management law, for example, may be considered either procedural *or* substantive streamlining measures.

<sup>36</sup> The terms "simplification", "coordination", and "streamlining" are problem solving strategies for achieving certain ends, such as reduced processing time, increased predictability, and more comprehensive public review. "Simplification" strategies "seek to clarify existing requirements and jurisdictional responsibilities for an improved understanding of the purposes and requirements of the permit as well as the decision-making rules under which it would be granted." Communication of information to all parties involved in the land use decision-making process, such as through a single source of information, is a "significant element of this strategy". "Coordination", on the other hand, "involves solving problems of multiple permit hearings, duplicative permit requirements and duplicative information needs for individual permits and approvals." Coordination problems may occur between different permitting agencies or within a single agency that issues permits. Finally, a "streamlining" strategy "involves the restructuring, consolidation or elimination of various permits and approvals. This is perhaps the most important type of reform that may take place as it challenges the assumptions surrounding simplification and coordination." Id. at 4-5.

<sup>37</sup> The techniques discussed in this section are derived primarily from John Holmstrom, Problems of Regulatory Inefficiency and Issues to be Considered in Reducing Them, prepared for the Hawaii Dept. of Planning & Economic Development (Honolulu, HI: Hawaii Coastal Zone Management Program, Technical Supplement No. 15, Jan. 1980), pp. 12-18, and Robert A. Alm and Annette Kolis, A Survey of States' Efforts to Improve Land

Development Review Procedures, prepared for the Hawaii Dept. of Planning & Economic Development (Honolulu, HI: Hawaii Coastal Zone Management Program, Technical Supplement No. 17, Jan. 1980), pp. 4-52.

State and local efforts to implement the streamlining measures discussed in these sources are discussed in Earl K. Matsukawa and Robert A. Alm, Hawaii's Efforts Toward a Coordinated Regulatory Process for Land Development, prepared for the Hawaii Dept. of Planning & Economic Development (Honolulu, HI: Hawaii Coastal Zone Management Program, Technical Supplement No. 16, Jan. 1980). The discussion in this report regarding streamlining regulations affecting Waikiki developments reviews some of the measures taken by the State and City and County of Honolulu to implement the streamlining measures discussed in the CZM technical supplements and related measures since the publication of those supplements in 1980. For a discussion of streamlining generally, *see also* Daniel R. Mandelker and Annette B. Kolis, "Whither Hawaii? Land Use Management in an Island State," University of Hawaii Law Review, vol. 1, no. 1, Fall 1979, pp. 48-68; John Connell, et al., Red Tape vs. Green Light: A Workshop on Government Permit Simplification, Coordination, and Streamlining (Honolulu, HI: Hawaii Coastal Zone Management Program, Department of Planning and Economic Development, 1978); Fred Bosselman, Duane A. Feurer, and Charles L. Siemon, The Permit Explosion: Coordination of the Proliferation (Washington, DC: The Urban Land Institute, 1976); Daniel R. Mandelker, et al., Thirteen Perspectives on Regulatory Simplification (ed. Annette Kolis) (Washington, DC: The Urban Land Institute, 1979); and John H. Noble, John S. Banta, and John S. Rosenberg (eds.), Groping Through the Maze: Foreign Experience Applied to the U.S. Problem of Coordinating Development Controls (Washington, DC: The Conservation Foundation, 1977).

<sup>38</sup> *See* Hawaii Revised Statutes, §§201-63(2) and 46-18(a)(1), respectively. As used in this chapter, "CAP" refers to both the consolidated application process and the other sections contained in chapter 201, part IV ("facilitation of permit processing"). *See* Guide to State Permits and Approvals for Land and Water Use and Development (Draft) (Honolulu, HI: State of Hawaii, Office of State Planning, 1996), superseding Hawaii Dept. of Planning and Economic Development, Planning Div., Hawaii Coastal Zone Management Program, An Applicant Guide to State Permits and Approvals for Land and Water Use and Development (Honolulu, HI: June 1986); City and County of Honolulu, Department of Land Utilization, Permit Register (Honolulu, HI: Oct. 1996).

<sup>39</sup> Hawaii Revised Statutes, §§201-63(1) and 46-18(1), respectively. While the CCA law does not specifically require the operation of a permit information center, section 46-18(1) requires the county CCA to make its permit register "and knowledgeable personnel available to inform any person requesting information as to the applicability of the same to a particular proposed project in the county...".

<sup>40</sup> *See* Hawaii Revised Statutes, §201-62(c).

<sup>41</sup> Hawaii Revised Statutes, §46-18(a)(5). Section 201-62(b)(5) of the consolidated application process provides for the development of a joint agreement among the applicant, authorities, and agencies, among other things, to establish "a timetable for regulatory review, the conduct of necessary hearings, ... and other actions required to minimize duplication and coordinate the activities of the applicant, agencies, and authorities...".

<sup>42</sup> Although state law provides for the creation of an office of the "small business ombudsman for air pollution control" in §342B-63, Hawaii Revised Statutes, there is a need for the creation of a broader position to assist all applicants, rather than only small businesses, to "walk" applicants through the regulatory process with respect to all needed permits, rather than only those relating to air pollution control.

<sup>43</sup> Hawaii Revised Statutes, §§201-62(d), (e); 201-62.5(c)(3), (c)(4), (d).

<sup>44</sup> *See* ch. 205A, pt. II ("special management areas"), Hawaii Revised Statutes (§§205A-21 to 205A-33).

<sup>45</sup> *See* City and County of Honolulu Bill No. 72 (1998) ("A bill for an Ordinance to Amend Chapter 21, Revised Ordinances of Honolulu 1990, as Amended, Relating to the Land Use Ordinance"), section 2, including §§21-2.40 (permits), 21-2.40-1 (minor permits), and 21-2.40-2 (major permits).

<sup>46</sup> Hawaii Revised Statutes, §46-18(a)(2), requires county CCAs to "[s]tudy the feasibility and advisability of utilizing a master application form to concurrently file applications for an amendment to a county general plan and development plan, change in zoning, special management area permit and other permits and procedures required for land development projects in the county to the extent practicable with one master application...".

- <sup>47</sup> Holmstrom, *supra* note 37, at 14.
- <sup>48</sup> Bosselman, Feurer, and Siemon, *supra* note 37, at 5.
- <sup>49</sup> Hawaii Revised Statutes, §201-62(c)(3).
- <sup>50</sup> Hawaii Revised Statutes, §201-62(c)(3), (5).
- <sup>51</sup> Honolulu Department of Land Utilization, Permit Register (Honolulu, HI: Oct. 1996), p. iv, citing Ordinance No. 77-73.
- <sup>52</sup> Hawaii Revised Statutes, §201-62(b), as amended by Act 127, Session Laws of Hawaii 1997, §3.
- <sup>53</sup> Hawaii Revised Statutes, Chapter 206G.
- <sup>54</sup> Hawaii Revised Statutes, Chapter 206E.
- <sup>55</sup> Hawaii Revised Statutes, Chapter 206J.
- <sup>56</sup> Hawaii Revised Statutes, Chapter 206X.
- <sup>57</sup> See note 6 in chapter 2 of this report.
- <sup>58</sup> Permit surrender, which is based on the assumption that a single agency review is more efficient and less time-consuming than multi-agency review, also reflects changing circumstances in state and county regulatory systems and the increased expertise of county issuing agencies: “Some state permits were undoubtedly created under the assumption that the issues involved were too complex to be handled by local governments or that the need for the use of specialized personnel prevented local governments from assuming such authority. The increasing sophistication and resources of local governments have invalidated the assumptions on which many of these overlapping mechanisms were based. A review of state laws may yield a number of authorities which should be ‘surrendered.’” Alm and Kolis, *supra* note 37, at 17.
- <sup>59</sup> Hawaii Revised Statutes, §196D-10 (transfer of functions).
- <sup>60</sup> Holmstrom, *supra* note 37, at 16.
- <sup>61</sup> Hawaii Revised Statutes, §196D-7(6) (streamlining activities).
- <sup>62</sup> Hawaii Revised Statutes, §342B-26(a) (general and temporary permits; single permit). The state disaster relief law also authorizes each political subdivision to exercise its powers “in light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work...”. Hawaii Revised Statutes, §127-6 (local organization for disaster relief).
- <sup>63</sup> California’s permit consolidation zone pilot program, which is to be repealed on January 1, 2002, will allow new or expanding facilities in a designated permit consolidation zone to substitute a facility compliance plan for any combination of individual state and local environmental permits. See Cal. Pub. Res. Code §§71035 – 71035.11. A “facility compliance plan” is one containing information and data for all emissions and discharges from a facility and the management of solid and hazardous waste; specifies measures, including monitoring, reporting, emissions limits, and materials handling, to be taken by the applicant to ensure compliance with environmental permits that would otherwise be required; meets the requirements of all individual environmental permits that would otherwise be required; and ensures compliance with all applicable state and local environmental laws. Cal. Pub. Res. Code §71035(d) (definition of “facility compliance plan”). “California Environmental Protection Agency (Cal/EPA) and local environmental agencies will make sure facility compliance plans meet certain standards before replacing existing permitting requirements. Cal/EPA hopes that this consolidation program will have cost savings both for the industrial facilities and agencies involved in the experiment.” Beth E. Lachman, Beyond Command and Control: An Evolution is Occurring in State and Local Government Environmental Activities (Santa Monica, CA: RAND National Defense Research Institute and Critical Technology Institute, July 1997), p. 6 (footnote omitted).

<sup>64</sup> Florida is developing “one of the most extensive statewide ecosystem management plans and comprehensive approaches to ecosystem management. Florida is using ecosystem management concepts to promote long term environmental stewardship throughout the state among all stakeholders.” Lachman, *supra* note 63, at 13. Florida’s ecosystems management statute includes “coordinating the planning activities of state and other governmental units, land management, environmental permitting and regulatory programs, and voluntary programs, together with the needs of the business community, private landowners, and the public, as partners in a streamlined and effective program for the protection of the environment.” Florida Stat. §403.075(1) (1998). The statute recognizes that long-term ecosystem restoration or maintenance is in the interests of both persons residing and doing business within the boundaries of that ecosystem, and that the proper stewardship of that area will benefit all state residents “by maintaining the natural beauty and functions of that ecosystem, which will, in turn, contribute to the beauty and function of larger inclusive ecosystems and add immeasurably to the quality of life and the economy of all Florida counties dependent on those ecosystems, thus serving a public purpose.” *Id.*

Florida’s law allows the Secretary of Environmental Protection, upon the request of an applicant, to enter into an ecosystem management agreement regarding any environmental impacts with regulated entities, in order to better coordinate the legal requirements and timelines regarding a regulated activity, including permit processing and project construction. The law establishes criteria for entering into such an agreement, including a determination that there is a net ecosystem benefit that is more favorable than operation under applicable rules, and that the entity certifies that it has in place internal environmental management systems or alternative internal controls that are sufficient to meet the agreement. In addition, the agreement may include incentives for participation and implementation, including:

- Coordinated regulatory contact per facility;
- Permitting process flexibility;
- Expedited permit processing;
- Alternative monitoring and reporting requirements;
- Coordinated permitting and inspections;
- Cooperative inspections that provide opportunity for informal resolution of compliance issues before enforcement action is initiated; and
- Alternative means of environmental protection which provide for equivalent or reduced overall risk to human life and the environment and which are available under existing law such as variances, waivers, or other relief mechanisms. Florida Stat. §403.0752.

<sup>65</sup> “New Jersey has one of the most aggressive multi-media permitting programs, the New Jersey Facility-Wide Permitting Program. This pilot program allows industrial facilities to replace many different media permits with a single facility permit. The program has two main goals: incorporating P2 [pollution prevention] into a multi-media permit process and increasing the administrative efficiency of the regulatory process.” Lachman, *supra* note 63, at 6. By replacing individual environmental permits for air, water, and solid and hazardous waste into a single, consolidated permit covering an entire plant, “[o]ne facility combined 70 air, water and hazardous waste permits into a single five-year permit, replacing three drawers of permit files with one four-inch binder.” Barry Toning, “Beyond Bean Counting,” *State Government News*, vol. 41, no. 3 (April 1998), p. 15.

However, implementing streamlined environmental processes “can be rocky at times. New Jersey’s consolidated permit program received mixed reviews earlier this year after the news media claimed that emissions at some industries actually increased under the program. State regulators said the new program is collecting discharge information that was not governed by a permit or captured in previous reporting programs. The increase did not reflect new discharges, state regulators maintained, but rather unreported emissions the old system failed to track.” *Id.* at 15-16. Nevertheless, New Jersey also offers incentives to participate in its pilot program:

In the past, industry has criticized permits to approve a facility’s production processes and equipment, particularly air permits, because they hampered the facility’s efforts to respond quickly

to changing market conditions. Facilities that wish to make even minor changes to a process often had to go through lengthy preapproval procedures. As an incentive to participate in the permitting pilot, New Jersey allows facilities with facilitywide permits to change processes without preapproval, as long as the changes will not increase releases of hazardous substances or increase the generation of waste. Companies that take advantage of this operating flexibility are required to expand the number of pollutants that come under their plans to prevent pollution.

United States General Accounting Office, Environmental Management: An Integrated Approach Could Reduce Pollution and Increase Regulatory Efficiency (Washington, DC: Jan. 1996), pp. 9-10. Other states, including New York and Massachusetts, have also sought to implement an integrated facility management approach to environmental inspections and enforcement. *See id.* at 1-17; Lachman, *supra* note 63, at 7.

<sup>66</sup> Oregon's "Green Permits" program, codified at Or. Rev. Stat. §§468.501 – 468.521 (1998), is "a pilot project for developing and testing regulatory flexibility and incentives for exceptional environmental management practices" which is designed to "encourage and reward facilities which utilize innovative environmental management approaches and implement voluntary 'beyond compliance' activities." Lachman, *supra* note 63, at 11. The program, which is established within the Department of Environmental Quality (DEQ), creates a tiered or multilevel system in which greater demonstrated environmental performance is acknowledged with increasing regulatory benefits. The DEQ may issue "green permits" to parties currently regulated by DEQ rules, which allow companies to use "innovative environmental approaches or strategies not otherwise recognized or allowed under existing regulations, to achieve environmental results that are significantly better than otherwise required by law." Or. Rev. Stat. §468.503(2).

The program seeks to encourage regulatory agencies to work cooperatively with industry on a voluntary basis to create incentives for achieving environmental excellence and reward outstanding environmental performance by business and industry. "Potential incentives include: streamlined monitoring and reporting requirements, expedited permits, longer permit renewal cycles, P2 [pollution prevention] technical assistance, award and recognition, modified inspection procedures and alternative enforcement response to violations. The level of incentives that a facility receives will depend on the extent of their EMS [environmental management systems] and their 'beyond compliance' activities." Lachman, *supra* note 63, at 11. The DEQ is required to report to the Legislative Assembly regarding the progress, successes, and shortcomings of the program.

<sup>67</sup> Innovative environmental management laws, including those relating to pollution prevention planning, voluntary and assistance programs; facility-wide permitting and inspection programs; the National Environmental Performance Partnership System (NEPPS); environmental management systems and environmental leadership approaches; and sustainable community, ecosystem management, and other place-based approaches, are discussed in Lachman, *supra* note 63, Tanning, *supra* note 65, and the report of the United States G.A.O., *supra* note 65.

<sup>68</sup> Holmstrom, *supra* note 37, at 11.

<sup>69</sup> Hawaii Revised Statutes, §201-62.5(c)(1).

<sup>70</sup> "The area exemption could be preceded by intensive background studies to determine the suitability of the area for such an exemption. And the granting of exemptions could be accompanied by the establishment of requirements or conditions applying to all activities therein. In addition, the agencies could always resume full regulatory processing should circumstances warrant." Alm and Kolis, *supra* note 37, at 5.

<sup>71</sup> Wash. Rev. Code §90.60.010 – 90.60.900 (1996 and 1997 Supp.). Washington's Environmental Permit Assistance law apparently replaced that state's Environmental Coordination Procedures Act of 1973, which established a coordinated mechanism for state environmental permits and "was the first and most comprehensive attempt to rectify deficiencies in the permit granting process." James E. Jarrett and Jimmy Hicks, Untangling the Permit Web: Washington's Environmental Coordination Procedures Act (Lexington, KY: Council of State Governments, June 1978), p. 3.

In enacting that law, the Washington State Legislature found that the increasing number of environmental laws and regulations in that state also led to a greater number of permits required of business and government: "This regulatory burden has significantly added to the cost and time needed to obtain essential permits in Washington. The increasing number of individual permits and permit authorities has generated the continuing



potential for conflict, overlap, and duplication between the various state, local, and federal permits.” Wash. Rev. Code §90.60.010(3). To remedy this problem, the purpose of that law was to “institute new, efficient procedures that will assist businesses and public agencies in complying with the environmental quality laws in an expedited fashion, without reducing protection of public health and safety and the environment... [and] to provide an optional process by which a project proponent may obtain active coordination of all applicable regulatory and land-use permitting procedures.” Wash. Rev. Code §90.60.010(4), (8). The Washington Legislature also intended that the law “provide consolidated, effective, and easier opportunities for members of the public to receive information and present their views about proposed projects.” Wash. Rev. Code §90.60.010(9).

In particular, that law created a permit assistance center within the state Department of Ecology to publish and keep current one or more handbooks containing lists and explanations of permit laws, to be provided to applicants and others, establish a point of contact for distribution of the handbook and advice to the public, and work cooperatively with the state’s business license center “in providing efficient and nonduplicative service to the public”. Wash. Rev. Code §90.60.030. Upon the applicant’s request, the center is to appoint a project facilitator to assist the applicant in which regulatory permits and processes may be required for the project and to explain available options in obtaining permits. Wash. Rev. Code §90.60.050. The applicant may also request that a coordinating permit agency be designated to serve as the main point of contact regarding the coordinated permit process for the project and to manage the procedural aspects of that processing. That agency, among other things, is required to coordinate the review of permits and ensure that timely permit decisions are made by permitting agencies, and assist in resolving conflicts or inconsistencies among permit requirements and conditions imposed by participating agencies. Wash. Rev. Code §90.60.060. The coordinating permit agency may also enter into a written agreement with the applicant to recover reasonable costs incurred by the agency in carrying out its functions with respect to that applicant. Wash. Rev. Code §90.60.100.

<sup>72</sup> Alaska Stat. §§46.35.010 – 46.35.210 (1998). In enacting that law, the Alaska Legislature found that “the substantial burdens placed upon persons who are proposing to undertake certain types of projects in this state through requirements to obtain numerous permits and related documents from various federal, state, and local agencies are undesirable and should be alleviated.” Alaska Stat. §46.35.010. Legislature further found that “present methods for obtaining public views relating to applications to state and local agencies pertaining to these projects are cumbersome and place undue hardships on members of the public with the result that the public ability to express its views is hindered and not facilitated. *Id.* Accordingly, Alaska’s Environmental Procedures Coordination Act was enacted to accomplish the following purposes:

- Establish a simplified procedure to assist those who, to satisfy the requirements of federal, state, and local law, must obtain a permit from one or more federal, state or local government agencies by establishing a procedure to coordinate the administrative decision-making process;
- Provide to the members of the public a better opportunity to present their views on proposed uses of the state’s natural resources and related environmental concerns before federal, state, and local agencies decide on applications for permits;
- Provide to applicants for the use of the air, land, or water resources of the state a greater degree of certainty on permit requirements of federal, state, and local governments;
- Increase the coordination between federal, state, and local agencies in their administration of programs affecting the state’s air, land, and water resources; and
- Establish an opportunity for members of the public to obtain information pertaining to requirements of federal, state, and local law which must be satisfied before undertaking a project in this state. Alaska Stat. §46.35.020.

The Alaska statute, among other things, requires the state Department of Environmental Conservation to prepare a master application for multipermit projects; provides for notice and a public hearing within specified time periods, at which representatives of state agencies having applications for a permit before those agencies must appear; and requires the establishment of a specific date by which all state agencies are to forward their final decisions on applications before them to the Department. Agencies that deny an application must provide a written summary suggesting alternative means of completing the project, or, if no alternative is feasible, a written

summary of the agency's reasons for that conclusion. As soon as all final decisions are received by the Department, the Department must incorporate them without modification into one document, and transmit it to the applicant. The statute also provides for administrative and judicial review, and for the granting of extensions of time due to unusual conditions if delays occurred beyond the control of the reviewing agency or municipality. Permits may not be issued unless the application complies with local zoning ordinances and associated comprehensive plans administered by the local government. Finally, the Act requires the establishment of regional permit requirement information centers.

Alaska's statute further requires the Department chair to establish a date by which all agencies must forward their final decisions on applications before them to the department, which must be within ninety days after the date of last publication of notice, but which may be extended by the department for reasonable cause. Alaska Stat. §46.35.070. Alaska's statute also allows "minimum extensions" upon a determination that the delay occurred "beyond the control of the reviewing agency or municipality." Alaska Stat. §46.35.100. (In contrast, Act 164, Session Laws of Hawaii 1998, which requires mandatory time limits, allows for time extensions only "in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.") In addition, Alaska's law requires representatives of all affected state agencies to attend public hearings, which prevents applicants from having to reschedule numerous hearings on the same subject matter, and allows the public to comment on the proposed development at one time and place. Like Alaska, in which members of the public must often travel great distances to attend hearings, public participants from Hawaii's neighbor islands will be able to minimize their travel to hearings on projects in Waikiki.

<sup>73</sup> The scope of the Alaska statute is expanded in the bill by providing that the pilot program applies not only to environmental permits but to all development-related permits for Waikiki developments, including land use and coastal zone management permits. The Alaska statute also provides for the Department of Environmental Conservation in that state to establish permit requirement information centers in the Department's central office and all regional offices, and allows the Department to "enter into an agreement with the governing body of any municipality having a population of more than 1,000 persons". Alaska Stat. §46.35.160(a). A similar requirement could be added to the bill that is applicable to Waikiki, which would allow applicants and other interested parties on the neighbor islands and in rural communities to have greater access to federal, state, and county permit requirements and to obtain assistance in the completion of permit applications.

## Chapter 5

### STREAMLINING SPECIFIC LAWS

In addition to the *general* streamlining techniques and proposals for Waikiki projects discussed in chapter 4 of this report, this chapter focuses on streamlining measures relating to *specific* laws affecting proposed Waikiki developments identified in chapter 3, namely, the Environmental Impact Statement (EIS) law, the Coastal Zone Management (CZM) law, and planning laws. In addition, the recently enacted “automatic approval” law, Act 164, Session Laws of Hawaii 1998, is reviewed as a streamlining measure.

#### A. Environmental Impact Statement Law

Hawaii’s Environmental Impact Statement (EIS) law has become a central point of contention in the debate over new development.<sup>1</sup> This is especially true in the case of proposed developments in Waikiki. Perhaps the most controversial area with respect to proposed streamlining in Waikiki is the so-called “Waikiki trigger” in the EIS law, as discussed in chapter 2. The debate has essentially centered on whether or not to repeal that trigger from the State’s EIS law. The proposal that most recently fueled this debate was the initiative proposed in 1998 by the City and County of Honolulu Department of Land Utilization (DLU), now the Department of Planning and Permitting (DPP), to delete Waikiki as an automatic trigger for the EIS law, as provided in Senate Bill No. 2665 (1998).

Before discussing the Waikiki trigger, however, this chapter reviews several other streamlining measures that may be taken in conjunction with the EIS process for proposed Waikiki developments:

1. Concurrent processing is an important streamlining measure in coordinating the permitting process with the environmental review process:

EIS laws generally require completion of the EIS early in the development approval process and prior to receiving specific permits. In designing a program intended to reduce red tape, the relationship of that program to the EIS process should be taken into account. It may be possible to have the EIS process and the application process occur concurrently. Or the program may involve some restructuring of the state’s EIS law to make the EIS role more complementary to the rest of the development approval process.<sup>2</sup>

In addition to greater coordination between the EIS and the processing of state and county permits, related ways to streamline processing include joint hearings, coordinated deadlines, and the incorporation of documents by reference.<sup>3</sup> California law, for example, provides as state policy that “[l]ocal agencies integrate [the environmental review process] with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.”<sup>4</sup>

Until recently, the City and County Department of Planning and Permitting (DPP) had been requiring the EA or EIS to be completed before a Waikiki Special District (WSD) or Special Management Area (SMA) permit could be filed, i.e., treating the EIS and permitting processes consecutively.<sup>5</sup> However, the state Office of Environmental Quality Control (OEQC) has maintained that these documents may be *filed* concurrently, provided that the EA or EIS is *completed* (either accepted or a finding that the project has no significant impact) before a decision is made on the permit. The DPP is currently working on redrafting ordinances to allow for this change for the SMA ordinances; however, there is no need to change the Land Use Ordinance (LUO) for the WSD because concurrent processing can already be accepted under existing ordinances, according to the Department.<sup>6</sup> Chapter 343 does not prohibit concurrent filing, so long as the environmental review process is completed before the permits are issued.<sup>7</sup>

The EA or EIS could be incorporated into the permit application process, for example, by attaching the draft EA or draft EIS to each application, or to the master application submitted to the DPP, and then circulating these documents to each permitting agency for their review in connection with the application. However, concerns have been raised that concurrent processing may defeat the purpose of the environmental review process if there is insufficient time to review the EA or EIS before approving or denying the permit. While the EIS “resembles a permit in that it usually must be approved as a separate item and has its own requirements as to contents as well as to processing”,<sup>8</sup> as noted in chapter 3, the EIS is *not* a permit, but rather an *informational document*.<sup>9</sup> The environmental review process, as provided in chapter 343, Hawaii Revised Statutes, seeks to ensure informed decision making and public involvement in planning projects that may affect the community by requiring a systematic consideration of the environmental, social, and economic consequences of proposed projects *before* permits are granted. Since concurrent processing may decrease the amount of time provided to review the EA or EIS, not having sufficient time to review project impacts may make a mockery of the environmental review process.<sup>10</sup>

Accordingly, the Bureau recommends that the concurrent processing of EAs and EISs with other permits be encouraged to the extent practicable, but that sufficient time be allowed for the review of the EA or EIS to ensure that the public and decision makers have the opportunity for a meaningful review of the project, including its environmental, economic, and social impacts, and for ways to mitigate those impacts through the imposition of permit conditions.

2. Exemption lists are another means to streamline the environmental review process. In its 1997 Environmental Report Card, the State Environmental Council recommended that “[t]o streamline the environmental review process, agency exemption lists (required by HRS Chapter 343) should be updated and standardized. This will help avoid needless bureaucratic procedures and provide greater certainty to the private sector, government and the public.”<sup>11</sup>

The EIS law requires the Environmental Council, after consultation with affected agencies, to “[e]stablish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment...”.<sup>12</sup> In addition, pursuant to the Hawaii Administrative Rules, each agency, through time and experience, is required to develop its own list of specific types of

actions that fall within these exempt classes, so long as these lists are consistent with both the letter and intent expressed in the exempt classes and chapter 343, Hawaii Revised Statutes.<sup>13</sup>

Following the Environmental Council's amendment of its exemption rules in August of 1996, certain projects in Waikiki that had previously been subjected to environmental review will likely be exempt from preparing an EA. For example, section 11-200-8(a)(9), Hawaii Administrative Rules, formerly excepted "use, density, height, [and] parking requirements" from exempt classes of action. Under the pre-1996 rules, EAs would have been required for these minor projects, in Waikiki and elsewhere, which needed a height, parking, or other variance. The 1996 amendments to this section, which repealed this language, has helped to streamline the process for these minor projects.<sup>14</sup> In particular, the OEQC testified before the Legislature in 1998 that the 1996 streamlining amendments would have cut the number of EAs prepared for Waikiki projects almost in half had those projects been proposed under the 1996 rules.<sup>15</sup>

Pursuant to section 11-200-8(c), Hawaii Administrative Rules, the City and County can petition the Environmental Council to add a new exemption class to rules, recognizing a special class for Waikiki.<sup>16</sup> In its response to the Bureau's survey, the OEQC has recommended that the City Department of Planning and Permitting amend its EIS exemption list, which was last updated in 1981, as a possible streamlining measure, noting that "it is possible that the list can be expanded to include some projects that are currently not exempted by the city."<sup>17</sup> The Bureau also reiterates the recommendations of the University of Hawaii's Environmental Center in 1991, which included recommendations that the Environmental Council amend its administrative rules to require annual publication of agency exemption lists and a review of all such lists every five years.<sup>18</sup>

3. Master or Regional EISs could be prepared by a state or county agency, which may provide baseline environmental data for a particular geographic area. "An EIS on an individual project would then be unnecessary or would only be required to supplement the regional EIS to the extent necessary to ensure that the impacts of individual projects are assessed."<sup>19</sup> Master or regional EISs are also used on the federal level in a process known as "tiering," which seeks to avoid duplication and provide appropriate levels of review.<sup>20</sup> Also referred to as a "generic" EIS or EA, preparation of a master or regional impact statement by an agency may produce substantial cost savings and prevent duplication of paperwork, especially if the statement is prepared to study the effects of a new comprehensive plan or major rezoning.<sup>21</sup> Supplemental or focused EISs may focus on a site-specific project, incorporating the master EIS by reference without repeating the broad environmental, social, or economic considerations addressed in the master EIS.

In Hawaii, regional or master EISs have been prepared, although mostly for large, primarily undeveloped areas, or when land is being reclassified.<sup>22</sup> Moreover, while a tiered approach is not articulated in the state EIS law or rules, as it is under federal requirements, tiering has also been used in the past, and the state Office of Environmental Quality Control (OEQC) encourages agencies to use this approach where appropriate in dealing with regional or programmatic issues on a macro level.<sup>23</sup>

Since the City and County is currently preparing a new development plan for the primary urban center (“PUC”, which includes Waikiki), which in itself will help streamlining in that area as will be discussed later in this chapter, the Bureau recommends that the City and County concurrently commission the preparation of a regional or generic EIS for that area, or only for the Waikiki area, in order to further streamline the regulatory process for that district.

While the preparation of a master or regional EIS for Waikiki is not required under state law in conjunction with the City and County’s preparation of the development plan for the PUC,<sup>24</sup> and it may be argued that the development plan process itself incorporates a significant amount of public input, making the master EIS process redundant, the preparation of a master EIS for Waikiki or the primary urban center will nevertheless provide decision makers on both the State and City and County levels with valuable, strategic information for decision making on a *regional* level, for example, with respect to regional traffic, and allowing for less involved supplemental EISs for specific projects in Waikiki. The Bureau recommends the preparation of a master EIS for Waikiki using language from California’s environmental review law relating to master and focused environmental impact reports. A master or regional EIS will also be especially useful if prepared in conjunction with the following proposal.

4. Environmental impact database. Using previously prepared EISs to add information to a larger database on Waikiki projects is another way to help streamline proposed developments in that district and integrate the environmental review process into the local land use process: “Impact statements can become a more meaningful part of the local land use process if they incorporate data gathered in previous statements and if the reviewing agencies analyze the statements in light of past decisions and any established comprehensive plans.”<sup>25</sup> For example, California has used this technique to streamline the regulatory process by limiting the amount of duplication in EISs “by mandating the creation of a data base in which information from past impact statements is stored. In addition, information developed in impact statements covering large geographic areas is expected to be used in impact statements for specific projects within those areas.”<sup>26</sup>

Currently, EISs are incorporated into the state’s geographic information system (GIS) by linking EISs to a Tax Map Key (TMK) in that system. However, while reviewing a specific TMK may identify one or more EISs that affect that TMK, specific information from the EIS is not included in that database.<sup>27</sup> While it is useful to know that an EIS has been prepared for a certain area, which can lead the researcher back to the EIS document for additional information on the effect of the development on that area, adding additional information from the EIS to a Waikiki regional database would provide policy makers with a better basis to make future land use decisions affecting that region.

The Bureau therefore recommends that the OEQC, which administers the EIS law, in conjunction with the City and County Department of Planning and Permitting, establish a regional database for Waikiki in which data from previously prepared EISs, as well as information from each new EIS, are utilized to continuously update environmental and land use information about that district. If a regional or generic EIS is prepared for Waikiki, subsequent EISs that are submitted for specific projects can incorporate information from the Waikiki database and can be evaluated against the assumptions and predictions made in the regional EIS.

Such a database will also help policy analysts and decision makers determine cumulative impacts within that district, which will assist in laying the groundwork for future policy and planning directions for Waikiki. The downside to establishing such a database is that it will take substantial effort to set up the database and establish its parameters, which may require additional staff and funding.

5. The Internet. Various State and City and County environmental and permitting agencies have created Web sites on the Internet to provide general information regarding those agencies, the programs administered by those departments, public hearings, meetings, how to obtain forms, and other customer services, including the State Office of Environmental Quality Control,<sup>28</sup> the Environmental Planning Office of the Department of Health,<sup>29</sup> the Office of Planning at the State Department of Business, Economic Development and Tourism (regarding Coastal Zone Management),<sup>30</sup> and the City's Department of Planning and Permitting.<sup>31</sup>

State and City and County agencies, however, could conceivably make greater use of the Internet, E-mail, and other computer assisted technologies to streamline their permitting procedures and allow for greater public access to that process. For example, the Pennsylvania Department of Environmental Protection was recently the first state environmental agency in the country to develop an on-line system in which citizens can track how businesses, local governments, and individuals are complying with environmental laws in their community.<sup>32</sup> The Internet may also be used to enhance facilitated communication among participants through the creation of locally-based community networks, also known as civic networks and public information utilities, that allows government planners and others to enter into a dialogue with citizens on environmental or other issues affecting the community.<sup>33</sup>

While compliance and regulated facility information are not as important for proposed Waikiki developments as for other areas in the State, the State and City could nevertheless use the Internet to allow applicants to track the status of applications before State or City permitting agencies, review agency criteria for determining the completeness of applications and for approving or denying permits, review statutory time limits for agency decision making, and other areas affecting the regulatory process, to the extent these functions are not already being accomplished, as well as to allow for quicker communication of public notices and E-mail with agency staff. However, maintaining a Web site on the Internet may require a dedicated source of funds and possibly additional staff and training in order to maintain and continually update those sites. Agencies must also be careful not to let computer assisted technologies themselves become the cause of inefficiencies in the regulatory process.<sup>34</sup>

6. Environmental dispute resolution. One reason for delays in the regulatory process affecting Waikiki developments, including the EIS process, is that of environmental disputes that result in litigation, which may tend to draw out the process. Lawsuits have increased not only in number but also in expense, complexity, and length; environmental dispute resolution, particularly environmental mediation, have developed in response to this situation: "Environmental mediation is essentially the use of a neutral third party facilitator to help parties in a dispute negotiate an administrative, rather than judicial settlement."<sup>35</sup> While a mediator has no authority to impose a settlement in this voluntary process, the mediator's strength generally

lies in the mediator's ability to assist the parties in resolving their own differences and reach a workable solution.<sup>36</sup>

This report does not intend to suggest that litigation is always inappropriate or is to be discouraged in all cases, but rather that the use of environmental dispute resolution can be an effective means to assist the parties in arriving at their own mutually acceptable solutions in a timely manner and avoid the expense of litigation and a court-imposed solution: "Although voluntary environmental dispute resolution processes are often characterized as alternatives to litigation – with the presumption that litigation is bad – they are better viewed as additional tools that might or might not be more effective or more efficient in particular circumstances. Litigation and other traditional decision-making processes remain important options. Disputes over environmental issues are so varied that no one dispute resolution process is likely to be successful in all situations."<sup>37</sup>

The Bureau recommends that the use of environmental mediation and other alternative dispute resolution strategies be encouraged to assist in streamlining the EIS process<sup>38</sup> with respect to proposed Waikiki projects.

7. Time limits for EIS preparation. Another technique to streamline the EIS process is to require statutory time limits for the preparation and completion of EAs and EISs, as well as for findings of no significant impact. For example, California law currently requires each local agency to establish, by ordinance or resolution, time limits that do not exceed one year for completing and certifying environmental impact reports and 180 days for completing and adopting negative declarations, measured from the date on which an application requesting approval of a project is received and accepted as complete by that agency.<sup>39</sup> Act 164, Session Laws of Hawaii 1998, which provides for automatic permit approval as discussed later in this chapter does not include the preparation of EAs or EISs under chapter 343, Hawaii Revised Statutes.

The Bureau recommends that statutory time limits for EA and EIS preparation should not be adopted at this time. The Bureau finds that the time provisions established in chapter 343 serve an important function – namely, to allow for sufficient time for the public and decision makers to review proposed developments to ensure that environmental concerns are given appropriate consideration in decision making. Decreasing the time allotted for the review of proposed Waikiki projects will not only curtail public participation but, when combined with the proposals to accelerate the concurrent processing of permits, may not allow sufficient time for decision makers to sufficiently evaluate the environmental and other impacts of those projects.

8. Standardized or joint EIS documents for the State and City and County will also help to streamline the regulatory process with respect to Waikiki. Packaging the same, or substantially similar, environmental and land use information in different forms for different agencies is both inefficient and time-consuming: "In particular, environmental impact statements (EIS) and EIS-equivalents (e.g., special management area impact statements) and their review procedures can be structured similarly.... [S]tandardized impact-reporting procedures meet the needs of a range of agencies while reducing the burden on applicants."<sup>40</sup>



Currently, the state EIS law provides for the use of one EIS document in actions that are subject to both the National Environmental Policy Act (NEPA) and the state EIS law, as well as the use of other streamlining techniques. In particular, the EIS law requires the OEQC and other agencies to cooperate with federal agencies “to the fullest extent possible to reduce duplication between federal and state requirements”, including joint EISs with concurrent public review and processing at both government levels. If there are additional federal EIS requirements, the OEQC and state agencies must cooperate in fulfilling them “so that one document complies with all applicable laws.”<sup>41</sup>

The Bureau similarly recommends the use of joint EISs or one EIS document that complies with both State and City and County laws, to the maximum extent feasible, patterned after existing language in the EIS law relating to actions subject to review under NEPA, in order to encourage State and City and County cooperation in this area. This issue, however, should not be confused with “functional equivalents”, as discussed in the next section.

9. Functional equivalents is another technique that may be used to streamline the EIS process by avoiding duplicative review and reducing time in the permitting process: “this situation arises when a development project subject to an environmental impact statement is also subject to review under equivalent environmental criteria contained in a development permit statute. Duplicative reviews can be avoided ... by allowing the environmental review under permit legislation to substitute for the equivalent environmental review through the environmental impact statement.”<sup>42</sup>

Senate Concurrent Resolution No. 153 implicitly raises the question whether the additional environmental review required in the EIS law by the Waikiki trigger duplicates existing county environmental controls. In other words, are the reviews required under the City’s Special Management Area (SMA) and Waikiki Special District (WSD) ordinances *functionally equivalent* to an EA or EIS under chapter 343, Hawaii Revised Statutes, thereby rendering the Waikiki trigger redundant?

Special Management Area. The issue of whether Hawaii’s statutory provisions for the review of developments in the coastal zone are redundant under the EIS law and the Shoreline Management Act (the precursor to Hawaii’s Coastal Zone Management Act) was raised nearly twenty years ago by Washington University Professor Daniel Mandelker: “A question arises whether this much environmental review is really necessary. The statutory environmental standards applicable to new development under the Shoreline Management Act are remarkably similar to the standards governing the preparation of environmental impact statements. One environmental review may be considered necessary, but are two?”<sup>43</sup>

Unlike the counties of Maui, Kauai, and Hawaii, the significance criteria used by the City and County in the review of proposed developments in the SMA under the City’s shoreline management ordinance are limited to the objectives, policies, and guidelines established under the Coastal Zone Management Act, which are less extensive in scope than the significance criteria specified in the state EIS law and rules adopted pursuant to that law.<sup>44</sup> Arthur Challacombe, Chief of the Environmental Review Branch for the City’s Department of Planning and Permitting, agrees that the City’s SMA review is not as extensive as the chapter 343 (EIS

law) process, nor was it designed to be. For example, the SMA process was not designed to review traffic, social and economic impacts, and other impacts included in chapter 343, Hawaii Revised Statutes. Requiring a review of these impacts under the SMA law, according to Challacombe, relegates the SMA law to a zoning code, which was not the original intent of that law.<sup>45</sup>

Although the City and County SMA ordinance does not incorporate all of the *significance criteria* of the EIS law,<sup>46</sup> the City and County nevertheless uses the *procedures* of the EIS law in its SMA review.<sup>47</sup> According to Challacombe, the City is the only county that uses chapter 343 procedures in its SMA ordinances in its review of applications; EAs are not used in the SMA process in other counties, nor must agencies in those counties ask for comments. Thus, the City utilizes SMA content requirements and EIS procedural requirements. The City maintains that it is voluntarily including the chapter 343 process in its ordinances, it need not also comply with the significance criteria of that chapter.<sup>48</sup> The OEQC disagrees with this interpretation, arguing that if the City is availing itself of chapter 343 procedures, then it must also include the content requirements of chapter 343 in reviewing SMA applications under the City's shoreline management ordinances, rather than applying only coastal zone management criteria to those applications.<sup>49</sup>

Waikiki Special District. According to Challacombe, the WSD provisions under the City's Land Use Ordinance review are at least as extensive as the chapter 343 process. For example, economic and social impacts, which must be reviewed under chapter 343, Hawaii Revised Statutes, can be brought into this process under existing ordinances, such as section 21-7.80-1(f), Revised Ordinances of Honolulu.<sup>50</sup> However, while social, economic, and other issues may be reviewed by the Department, their review may not always be necessary. The Department of Planning and Permitting (DPP), in its discretion, may also ask applicants for additional information that is called for in chapter 343 but not in the WSD ordinances if that information is relevant to the Department's review of a proposed development.<sup>51</sup>

In response to the Bureau's survey on Senate Concurrent Resolution No. 153, the DPP in part submitted a comparison sheet analyzing the content and procedural requirements of the chapter 343 process and the Waikiki Special District process, a copy of which is included in Appendix L. That comparison seeks to show that the Waikiki Special District review process for major and minor permits, when combined with the review processes of other City and County permitting and planning laws, is coextensive with the EIS process in terms of both content and procedure, and even exceeds the procedural requirements of the EIS process with respect to its review of major permits.<sup>52</sup>

However, the extent to which the WSD provisions are able to achieve a level of environmental review that is comparable to the review provided under the EIS law is open to debate. For example, Jeyan Thirugnanam, the lead planner at the State Office of Environmental Quality Control, has noted that the WSD permit process is intended to provide more "nuts and bolts" and a higher level of detail than the EIS process. In contrast, the focus of chapter 343, Hawaii Revised Statutes, is on the planning process; it is broader in scope and more general, covering both social and cultural impacts that are not covered by the WSD. The EIS is therefore more of a planning document that is used as a tool to make permitting decisions. If the EIS

process is eliminated, it is hard to replace it with the WSD process.<sup>53</sup> Others also reject the idea that the WSD provisions provide the same degree of environmental review provided by the EIS law.<sup>54</sup>

Federal functional equivalency review under NEPA. Although Hawaii’s courts have apparently not specifically ruled on the issue of functional equivalence with respect to the EIS law, guidance may be obtained from federal court rulings. As noted in chapter 3, Hawaii’s “little NEPA” law, codified in chapter 343, Hawaii Revised Statutes, is patterned after the National Environmental Policy Act of 1969 (NEPA).<sup>55</sup> The Eleventh Circuit Court of Appeals found in 1990 that most federal judicial circuits have recognized “that an agency need not comply with NEPA where the agency is engaged primarily in an examination of environmental questions and where ‘the agency’s organic legislation mandate[s] specific procedures for considering the environment that [are] functional equivalents of the impact statement process.’”<sup>56</sup>

While it is unclear whether the Hawaii Supreme Court would find that a functional equivalency exception to the state EIS law has been met for DPP actions under the SMA and WSD review processes for proposed Waikiki developments, the Court may apply the federal functional equivalency standard to this situation, in which case the issue may be divided into the following two parts:

1. Whether the agency in question, in this case the DPP, “is engaged primarily in an examination of environmental questions”, i.e., under the City and County’s WSD and SMA ordinances; and
2. Whether the DPP’s “organic legislation” (i.e., the charter provisions creating the DPP) “mandate specific procedures for considering the environment that [are] functional equivalents of the impact statement process.”

As noted earlier, with respect to the first prong of this analysis, the DPP would maintain that the City’s WSD ordinance, together with the City’s SMA ordinance and other City and County ordinances and policies, *collectively* provide sufficient standards to ensure adequate consideration of all relevant environmental issues regarding proposed Waikiki projects. Nevertheless, even assuming that the WSD, SMA, and other City and County laws provide sufficient environmental safeguards, and that the DPP is “engaged primarily in an examination of environmental questions” under those laws, the DPP’s analysis would fail under the second prong of the federal functional equivalency standard.

While compliance with the second prong of this standard may appear to be hair-splitting, federal courts apparently place an equal emphasis on the “organic legislation” creating the agency as they do on the specific statute being applied: “For a court to apply the functional equivalency exception, it must find that the statute creating the agency, as well as the specific statute being applied, together provide sufficient substantive and procedural standards to ensure a full and adequate consideration of all pertinent environmental issues by the agency.”<sup>57</sup>

The organic law creating the DPP is the Charter of the City and County of Honolulu. The charter provisions relating to the DPP were most recently amended following the ratification of a

proposed charter amendment at the November 3, 1998, general election, which combined the DPP with the City Department of Planning into one department to streamline the City’s land use planning and permitting process.<sup>58</sup> While it may be argued that the new consolidated department will necessarily be involved in environmental reviews as an integral part of its planning and permitting functions, the charter provisions creating the DPP simply do not “mandate specific procedures for considering the environment that [are] functional equivalents of the impact statement process.”

For example, the word “environment” is not mentioned once in the charter provisions establishing the new department or describing its functions. Section 6-903 of the City Charter, as amended, specifies the powers, duties, and functions of the Planning and Permitting Director, which relate primarily to *planning and zoning*. For example, the new charter amendment added several provisions relating to the preparation and revision of general and development plans, as well as undertaking studies and preparing plans for special planning areas and issues, and performing other functions to promote comprehensive planning. These provisions were added to the Department of Land Utilization’s pre-amendment functions of preparing zoning ordinances, maps, and rules; preparing the land subdivision code and rules; establishing procedures for the review of land utilization applications; and administering the zoning and subdivision ordinances and rules.

Although preparation of the general and development plans are to include a recognition and anticipation of “the major problems and opportunities concerning the social, economic, and environmental needs and future development of the city”,<sup>59</sup> this in itself does not relate to the Department’s procedures, nor are there any other *specific* procedures included in the City’s Charter, as amended, for the DPP to consider environmental impacts in its zoning, planning, and permitting functions that may reasonably be considered as functionally equivalent to the EIS process. It has also been argued that the recent charter amendments may further decrease the Department’s environmental review functions, to the extent that the streamlined functions may favor quicker response times for zoning and permitting changes at the expense of the Department’s long-range planning functions.<sup>60</sup>

Although existing law does not provide for functional equivalents to the EIS, and the WSD review, as administered by the DPP, does not rise to the level of a functional equivalent of the EIS review, the Bureau recommends that the EIS law be amended to add a provision for functional equivalents similar to that provided in California’s Public Resources Code.<sup>61</sup>

10. The “Waikiki trigger”. As discussed in chapter 3, the “Waikiki trigger” is one of the eight actions that will “trigger” applicability of the EIS law and require the preparation of an environmental assessment. Senate Concurrent Resolution No. 153, which requested this study, notes that there is already a high level of environmental review for Waikiki projects under existing City and County law, in particular, the WSD and SMA ordinances, suggesting that these ordinances may eliminate the need for the Waikiki trigger under the EIS law.<sup>62</sup> As discussed in the previous section, however, the WSD and SMA processes do *not* appear to be functional equivalents of the EIS process using federal functional equivalency standards. Nevertheless, are there valid *public policy* reasons for repealing the Waikiki trigger? The Bureau believes that, in

weighing the competing policies positions, there is a need to retain the Waikiki trigger but limit its application for streamlining purposes.

Policy reasons for and against the repeal of the Waikiki trigger may be summarized as follows. Generally, those who argue for the repeal of the Waikiki trigger maintain that this trigger, which is the only geographic or site-specific trigger in the EIS law, has outlived its usefulness. Although the Waikiki trigger was necessary to prevent a decline in environmental quality in Waikiki in 1974 when the EIS law was enacted, since that time numerous other state and county laws have been enacted which established design and environmental guidelines. These laws, it is argued, render the extra level of review provided by the Waikiki trigger duplicative and unduly burdensome by adding additional layers of bureaucracy for those seeking to build or renovate properties in Waikiki. This duplication of regulations can be substantially reduced by eliminating the Waikiki trigger. Given existing environmental protection laws and the current stringent level of land use review for proposed projects in Waikiki, there is simply no longer any reasonable justification for requiring Waikiki to be the only area in the State that automatically triggers an environmental assessment.<sup>63</sup>

Those who argue for the retention of the Waikiki trigger maintain that without strong land use and environmental controls, Waikiki will suffer environmental degradation, leading to the decline of tourism in Hawaii's most important economic asset. Chapter 343 serves to disclose to the public the nature and extent of environmental, social, and economic impacts on this area prior to decision making. Development pressures and overbuilding, it is argued, will jeopardize tourism and provide less open space for both tourists and residents alike. The environmental review process in chapter 343 protects communities and prevents environmental degradation by encouraging citizen involvement and informed decision-making. Repealing the Waikiki trigger will significantly reduce public participation in this process. If Waikiki's beaches and overall clean environment is not protected, then tourists will no longer come.<sup>64</sup>

In balancing these competing objectives, it should be noted that, as a practical matter, the number of projects having a significant impact on Waikiki remains relatively small. It was noted in 1979 that "ninety percent of all developments receive a negative declaration by the responsible agency."<sup>65</sup> That percentage remained substantially the same for EA determinations from 1979 through 1991.<sup>66</sup> As reported in Appendix M, the City's Department of Planning and Permitting has noted that from 1990 to 1997, 1250 SMA and WSD permits had been issued with respect to Waikiki projects; of these, 17, or 1.4 percent, of all projects required an EA, while only 4, or 0.3 percent, of all projects required an EIS. Moreover, of the 17 projects requiring an EA, 6 projects had more than one trigger (3 were also required by the county funds trigger and 3 others required under the shoreline area trigger), leaving only 11 projects that would not have had an EA if the Waikiki trigger was nonexistent.<sup>67</sup>

To a large extent, the various triggers mandating the preparation of an environmental assessment in the EIS law represent policy choices made by the Legislature. The inclusion of the Waikiki area as the only site-specific trigger in the EIS law serves to reinforce the broad policy objective of protecting Waikiki's environment. Gary Gill, Director of the Office of Environmental Quality Control (OEQC), noted in his testimony regarding the proposal to repeal the Waikiki trigger that "[t]o remove Waikiki from the law as this bill proposes, the Legislature

must find that either the district is adequately protected by other means or is no longer worthy of protection. Such a finding is a policy concern we will leave to lawmakers.”<sup>68</sup> While the Bureau agrees with the OEQC’s characterization of this issue as a policy question, framing the issue as an either/or proposition omits an intermediate level of review, namely, the *modification* of the Waikiki trigger rather than outright repeal.

Major/minor permit distinction. The Bureau believes that given the fact that the WSD and SMA processes cannot be viewed as functional equivalents of the EIS process, there is still a need to retain the Waikiki trigger in some form. The most appropriate solution at this time is to retain the Waikiki trigger but limit its application to address policy concerns without overburdening the regulatory process. While there are any number of possible compromise positions, the Bureau believes that applicability of the Waikiki trigger should be limited only to proposed “major” uses in Waikiki, and that the OEQC should review the need for continuation of the trigger after five years to determine its effectiveness and the need to retain, repeal, or expand that trigger, depending on the level of environmental quality in Waikiki.

As discussed in chapter 4, the streamlining technique of distinguishing between “major” and “minor” permits generally involves categorizing activities that are subject to permits based on the magnitude or complexity of those activities: “Major activities would then be subject to normal (or perhaps more intensive) permitting procedures while the minor activities would be processed through a faster, more abbreviated procedure. This technique provides the agencies with the opportunity to concentrate on the larger, more complex applications while spending less time on the routine cases.”<sup>69</sup> Minor projects would also require less stringent public notification requirements than major projects.<sup>70</sup> While the major/minor development distinction “considerably reduces the total backlog time for all types of development”, however, one drawback associated with this technique is that “the cumulative impact of a series of similar small developments may not be adequately considered.”<sup>71</sup>

If “major uses” are deemed the equivalent of “significant environmental effects,” there is precedent for reviewing only major uses in Waikiki. As enacted in 1974, the EIS law required environmental impact statements, rather than environmental assessments, for “[a]ll actions proposing any use within the Waikiki-Diamond Head area of Oahu ... which will probably have significant environmental effects.”<sup>72</sup> The major/minor distinction is also recognized under National Environmental Policy Act (NEPA), in which EIS preparation is required for “major” actions that are likely to “significantly” affect the quality of the human environment, as opposed to “non-major” actions that “do not individually or cumulatively have a significant effect on the human environment.”<sup>73</sup> As discussed in the next section of this chapter, this distinction is also recognized in Hawaii’s Coastal Zone Management law with respect to the issuance of Special Management Area permits, in which minor permits, among other things, have “no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.”<sup>74</sup>

The intent of amending the Waikiki trigger to provide for EAs only for major uses is to provide a measure of streamlining by eliminating the need for EAs (and, consequently, EISs) for minor projects in Waikiki, while addressing the concerns of those who seek greater environmental protection and public input for projects that have significant effects on the quality of the environment. Under current City and County ordinances, “major permits” are intended for

projects that may significantly change the intended character of the special district, while “minor permits” are intended for projects that will have limited impact and are considered minor in nature.<sup>75</sup> The City’s new bill to streamline the Land Use Ordinance further extends the major/minor distinction for proposed developments. Bill No. 72 (1998) proposes to eliminate the twelve existing application processes and combine them into only two basic major and minor application processes.<sup>76</sup>

The creation of major and minor processes in the proposed streamlined LUO helps to distinguish those application types that are essentially ministerial in nature and can be processed with minimal levels of review from application types that will potentially have greater impact and will require more substantial levels of review. Accordingly, it is expected that the limitation of the Waikiki trigger to only “major” uses, as defined by the City and County, will help to prevent litigation over that term, since the proposed LUO draws clear distinctions between major and minor permits. Conversely, limiting that trigger to proposed uses that “will probably have significant environmental effects”, as provided in the 1974 version of that trigger, would most likely require litigation to ascertain the intent of that language. Finally, including a provision for the OEQC to review the need for continuation of the Waikiki trigger after five years to determine its effectiveness will allow for the retention, repeal, or expansion of that trigger, depending on the quality of the environment in that district as determined by the OEQC. The Bureau believes that this option (retaining the Waikiki trigger for major projects only) provides for increased streamlining while still retaining a measure of public participation and environmental review for the Waikiki district.

SMA in Waikiki. Another possible streamlining solution with respect to the Waikiki trigger is to limit the application of that trigger to only the Special Management Area (SMA) in Waikiki, which covers only a small portion of land along the coast of Waikiki, as shown in Appendix G. The rationale behind this proposal is that the SMA is subject to rapid growth and development, increased population pressures, and recreation needs, and serves as one of the economic bases for tourism, Waikiki’s top industry. Therefore, extension of the EIS process to this area will help to protect development in that environmentally sensitive area.<sup>77</sup> However, there are several reasons why this proposal is not recommended at this time.

First, as noted above, the SMA covers only a small portion of Waikiki. In view of the fact that the City’s WSD process is not the functional equivalent of the EIS process, as discussed earlier, proposed developments in those areas of Waikiki that are physically outside of the SMA would arguably receive less rigorous environmental review under the WSD process than that provided under the EIS law. Private developments that have a significant environmental impact that are not within the SMA in Waikiki, or do not fall within any of the other criteria specified in the other triggers in section 343-5(a), Hawaii Revised Statutes, would in some cases be exempt from EIS review if the Waikiki trigger is repealed.

Second, although the scope of the City’s SMA subject matter review is not coterminous with the subject matter of the EIS law, the City’s SMA procedural review process duplicates the review requirements of the EIS law: “The primary reason cited by the counties for not including actions in the SMAs as one of the triggers for HRS [chapter] 343 is that requirements for environmental disclosure are already, or can be included, in some county SMA ordinances

making state mandated EA duplicative and unnecessary.”<sup>78</sup> In view of the fact that the City and County is currently working on a proposal to consolidate the environmental review process with the City’s SMA review process,<sup>79</sup> the inclusion of the SMA for Waikiki as a streamlining measure is premature.

Finally, if the State finds that the City and County is allowing Waikiki (or any other area) to become degraded environmentally, the State may always take such measures as may be necessary to ensure the conservation and protection of Waikiki’s natural environment, pursuant to Article XI, Section 1 of the State Constitution. As noted in chapter 3, that section requires the State and its political subdivisions to “conserve and protect” Hawaii’s natural resources for the benefit of present and future generations, and to “promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.” However, rather than singling out Waikiki as the only site-specific area for which the SMA trigger would apply, this trigger should apply state-wide, if it is to be implemented at all.

A bill that includes proposed amendments to the EIS law, made applicable only to Waikiki, as proposed in subsections 1, 3, 4, 8, 9, and 10 of this section, relating respectively to concurrent processing, master and focused EISs, a Waikiki environmental impact database, standardized or joint EIS documents, functional equivalents, and the “Waikiki trigger,” may be found on the LRB Library’s Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix Q.

## **B. Coastal Zone Management Law**

There are several measures that can be taken to streamline the Coastal Zone Management process, with particular reference to the Special Management Area in Waikiki, including the following:

1. Coordinated coastal permitting process. Establishing a coordinated permitting process for proposed Waikiki projects proposed in Waikiki’s SMA may help to streamline the issuance of SMA permits for those projects. The Bureau recommends that Hawaii’s CZM law be amended by adding language to establish such a process, as applicable only to Waikiki, based on the Louisiana’s coordinated permitting process. Louisiana’s law contains a coordinated coastal permitting process that is intended “to expedite and streamline the [process] of issuing coastal use permits and of obtaining all other concurrently required permits or approvals from other governmental bodies having separate regulatory jurisdiction or authority over uses of the coastal zone without impinging on the regulatory authority of such governmental bodies.”<sup>80</sup> The coordinated process, which is to be established by means of binding interagency agreements, includes such streamlining measures as a master application, a “one window” system for applications, a single public hearing, a short permit review period, and a joint state-federal permitting process, if practicable.

2. Statutory SMA dollar threshold. As noted in chapter 3, Hawaii law provides for a dollar threshold of \$125,000 for SMA minor permits and over that amount for SMA use permits: SMA use permits authorize development valued at over \$125,000, “or which may have a



substantial adverse environmental or ecological effect, taking into account potential cumulative effects”, while SMA minor permits allow development valued not in excess of \$125,000, “and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects”<sup>81</sup> While this dollar amount provides a degree of certainty regarding which projects are covered by the CZM law, it is nevertheless a relatively arbitrary figure that is set too low for Waikiki projects.

One way to avoid having to amend this dollar figure every few years to keep pace with rising business development costs, cost of living increases, or other measures, is to define SMA permits for Waikiki projects without reference to a statutory dollar threshold, similar to that provided under New York’s Environmental Conservation Law. New York’s law provides that “minor projects” are those that “will not have a significant impact on the environment and will not exceed criteria established in rules and regulations adopted by the department...”.<sup>82</sup> All other projects in New York are considered “major”. The Bureau recommends amending the SMA minor and use permit definitions in Hawaii’s CZM law by eliminating the *statutory* dollar threshold altogether for Waikiki projects, similar to the major/minor distinction provided under New York’s law, but allowing for the setting of a dollar figure and other relevant criteria for Waikiki developments pursuant to *administrative rules*. “Criteria” adopted by administrative rule may include a dollar figure for Waikiki, a list of permissible activities, or both.<sup>83</sup>

Removing the statutory dollar figure for SMA use permits for Waikiki projects would allow the Office of Planning, as the lead agency responsible for administering Hawaii’s Coastal Zone Management Program, greater flexibility to adopt more appropriate rules for Waikiki developments, including a new dollar threshold as may be necessary. Since the dollar figure would be adopted administratively, pursuant to chapter 91, Hawaii Revised Statutes (the Hawaii Administrative Procedure Act), this figure could be amended more easily, as circumstances require, than by legislation. As amended, “SMA minor permits” could be issued if the proposed Waikiki project has no substantial adverse environmental or ecological effect and will not exceed criteria established in rules, while “SMA use permits” could be issued if there would be a resulting substantial adverse environmental or ecological effect and the project would exceed criteria established in rules. The Bureau believes that such an amendment to Hawaii’s CZM law would provide a greater degree of flexibility in granting permits and would provide greater discretion to the City and County in deciding which projects to approve or deny.

3. Balancing of interests. The SMA is recognized as an environmentally sensitive area and an important statewide resource. As noted in chapter 3 of this report, chapter 205A, Hawaii Revised Statutes, the objectives and policies of the State’s CZM program focus on ten specific areas, ranging from recreational and historic resources to coastal ecosystems and hazards. It has been noted that “[o]ne half of Hawaii’s total land area is within five miles of the shoreline, and it is here that the great bulk of development has taken place, and where the future development pressures will be”;<sup>84</sup> nevertheless, there is substantial disagreement as to the nature of the CZM law and the role it plays in coastal development, particularly within the SMA in Waikiki, which has been subject to substantial development pressures.

Those who maintain that the role of the CZM law is that of environmental resource protection or preservation argue that Waikiki is already saturated and suffering from

overdevelopment. Rather than decreasing environmental controls, there is a need to protect Waikiki from further harm by increasing controls in the SMA in that district to allow for zero or managed growth and development, consistent with the need to protect the coastal region. Clean beaches are what draw tourists to Waikiki; without clean beaches and coastal waters, tourism will drop. At the very least, the status quo should be retained, i.e., no changes should be made to the State's CZM law.

On the other hand are those who maintain that the CZM law is not an environmental protection statute, but rather a conservation and development statute; it was intended to guide development, not exclude development. It is argued that Waikiki is not a pristine coastal environment, but rather one of the State's most densely populated urban areas. Some go so far as to argue that "the environment has been distorted so drastically in [the Waikiki district] that further development cannot have a significant impact."<sup>85</sup> Accordingly, Waikiki should be treated differently from other coastal areas to allow for the needed renovation and reconstruction of property in Waikiki's SMA with minimal interference. This can be achieved by exempting Waikiki entirely from the purview of the CZM law, providing for a two-tiered system in which a different level of scrutiny is applied to Waikiki developments in the SMA, or by raising the dollar limit for the issuance of SMA use permits significantly higher for proposed Waikiki projects within the SMA.

There are, however, potential problems associated with exempting Waikiki from the CZM program or adopting intermediate levels of scrutiny for Waikiki. The primary concern, according to Douglas Tom, the Planning Program Manager for the State's Coastal Zone Management Program, is potential loss of certification from the federal CZM program. Hawaii received federal approval of its CZM program in 1978, and is eligible for federal grants-in-aid under the federal CZM program. According to Mr. Tom, if Waikiki is exempted from chapter 205A, Hawaii Revised Statutes, or a less stringent level of scrutiny is established for Waikiki developments in Waikiki's SMA, the State runs the risk of having its CZM program decertified if the federal government finds that this is inconsistent with the purposes of the federal CZM law and cannot reconcile the differences. Decertification would have two results: first, the State would lose its eligibility to receive grants-in-aid under the federal CZM program, and second, the State would lose its federal consistency review authority. This authority was a "carrot" offered by the federal government to the states, recognizing that the State is in the best position to manage its coastal areas.<sup>86</sup>

The Bureau recommends that the Office of Planning, as the lead agency responsible for administering the State's CZM program, further study this issue to determine whether a balancing of these competing interests is possible, following the statutory objectives specified in chapter 205A, without resulting in federal decertification.<sup>87</sup>

A bill that includes proposed amendments to the CZM law, made applicable only to Waikiki, as proposed in subsections 1 and 2 of this section, relating respectively to a coordinated coastal permitting process and statutory SMA dollar threshold, may be found on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix R.

### C. Planning Laws

Several measures can also be taken to streamline planning laws relating to Waikiki developments, including the following:

1. State and local plans affecting Waikiki. University of Hawaii Professor of Law David Callies has noted that “no permit simplification, coordination, or streamlining will be effective unless the multitude of plans under which land use labors is also both coordinated and simplified.”<sup>88</sup> While the streamlining of all state and local plans is beyond the scope of this report, State and City and County plans as they relate only to Waikiki can nevertheless be streamlined. The rationale for singling out Waikiki for special streamlining treatment is the importance of that district to the economy of not only the City and County of Honolulu but to the economic future of the entire State.

As noted in chapter 3, the Hawaii State Plan provides in part that state goals include a strong, viable economy; a desired physical environment; and physical, social, and economic well-being for Hawaii’s individuals and families.<sup>89</sup> As noted in that chapter, however, it is not clear from the plan how economic development activities are to be reconciled with environmental preservation activities, in view of the fact that the objectives of each are not always mutually compatible. The Bureau believes that the objectives for Waikiki should be framed in terms of a *balancing* of the goals of economic development and environmental protection, in view of the Legislature’s previous finding in section 341-1, Hawaii Revised Statutes, that “the quality of the environment is as important to the welfare of the people of Hawaii as is the economy of the State.”

The coordination and simplification of state and local plans affecting Waikiki projects should be conducted by either the Joint Waikiki Task Force, which was appointed pursuant to Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998), to serve as “a forum for coordination of plans and proposals for both public and private investment and actions needed to encourage revitalization of this area”,<sup>90</sup> or the Waikiki Planning Working Group, which is chaired by the Office of Planning and has stated that it “will remain involved with planning and promoting Waikiki’s future.”<sup>91</sup>

2. Long-range planning. As discussed in chapter 2, the State and City and County have been at odds in the past over the direction of Waikiki. Because of the importance of long-range planning for Waikiki’s future, there is a need to ensure that long-range planning functions are not treated as a political football between the State and the City. Moreover, this area has received recent concern arising from the City Charter amendment combining the City’s Department of Planning and Permitting and Department of Planning, in which some critics have maintained that the amendment minimizes the importance of long-range planning responsibilities in favor of quick zoning and permitting changes.<sup>92</sup>

The Bureau therefore recommends the establishment of an area-specific agency that includes members of both the State and the City and County to resolve dissatisfaction with the existing state-county regulatory structure and assist in consolidating overlapping functions with respect to long-range planning in Waikiki, by providing for an integrated and streamlined land

use planning and growth management system for that district, including planning for infrastructure improvements. As discussed in chapter 2 of this report, the final report of the “Waikiki Tomorrow Conference” to the 1990 Legislature noted that “[t]he division between the State and County of responsibilities and resources for supporting Waikiki has often meant inadequate and untimely attention to the infrastructure of the district.”<sup>93</sup> Moreover, as noted in chapter 3, the City Planning Department found that there was “a critical need to revitalize Waikiki’s aging physical plant” and that “new investment and reinvestment are necessary to prevent decline. Urban decay would be disastrous to Waikiki’s competitiveness and to the State’s economy”.<sup>94</sup> Finally, both state and county planning laws support reinvestment in Waikiki’s infrastructure.<sup>95</sup>

3. Planning for economic revitalization. In addition to streamlining infrastructure improvements for Waikiki, there is a concurrent need to streamline mechanisms for other project financing to assist in Waikiki’s revitalization. As discussed in chapter 2, “Vision for Waikiki 2020,” which was initiated in 1990 to prepare plans for Waikiki’s future, noted that “urban revitalization cannot be truly successful if it relies on either the public or private sectors acting alone. Current experience shows that public-private partnerships are the keys to success in planning, implementing, and financing urban revitalization efforts.”<sup>96</sup> The Bureau agrees with the following recommendations made in Vision for Waikiki’s 1992 report, namely, that project financing for Waikiki should be based on three major initiatives as follows:<sup>97</sup>

(1) Maximum use should be made of existing, traditional funding sources, including:

- Transient Accommodation Taxes (TATs).<sup>98</sup> TATs derived from Waikiki should be earmarked to fund Waikiki’s revitalization;
- Special Assessments levied in Waikiki on the basis of benefit derived may be used to fund basic public improvements and services;
- Business Improvement Districts (BIDs) (discussed further in this section);
- Private Contributions for specific, earmarked projects such as parks and cultural facilities; and
- Grants-in-Aid from federal, state, and county sources.

(2) Values created by redevelopment, reinvestment and business improvement should be captured as a resource to help finance the revitalization of Waikiki. Added values can be captured through the following techniques without greater intensity of development:

- Tax Increment Financing<sup>99</sup> allows local governments, as a funding device to pay for redevelopment costs, to capture those real property taxes derived from the redeveloped property that exceed the real property taxes derived from the property before redevelopment; and

- TAT Incremental would allow for the retention of all TAT and General Excise Tax (GET) increments that are generated through increased tourism resulting from Waikiki’s revitalization effort after a certain date, e.g., through a special set-aside or reallocation of TAT or GET revenues dedicated exclusively to Waikiki’s improvement program.

(3) Waikiki’s revitalization program should provide for the *transferral of development rights (TDRs)* to undeveloped, underutilized and/or economically marginal sites which do not have similar development rights. (Discussed later in this section.)

Business Improvement Districts (BIDs). One way to streamline planning to revitalize Waikiki, using public-private management partnerships, is through the use of BIDs, which are generally used to finance services to improve the economic vitality of downtowns and other commercial areas: “A BID is a financing mechanism used to provide revenue for a variety of local improvements and services that enhance, not replace, existing municipal services. Based upon the benefit assessment district concept, a BID is a self-imposed and self-governed quasi-municipal mechanism that must be supported by private sector business and property owners.”<sup>100</sup> Now numbering more than 1,200 across the United States and Canada, BIDs are formed with the consent and participation of local property and business owners, and produce revenues that are returned to a defined area in the form of maintenance, security, marketing, economic development, and other services.<sup>101</sup> A well-publicized example of a BID involved efforts in New York City to improve the Times Square area. The use of BIDs and other public-private partnerships to assist in Waikiki’s economic revitalization has been suggested on several occasions, for example, in the City and County’s Waikiki Master Plan,<sup>102</sup> in the City Planning Department’s Waikiki Planning & Programming Guide,<sup>103</sup> and by the nonprofit organization Vision for Hawaii 2020.<sup>104</sup>

Transfer of Development Rights (TDRs). The use of TDRs is another technique that may be used in Waikiki in conjunction with streamlining to preserve open space and structures of historic or cultural value. Generally, TDRs allow landowners who cannot, or choose not to, build to the maximum density on their property to sell their unused density to another landowner, who may add that density to the buyer’s property. Used as a supplement to streamlining techniques, TDR programs have the potential to save historic and cultural structures, improve residential development, and increase open space in Waikiki by offering landowners the option of continuing a publicly desired use, such as preserving open space, while obtaining the same economic return as if the owner had developed the property.<sup>105</sup>

The Hawaii Legislature recently passed TDR legislation, effective on July 20, 1998, that allows the counties to transfer and regulate the transfer of development rights, in addition to planning and zoning laws, to protect the natural, scenic, and agricultural qualities of open lands; enhance sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value; and enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.<sup>106</sup> While the Honolulu City Council initially rejected the TDR concept in the early 1970s before the implementation of adequate planning for Waikiki,<sup>107</sup> the City and County already uses this technique in certain areas<sup>108</sup> and recommended incorporating the TDR concept into an amended Waikiki Special

District.<sup>109</sup> The Bureau accordingly recommends that the City and County adopt ordinances to implement a TDR program for Waikiki pursuant to Act 296, Session Laws of Hawaii 1998.

#### **D. Automatic Permit Approval Law**

Concerns have been raised about the impact of Hawaii's automatic permit approval law, Act 164, Session Laws of Hawaii 1998, codified as section 91-13.5, Hawaii Revised Statutes, which requires state and county agencies to adopt rules specifying maximum time periods to grant or deny all business and development-related permits, and provides for the automatic approval of those permits if an agency fails to take action within the established maximum time period. Critics claim that Act 164 denies due process, will sacrifice Hawaii's environment to developers, makes public policy in the most difficult cases by default or evasion, and fails to address legitimate delays in issuing development-related permits.<sup>110</sup> Others counter that the law increases government predictability, accountability, and efficiency; provides sufficient regulatory safeguards; will not harm the environment; and is not unique – California has had a similar automatic permit approval law for more than twenty years.<sup>111</sup>

The Bureau recommends that a new statutory provision be enacted that is based on Act 164, but applicable only to Waikiki, to address fairness concerns in that law with respect to proposed Waikiki projects. In particular, the Bureau finds that Act 164, while increasing streamlining in the short-term, may result in decreased streamlining in the long-term. For example, the failure to allow an extension for contested case hearings may result in at least a perceived denial of due process rights, thereby increasing the length and cost of the regulatory process through increased litigation. Extensions for contested cases could also benefit reviewing agencies by allowing for additional time to obtain necessary information on which to base their decisions, and could benefit litigants, who would have additional time to prepare their cases.<sup>112</sup>

Accordingly, the Bureau recommends the inclusion of several provisions from California<sup>113</sup> and Washington State<sup>114</sup> laws relating to application completeness, time limit exceptions, and expedited appeals procedures, to prevent abuse or unanticipated results under Act 164's automatic approval provisions. In addition to extensions for "national disasters, state emergencies, or union strikes" under Act 164, the following are some of the circumstances that would appropriately be available to extend maximum time limits under Act 164:

1. The applicant has been requested by the agency to correct plans, perform required studies, or provide other additional required information. If the agency determines that the information submitted by the applicant is insufficient, it must notify the applicant of the deficiencies and the period is further extended until all required information has been provided;<sup>115</sup>
2. For the preparation of environmental impact statements following an agency determination that the proposed action may have a significant effect on the environment, if the City and County government has established time periods for completion of EISs by ordinance or resolution, or if the agency and applicant agree in writing to a time period for completion of the EIS;<sup>116</sup>

3. When a contested case hearing is requested and for any other period for administrative or judicial appeals and review;<sup>117</sup>
4. For any period of time mutually agreed upon by the applicant and the agency; provided that nothing shall prohibit an applicant and the agency from mutually agreeing to an extension of any time limit;<sup>118</sup> and
5. If the agency has good cause for exceeding the time limits because either: (A) the number of permits to be processed exceeds by 15 percent the number processed in the same calendar quarter the preceding year; or (B) the permit-issuing agency must rely on another public or private entity for all or part of the processing and the delay is caused by that other entity.<sup>119</sup>

Other additional extenuating circumstances that can be added to mitigate the potentially harsh effects of Act 164 include the following:

1. Multiple permits are being considered as part of a State or City and County consolidated permit application review process; provided that nothing shall prohibit the State, City and County, or both, from establishing by ordinance or rule a consolidated permit review process that may provide different procedures and time limits for different categories of permits;
2. For any period of time in which the agency is unable to reach a quorum for any reasons, if the agency is required to maintain a quorum before making any official decisions, including approving or denying a permit;<sup>120</sup> and
3. If any other compelling circumstances justify additional time and the applicant consents to that extension.

A proposed bill establishing a modified automatic permit approval law that is applicable only to Waikiki may be found on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) as Appendix S.

## Endnotes

<sup>1</sup> University of Hawaii Professor Karl Kim has noted that “[g]iven concerns over adequate infrastructure as well as the social and economic costs of development, the EIS system in Hawaii has evolved into the principal battlefield where developers, community groups, environmentalists, and government officials hash over the merits and minuses of new development.” Karl E. Kim, “Environmental Impact Statements in Hawaii: Problems and Prospects,” Discussion Paper No. 16 (Honolulu: [University of Hawaii], Oct. 1990), pp. 1-2.

<sup>2</sup> Robert A. Alm and Annette Kolis, A Survey of States' Efforts to Improve Land Development Review Procedures, prepared for the Hawaii Dept. of Planning & Economic Development (Honolulu, HI: Hawaii Coastal Zone Management Program, Technical Supplement No. 17, Jan. 1980), p. 3.

<sup>3</sup> Id. at 9. The impact of Act 164, Session Laws of Hawaii 1998, regarding mandatory time limitations and automatic approvals, on the EIS process is discussed in section D of this chapter.

<sup>4</sup> Cal. Pub. Res. Code §21003(a) (West 1996).

<sup>5</sup> For example, applicants for an SMA permit must submit to the DPP a copy of either the negative declaration or a completed and accepted EIS, as required by section 25-5.1(b), Revised Ordinances of Honolulu.

<sup>6</sup> Interview with Arthur Challacombe, Chief, Environmental Review Branch, City and County of Honolulu Department of Planning and Permitting, July 9, 1998.

<sup>7</sup> Interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, July 2, 1998. *See, e.g.*, §§343-5(b), Hawaii Revised Statutes (“Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action.”) and 343-5(c) (“Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action.”)

<sup>8</sup> Alm and Kolis, *supra* note 2, at 9.

<sup>9</sup> Section 343-2, Hawaii Revised Statutes, defines “environmental impact statement” as an “informational document”; *see also* Mauna Kea Power Co., Inc. v. Board of Land and Natural Resources, 76 Haw. 259, 265, 874 P.2d 1084 (1994).

<sup>10</sup> Telephone interview with Kathy Sokugawa, Chief, Zoning Division, DPP, October 28, 1998.

<sup>11</sup> Hawaii Environmental Council and Office of Environmental Quality Control, Environmental Report Card, 1997: An Assessment of Hawaii’s Environmental Health (Honolulu, HI: 1998), p. I.

<sup>12</sup> Hawaii Revised Statutes, §343-6(a)(7). The Hawaii Supreme Court has recently held that it was apparent “from the context of the exemptions that the regulations intend to exempt only very minor projects from the ambit of HEPA [i.e., chapter 343, Hawaii Revised Statutes].” Kahana Sunset Owners Assn. v. County of Maui, 86 Haw. 66, 72, 947 P.2d 378 (1997), referring to section 11-200-8, Hawaii Administrative Rules.

<sup>13</sup> Hawaii Administrative Rules, §11-200-8(d).

Recent examples of amendments to agency exemption lists include those of the Department of Land and Natural Resources, Division of Forestry and Wildlife, and the City and County of Honolulu Department of Parks and Recreation, as contained in the July 8, 1998 issue of The Environmental Notice, the semi-monthly bulletin of the Office of Environmental Quality Control, pp. 21-23.

<sup>14</sup> Interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, July 2, 1998.

<sup>15</sup> Testimony of Gary Gill, Director of Environmental Quality Control, Office of Environmental Quality Control, before the Senate Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Environment regarding S.B. No. 2665, February 19, 1998, p. 2. Gill’s testimony indicated that since 1988, 37 projects in Waikiki have been subject to EAs under chapter 343, of which 16 would likely be exempt from preparing an EA under the new rules adopted in 1996 if those projects were proposed today.

<sup>16</sup> Id. For example, with respect to Waikiki, exemptions might be made for retail stores, restaurants, office buildings, etc., that are no higher than a certain number of stories (or no higher than existing buildings) within the same block, and that are no different from the adjacent buildings or are of the same character as other projects on that block, and which do not increase the density of the block. If, on the other hand, the project is a new block-development, there is a need for a new EA. Id.

<sup>17</sup> Letter faxed from Gary L. Gill, Director of Environmental Quality Control, to Mark Rosen, LRB, dated September 8, 1998, p. 2.

<sup>18</sup> Peter J. Rappa, Jacquelin N. Miller, and Carolyn D. Cook, The Hawaii State Environmental Impact Statement System: Review and Recommended Improvements (prepared for the State Office of Environmental Quality Control) (Honolulu, HI: University of Hawaii Environmental Center, July 1991), p. 86. Currently, agency exemption lists are subject to periodic review by the Environmental Council pursuant to section 11-200-8(d), Hawaii Administrative Rules.



<sup>19</sup> Alm and Kolis, *supra* note 2, at 9.

<sup>20</sup> In the tiering process, EISs under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321-4370c, may be prepared on the national, regional, and site-specific levels:

Federal decisions made at the national level among competing programmatic alternatives and policies which affect the entire federal effort may require the preparation of a ‘programmatic’ EIS (PEIS). Proposals for federal actions may also be made at a regional level requiring an EIS which is focused on regional considerations and which must be more specific than the national PEIS. Finally, a proposed project at a specific site may require an EIS more detailed than the regional EIS or national PEIS.

‘Tiering’ is an approach whereby the very site-specific project EIS can incorporate by reference and without repetition the broader considerations of a regionwide EIS, or even a national PEIS, if they are relevant. CEQ [Council on Environmental Quality] regulations note that tiering is appropriate when the sequence of EIS’s is from a program, plan or policy EIS to a site-specific statement or from an EIS on a specific action at an early stage (such as a need and site selection) to a subsequent statement at a later stage. Tiering in such cases is appropriate when it helps the responsible federal agency focus on the issues which are ripe for discussion, and exclude from consideration issues already decided or not yet ripe. ...

Tiering is a useful tool when new federal programs are initiated which must later be delegated to regional programs and finally become site-specific activities. Tiering can be used in the NEPA compliance process to avoid duplication and provide the appropriate detail required for the level of action under consideration. Using the tiered system, a project specific EA or EIS need only focus on potential environmental impacts of the project that are not covered by earlier, broader statements.

J. Gordon Arbuckle, et al., Environmental Law Handbook, 12<sup>th</sup> ed. (Rockville, MD: Government Institutes, Inc., 1993), pp. 333-334.

<sup>21</sup> “Costs can also be reduced through greater use of generic environmental impacts statements (GEIS). Where a municipality is formulating a new comprehensive plan or considering a major rezoning, it should commission a generic statement which will study the effects of that change. Then when developers seek approval for new projects which are consistent with the plan or the rezoning, the municipality often will not need a new impact statement. At most, it should only require a supplemental statement (SEIS) which discusses the impact of any deviations from the plan.” George F. Carpinello, SEORA and Local Land Use Decision Making: The Lessons From Other States (Prepared for the Legislative Commission on Rural Resources – Land Use Advisory Committee) (Albany, NY: Government Law Center, Albany Law School, August, 1991), p. 41. For example, a study conducted in Santa Barbara, California, found that “the City’s preparation and adoption of a Master Environmental Assessment (MEA) dramatically reduced the time of cost and review for individual projects. Since adoption of the MEA, the number of impact statements has been cut in half.” Id. at 43.

To avoid litigation, however, Professor Carpinello argues that a presumption should be created that an SEIS will be required “only when a proposed use deviates from the plan or where a project has a peculiar impact distinct from other projects in the area and that impact was not analyzed in the GEIS. Where the GEIS could not accurately predict the impact of one or more subsequent uses, the local agency would have the discretion to require an SEIS, even for an allowable use.” Id. at 42.

<sup>22</sup> For example, a Master Plan EIS was prepared by the Department of Hawaiian Home Lands for the ten-year Kawaihae Master Plan, which covered a large, mostly undeveloped land area. Another Master EIS was prepared by the State in conjunction with the reclassification of conservation to urban lands in the Kona area of the Big Island. Telephone interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, November 9, 1998.

- <sup>23</sup> For example, in the mid-1980s, the Honolulu Board of Water Supply prepared a Master Plan EIS for broad water-related activities or uses on the windward side of Oahu, establishing a programmatic or regional EIS. Subsequent supplemental EISs focused on specific uses in that area. Id.
- <sup>24</sup> See §343-5(a)(6), Hawaii Revised Statutes, which exempts the preparation of environmental assessments in connection with new county general plans initiated by a county, which has been interpreted as applying to county development plans by the State Attorney General. Hawaii Attorney General Opinion No. 85-30, dated December 20, 1985.
- <sup>25</sup> Id. at 23. “More fundamentally, the impact statements on various projects should not be shelved, never to see the light of day, after project approval is given. Each EIS should be viewed as part of a mosaic of information which the community accumulates to get a picture of its evolving landscape. The EIS should not only be analyzed in light of an existing comprehensive plan, but the plan should be updated with the information provided in each EIS.” Id. at 24-25.
- <sup>26</sup> Id. at 23-24.
- <sup>27</sup> Telephone interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, November 9, 1998.
- <sup>28</sup> The Environmental Notice, the semimonthly bulletin of the OEQC, is at the following website: <http://www.hawaii.gov/health/oeqc/eioeqc00.htm>. The Environmental Council’s Environmental Report Card, 1997 is at: <http://www.hawaii.gov/health/images/pdf/anrpt97.pdf>.
- <sup>29</sup> The website of the Environmental Planning Office is: <http://www.hawaii.gov/health/ei/ep/eiep0000.htm>.
- <sup>30</sup> The Office of Planning’s HCZM website is: <http://www.hawaii.gov/dbedt/czm/index.html>.
- <sup>31</sup> The DPP’s website is at: <http://www.co.honolulu.hi.us/planning/index.htm>.
- <sup>32</sup> “Pennsylvania Puts Environmental Compliance and Permit Information on the Internet,” ECOS Magazine, vol. 5, no. 3 (Jan./Feb. 1998), pp. 3, 17-18. Pennsylvania’s “Interim Compliance Tracking System” is available to the public at the DEP’s website at [www.dep.state.pa.us](http://www.dep.state.pa.us) (under “Compliance Reporting”). However, “[t]he current flurry of activity by federal, state and non-governmental organizations to make permit, discharge, violation and other information available on the World Wide Web has sparked a furious debate over the practice, and worries that citizens may either receive dated or incorrect information or fail to understand the context of release data or violation notices.” Douglas R. Blazey, “Forging Successful Internet-Based Compliance Tracking Systems,” ECOS Magazine, vol. 5, no. 4 (March/April 1998), p. 2 (Editor’s note).
- <sup>33</sup> See Paul M. A. Baker, “Community Networks: New Tool for Environmental Planning,” Environment & Development, American Planning Assn., June 1995, p. 11, and web pages cited therein.
- <sup>34</sup> For example, a recent computer upgrade in the Chicago Department of Buildings permitting process was designed to allow for the digital scanning of large blueprints. However, in order to fit on seventeen-inch computer screens, the drawings were required to be significantly reduced in size, causing errors that were sometimes overlooked and plans that were returned for corrections although they contained no errors. The unintended effect was the “clogging of the approval process, rather than expediting it.” The new Commissioner of that Department scrapped the system to resolve the problem. Charles Mahtesian, “Mary Richardson-Lowry: Expediter,” Governing (Nov. 1998), p. 84.
- <sup>35</sup> John Helland, “Environmental Mediation,” Minnesota House of Representatives Information Brief (St. Paul, MN: House Research Department, Dec. 1985), p. 1.
- <sup>36</sup> Id.
- <sup>37</sup> Gail Bingham, Resolving Environmental Disputes: A Decade of Experience (Washington, DC: The Conservation Foundation, 1986), p. xvi.

- <sup>38</sup> Mediation is already encouraged in the State’s Coastal Zone Management law; the public participation policy in that law provides for the organization of “workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.” §205A-2(c)(8)(C), Hawaii Revised Statutes (“coastal zone management program; objectives and policies”) (emphasis added).
- <sup>39</sup> Cal. Pub. Res. Code §21151.5 (West 1998) (“time limits for preparation of environmental impact reports and negative declarations”).
- <sup>40</sup> John Holmstrom, Problems of Regulatory Inefficiency and Issues to be Considered in Reducing Them, prepared for the Hawaii Dept. of Planning & Economic Development (Honolulu, HI: Hawaii Coastal Zone Management Program, Technical Supplement No. 15, Jan. 1980), pp. 16.
- <sup>41</sup> §343-5(f), Hawaii Revised Statutes; see also §11-200-25, Hawaii Administrative Rules.
- <sup>42</sup> Daniel R. Mandelker and Annette B. Kolis, “Whither Hawaii? Land Use Management in an Island State,” University of Hawaii Law Review, vol. 1, no. 1 (Fall 1979), 48 at 63.
- <sup>43</sup> Id. at 53. Mandelker and Kolis noted that Hawaii’s Shoreline Management Act was modeled after California’s interim coastal legislation, and that California’s courts recognized an implicit exemption to the statutory EIS requirement (which was subsequently codified in California). Accordingly, they concluded that, “[g]iven the close kinship between the Hawaii and California shoreline protection and environmental impact statement legislation, the Hawaii courts can also be expected to exempt shoreline management permits from the environmental impact statement requirement.” Id. at 54.
- <sup>44</sup> The August, 1992 Guidebook for the Hawaii State Environmental Review Process, prepared by the staff of the State Office of Environmental Quality Control, states the following at p. 22:
- Each authority must assess proposed developments in the SMA to determine if there will be significant environmental effects. For Maui and Hawaii counties, the applicant is required to provide the authority with information on the development’s technical, economic, social and environmental characteristics. This is similar to the information required in environmental assessments under the State EIS Regulations. The counties of Kauai and Oahu have authorized, through their SMA ordinances, the option for the authority to require the preparation of an EIS. All four counties also permit the submittal of an accepted EIS as part of the information needed by the authority to assess the proposed development.
- The counties of Kauai, Maui and Hawaii utilize [significance] criteria, which are similar to that contained in the EIS Regulations, to determine whether there will be a significant effect on the SMA. The City and County of Honolulu has limited the criteria to the objectives and policies in Section 205A-2, HRS and the review guidelines of City and County Ordinance 4529, Section 4.
- <sup>45</sup> Interview with Arthur Challacombe, Chief, Environmental Review Branch, City and County of Honolulu Department of Planning and Permitting, July 9, 1998.
- <sup>46</sup> §25-4.1, Revised Ordinances of Honolulu (“Significance criteria”) provides: “In assessing the significance of a development, the director shall confine the director’s criteria to the objectives, policies and guidelines in Article 3 of this chapter.” Section 25-3.1, ROH, specifies that the “objectives and policies of this chapter shall be those contained in HRS Section 205A-2.” Section 205A-2, in turn, outlines the objectives and policies of the coastal zone management program.
- <sup>47</sup> §25-4.2, Revised Ordinances of Honolulu (“Procedures”), provides: “In processing a negative declaration or environmental impact statement, the director shall adhere to the procedures set forth in HRS Chapter 343, and the regulations adopted thereunder by the environmental quality commission. In the event that a development is not subject to the chapter, but the director requires and EIS, filing shall be with the agency.” (Emphasis added.)
- <sup>48</sup> Interview with Arthur Challacombe, Honolulu Department of Planning and Permitting, July 9, 1998.
- <sup>49</sup> According to the OEQC, city ordinances require that projects within the SMA prepare EAs or EISs according to the provisions of chapter 343, Hawaii Revised Statutes. Roughly one-third of Waikiki is within the SMA.

However, the City applies chapter 205A, HRS (Coastal Zone) objectives and not chapter 343, HRS (EIS) criteria in determining the significance of impacts when preparing EAs or EISs for projects in the SMA. OEQC believes that the City and County should apply the EIS significance criteria. For example, traffic issues are not covered under the Coastal Zone objectives, although traffic is a big concern in Waikiki and is covered under the EIS process. Interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, July 2, 1998.

<sup>50</sup> §21-7.80-1(f), Revised Ordinances of Honolulu (“Waikiki special district – Objectives”), states as one of the objectives of the WSD to “[p]rovide for the ability to renovate and redevelop existing structures which otherwise might experience deterioration. Waikiki is a mature, concentrated urban area with a large number of nonconforming uses and structures. The zoning requirements of this special district should not, therefore, function as barriers to desirable restoration and redevelopment lest the physical decline of structures in Waikiki jeopardize the desire to have a healthy, vibrant, attractive and well-designed visitor destination.”

<sup>51</sup> Id.

<sup>52</sup> In response to the Bureau’s survey, the DPP further noted the following:

A comparison of the significance criteria in the environmental impact evaluation contained in Hawaii Administrative Rules, Title 11, Department of Health 200, Environmental Impact Statement Rules and the WSDD regulations contained in the City’s Land Use Ordinance reveals that the fundamental elements of both review processes are very similar... In the few instances where there is not a direct statutory similarity between these two documents, other city policies, regulations, and development codes require an applicant for a development project in Waikiki to prepare and disclose environmental data pertinent to the City’s permit approval process.

Additionally, an applicant for a development project in Waikiki is subject to a more rigorous level of review under the City’s WSDD requirements than under Chapter 343. Whereas the Chapter 343 requirements are general in nature, the WSDD regulations require applicants to disclose detailed plans which are specific to zoning, height, design as well as infrastructure layout.

An analysis of the public review procedure under Chapter 343 and the WSDD regulations reveals that major permits under the WSDD undergo a much more stringent level of public participation than under Chapter 343. Whereas Chapter 343 rules provide for a 30-day public review process which is published in the OEQC’s Environmental Notice, the WSDD regulations require an applicant to present the proposal to the Neighborhood Board, send a Notice of Application to property owners within 300 feet of the proposal, and require the City to hold a public hearing which is advertised 30 days in advance.

Other similarities between the Chapter 343 and WSDD regulations include an aggrieved party’s right to appeal final actions of the agency. In Chapter 343 rules, a party has the right to appeal an agency action to the Environmental Council. For decisions on City development permits in Waikiki, an appellant can contest a decision regarding a development proposal by petitioning the Zoning Board of Appeals before going to court.

Letter from Jan Naoe Sullivan, Director of Planning and Permitting, to Wendell Kimura, Acting Director, Legislative Reference Bureau, August 31, 1998.

<sup>53</sup> Interview with Jeyan Thirugnanam, Planner, State Office of Environmental Quality Control, July 2, 1998.

<sup>54</sup> For example, in his response to the first question of the Bureau’s survey on S.C.R. No. 153, which asked whether the “Waikiki trigger” in the state EIS law should be repealed, Donald Bremner stated the following: “Judging from the callous disregard for environmental concerns apparent in the City’s 1996 revision of the WSD, Waikiki needs more environmental protection – not less. The WSD regulations never equaled Chap 343 in providing information on possible impacts.”

<sup>55</sup> However, the state EIS law calls for a broader range of information than NEPA and is wider in scope than NEPA. See Molokai Homesteaders Cooperative Assn. v. Cobb, 63 Haw. 453, 465, 629 P.2d 1134 (1981).

<sup>56</sup> State of Alabama ex rel. Siegelman v. U. S. Environmental Protection Agency, 911 F.2d 499, 504 (11<sup>th</sup> Cir. 1990), *quoting* Texas Committee on Natural Resources v. Bergland, 573 F.2d 201, 207 (5<sup>th</sup> Cir. 1978); *see also* Arbuckle, et al., *supra* note 20, at 329-331, Western Nebraska Resources Council v. U. S. Environmental Protection Agency, 943 F.2d 867, 871-872 (8<sup>th</sup> Cir. 1991); Environmental Defense Fund, Inc. v. Environmental Protection Agency, 489 F.2d 1247, 1257 (D.C. Cir. 1973):

We conclude that where an agency is engaged primarily in an examination of environmental questions, where substantive and procedural safeguards ensure full and adequate consideration of environmental issues, then formal compliance with NEPA is not necessary, but functional compliance is sufficient. We are not formulating a broad exemption from NEPA for all environmental agencies or even for all environmentally protective regulatory actions of such agencies. Instead, we delineate a narrow exemption from the literal requirements for those actions which are undertaken pursuant to sufficient safeguards so that the purpose and policies behind NEPA will necessarily be fulfilled.

<sup>57</sup> Arbuckle, et al., *supra* note 20, at 329-330 (emphasis added).

<sup>58</sup> The rationale for the merger was as follows:

The overlapping functions of the two departments have resulted in a complicated and redundant set of land use procedures and a system which has resulted in lengthy processing times. This amendment combines the two departments into one department in order to streamline the land use planning and permitting processes by using new multidisciplinary staff to provide comprehensive input, improve efficiency, consolidate duplicative and related functions, and to provide consistency with respect to planning, policies and project review. Combining the two departments will provide close coordination of land use policies and their implementation through the zoning and permit approval processes, while continuing long-range planning functions and responsibilities.

<sup>59</sup> Revised Charter of the City and County of Honolulu, §6-907 (“general and development plans”).

<sup>60</sup> *See, e.g.*, Grace Furukawa, “Charter Changes: No: Voters Need to Know More Before Deciding,” The Honolulu Advertiser, September 27, 1998, p. B1, B4 (“The pressures of zoning applications and the advantages of jobs and tax revenues often outweigh sound long-range planning.... We are very concerned that development will be allowed to spread all over the island without consideration of the availability of water or sewerage facilities, schools, traffic and transit implications, other public facilities needed, protection of the natural environment, and the public expenditures that would have to follow.”) (Emphasis added.) *See also* David Waite, “Charter Issues in Dispute,” The Honolulu Advertiser, October 19, 1998, pp. B1, B4 (“The 1972 and 1992 charter commissions considered the same proposal and decided against putting the proposal on the ballot. There were concerns that planning would become developer-driven and that there would be little consideration of water and sewer availability or school and traffic implications.”); and Curt Sanburn, “Charter Amendment #1,” Honolulu Weekly, October 21-27, 1998, p. 4 (“The argument against the amendment is that the newly constituted single agency will respond to the immediate deadlines of zoning and permitting under pressure from private development interests. Meanwhile, there is no comparable short-term, profit-driven pressure for comprehensive, long-term planning, and thus the planning function of city government will be institutionally devalued.”)

<sup>61</sup> Cal. Pub. Res. Code §21080.5 (West 1998); *see also* Mandelker and Kolis, *supra* note 42, at p. 53, n. 28; and Alm and Kolis, *supra* note 2, at 9, 36-37.

<sup>62</sup> Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998) appears to tentatively endorse the repeal of the Waikiki trigger. However, the Concurrent Resolution notes competing concerns as follows:

WHEREAS, because Chapter 343 provides review of the environmental impact of development projects in Waikiki that is more comprehensive than City and County of Honolulu regulations, there is a justified concern that it may be premature to eliminate the Waikiki Special District trigger from Chapter 343 because, currently, there are no assurances that coverage under the county regulatory framework would provide the Waikiki area with the level of environmental review that exists under state law; and

WHEREAS, the Legislature also recognizes that streamlining is necessary to eliminate duplicative regulations that add to the cost of doing business in Waikiki...

<sup>63</sup> Testifying on behalf of the Department in its February, 1998, testimony before the Senate Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Environment, Ms. Jan Naoe Sullivan, Director of Land Utilization, characterized the bill as “a streamlining measure that will eliminate duplicative regulations that affect projects in Waikiki. This bill seeks to implement the dual goals of enhancing the revitalization of Waikiki and eliminating recurring red tape and bureaucracy.” Testimony of Jan Naoe Sullivan, Director of Land Utilization, before the Senate Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Environment regarding S.B. No. 2665, February 18, 1998, p. 1 (hereinafter, “DLU testimony”).

Sullivan further noted that “an excessive number of projects in Waikiki must undergo procedural disclosure and review requirements through the environmental assessment (EA) or the environmental impact statement (EIS) process.” The Department maintained that while the chapter 343 review requirements for Waikiki were appropriate when the EIS law was first enacted in 1974, “stringent regulations and permit procedures have evolved in the past 24 years for Waikiki which ensure an appropriate level of environmental review for project proposals.” *Id.* Sullivan also reviewed the following changes in state and county law following the enactment of the EIS law in 1974:

At the time of the original bill, there was a need to establish additional development controls in the Waikiki area. The significance of Waikiki to the State’s economy was well recognized and the years from statehood to 1974 saw uncontrolled growth in Waikiki creating serious problems which threatened to erode this area. The City and County of Honolulu had not yet adopted any special zoning regulations for Waikiki, and the EIS process was a logical step in assuring that land use permit decisions would be based on adequate disclosure of a project’s potential impacts to the Waikiki area.

On April 1, 1976, the City’s Waikiki Special Design District (WSDD) regulations took effect. The purpose of this district was to provide the orderly development and redevelopment of the district. A system of review criteria and permit procedures were created, including a public hearing requirement for major projects. However, specific design and other guidelines for reviewing projects remained rather vague.

In subsequent years, additional planning and regulatory programs such as the Oahu Development Plans, Special Management Area permit requirements via Chapter 205A, state water and air quality permitting, flood hazard districting, and other amendments to the City’s Land Use Ordinance (LUO), including expanding provisions of the WSDD which provides more explicit guidelines with respect to design and environmental concerns, have created separate area-specific review criteria. *Id.* at 2.

Sullivan’s testimony concluded that there was no longer any justification for retaining the Waikiki trigger – the only trigger under the EIS law with a site-specific location – since the City and County now has sufficient regulatory authority to properly evaluate the potential impacts of projects in Waikiki. Eliminating the Waikiki trigger would eliminate duplication by reducing time and expenses to project applicants, reduce duplication for government agencies responsible for processing permits, and encourage revitalization in Waikiki. *Id.* at 3.

Others testifying in favor of repealing the Waikiki trigger argued that such a measure would help to stimulate the State’s poor economy by providing needed streamlining to help revitalize Waikiki. *See, e.g.*, testimony of the following persons regarding S.B. No. 2665 (1998), before the same Senate Committees: The

Hawaii Business Roundtable (Feb. 19, 1998); Sam Bren, Chairman, Waikiki Neighborhood Board (Feb. 19, 1998); the American Institute of Architects Hawaii State Council (Feb. 18, 1998); Kajioka Yamachi Architects (Feb. 17, 1998); and Mark F. Ito of Goodsill Anderson Quinn & Stifel (Feb. 18, 1998).

<sup>64</sup> The case for the status quo, i.e., for leaving the Waikiki trigger in the EIS law, is perhaps most forcefully stated by Donald A. Bremner, former Executive Vice President of the Waikiki Improvement Association and Chair of the State’s Environmental Quality Commission. According to Mr. Bremner, the most important issue is maintaining environmental protection in Waikiki, which is as important today as it was in 1974 when the EIS law was enacted, which included the Waikiki trigger. However, according to Bremner, while “an attractive environment in Waikiki is the key to competing in the marketplace of tourism and regaining our declining mainland market”, the City and County of Honolulu has taken steps to reverse environmental quality through its 1996 amendments to the City’s Land Use Ordinance relating to the Waikiki Special District:

In 1996, the Administration proposed, and the Honolulu City Council passed, a sweeping re-zoning of Waikiki. That re-zoning threatens the attractive environment of Waikiki with overcrowding by fostering population densities like those found in New York City and Tokyo.

Such action is exempt from Chapter 343 because it is county-initiated but supposedly similar analyses will be provided by the planning process leading to the re-zoning. However, no such planning analysis was done for the recent Waikiki re-zoning and the intent of Chap. 343 was circumvented accordingly. Down the line, various development projects will arise from this re-zoning and several will be large in size and scope.

If the environmental assessment requirements in Waikiki are removed, the environmental impacts from these projects and the re-zoning will never be disclosed. This could be [disastrous] to Waikiki where the [environment] is the economy, i.e., our tourist economy on Oahu relies on the competitive attractiveness of Waikiki’s environment. If we allow Waikiki’s environment to become repulsively unattractive, Oahu won’t have an economy to worry about. Testimony of Donald A. Bremner before the Senate Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Environment regarding S.B. No. 2665, February 19, 1998.

Others testifying in favor of retaining the Waikiki trigger in chapter 343 agreed that extra protection for Waikiki was necessary. The environmental organization Hawaii’s Thousand Friends noted that creating a “Hawaiian sense of place”, as required in the ordinance amending the Waikiki Special District, would be “difficult to accomplish if Waikiki continues to be a concrete jungle and the existing environment – clean air, clean beaches and ocean, and open space – are not retained, maintained and enhanced.” Testimony of Hawaii’s Thousand Friends regarding S.B. No. 2665, February 19, 1998. Hawaii’s Thousand Friends further noted that “[i]n the great rush to develop Waikiki to tourists, the residents of Waikiki have been forgotten. Thousands of residents call this most congested area in the state home. As the preamble to Chapter 341 [Hawaii Revised Statutes (“Environmental Quality Control”)] states[,] the environment is of equal value as the economy and the residents of Waikiki should not be required to accept anything less.” Id.

Similarly, Ms. Arlene Kim Ellis of the League of Women Voters of Honolulu argued that repealing the Waikiki trigger would be “unconscionable” since it would “take away one of the last remaining protections this precious and replaceable resource can depend on to prevent the further destruction of its remaining open space, views, and the other things tourists come here to enjoy.” Testimony of Arlene Kim Ellis, The League of Women Voters of Honolulu, regarding S.B. No. 2665, February 19, 1998; *see also* testimonies of Nancy Von, a small business owner in Waikiki (Feb. 17, 1998) and Ahupua’a Action Alliance (Feb. 19, 1998) on the same bill.

<sup>65</sup> Mandelker and Kolis, *supra* note 42, at 67 (footnote omitted). Act 61, Session Laws of Hawaii 1991, replaced the term “negative declaration” with “finding of no significant impact” (“FONSI”), in chapter 343, Hawaii Revised Statutes.

<sup>66</sup> Rappa, Miller, and Cook, *supra* note 18, at 33 (table 4). Of 3,215 EA determinations from 1979 through 1990, there were 2,870 negative declarations, resulting in approximately 89 percent of EAs receiving a negative declaration during that period.

<sup>67</sup> “Projects With a FONSI in Waikiki (1997-90),” City and County of Honolulu Department of Land Utilization, March 12, 1998, p. 2.

<sup>68</sup> Testimony of Gary Gill, Director of Environmental Quality Control, Office of Environmental Quality Control, before the Senate Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Environment regarding S.B. No. 2665, February 19, 1998, p. 1.

<sup>69</sup> Alm and Kolis, *supra* note 2, at 13.

<sup>70</sup> *See, e.g.*, Rappa, Miller, and Cook, *supra* note 18, at 31:

We suggest that a two-tiered system of information be developed by the OEQC. Actions that would be considered to be of major importance or of a potentially controversial nature, to be determined by OEQC, would require maximum public notification including newspaper advertising, radio and television public service announcements, and mail outs to communities in affected areas. Public input to these actions could also be encouraged by having informal public scoping meetings. Actions which are of a minor nature would have less stringent public notification requirements. We recognize that it may be difficult to define precisely what actions would be considered major and which ones would be considered minor. However, other determinations based on [judgment] are required in the EIS process and in other laws such as the state CZM Act (205A HRS), wherein a distinction is made between major and minor actions. (Emphasis added.)

<sup>71</sup> Mandelker and Kolis, *supra* note 42, at 64.

<sup>72</sup> Act 246, Session Laws of Hawaii 1974, part of §1 (section -4(a)(2)(D)) (emphasis added). The Waikiki trigger was subsequently amended in 1979 by requiring an EA instead of an EIS for the same geographic area, but deleting the emphasized language. Act 197, Session Laws of Hawaii 1979, §1(5) (renumbering section 343-4 as 343-5, HRS). This language was repealed 1987 and replaced by the existing language making reference to the Waikiki Special District. Act 187, Session Laws of Hawaii 1987, §2.

<sup>73</sup> See Arbuckle, et al., *supra* note 20, at 321-328, 331-332.

<sup>74</sup> §205A-22, Hawaii Revised Statutes (definition of “special management area minor permit”).

<sup>75</sup> §21-7.20-2, Revised Ordinances of Honolulu.

<sup>76</sup> Under Bill No. 72, the following application types would be processed under the “major” process:

1. Zone changes;
2. Plan review uses;
3. Conditional use permits, major;
4. Special district permits, major; and
5. Planned development-resort and planned development-commercial projects (applicable to Waikiki only).

Under the “major” process, applications for these types of actions would be required to be processed, and either approved or denied, within 90 days after acceptance of the completed application. A public hearing is also required. If the department fails to respond within this period, the application is deemed approved, unless the time period is extended in writing with the approval of the applicant. Zone changes, plan review changes, and planned developments (resort and commercial in Waikiki) are now, and would continue to be approved by legislative action before the city council.

In contrast, the following application types would be processed under the “minor” process under Bill No. 72:

1. Zoning adjustments;
2. Waivers;
3. Existing use permits;
4. Conditional use permits, minor; and



5. Special district permits, minor.

Under the “minor” process, applications for these types of actions would be required to be processed, and either approved or denied, within 45 days after acceptance of the completed application. No public hearing would be required. As in the major process, if the department fails to respond within this period, the application is deemed approved, unless the time period is extended in writing with the approval of the applicant. Multi-permit projects would be processed within the maximum time period specified for any one of the required permits. See Kusao & Kurahashi, Inc., and McCorrison Miho Miller Mukai, Report on the Proposed Streamlining Amendments to the Land Use Ordinance (Honolulu, HI: City and County of Honolulu Department of Land Utilization, June 1998), pp. 1-1 to 1-3.

<sup>77</sup> Rappa, Miller, and Cook, *supra* note 18, at 36.

<sup>78</sup> *Id.* Rappa, Miller, and Cook nevertheless recommended that the SMA be included as a criteria for triggering the EIS process (for the entire State, rather than only for Waikiki), in view of the fact that the SMA requires “a different management regime than other lands because it is expressly recognized as an environmentally sensitive area...” *Id.* at 38; *see also* Environmental Council, Report to the Hawaii State Legislature in Response to H.C.R. 267, Relating to the Environmental Process (Honolulu, HI: April 1998), p. 11 (recommending amending the EIS law to add an SMA trigger).

<sup>79</sup> *See* note 7 and accompanying text in chapter 6 of this report. The report of the House Committees on Energy and Environmental Protection and Water and Land Use, to which was referred S.C.R. No. 153, S.D. 1 (1998) (which requested this study) noted that “[t]he DLU testified in favor of the purpose of streamlining the regulatory process, but requested that the concurrent resolution be deferred to allow the DLU to retool county regulations while incorporating the state statutory environmental impact statement procedure process within the county regulatory framework.” Standing Committee Report No. 1510-98 (April 27, 1998), regarding S.C.R. No. 153.

<sup>80</sup> La. Rev. Stat. Ann. §214.33(A) (West 1998).

<sup>81</sup> Hawaii Revised Statutes, §205A-22 (definitions of “special management area use permit” and “special management area minor permit”).

<sup>82</sup> N.Y. Envtl. Conserv. Law §70-0105(3) (Consol. 1992).

<sup>83</sup> Alm and Kolis, *supra* note 2, at 14; *see also* Mandelker and Kolis, *supra* note 42, at 64 n. 69.

<sup>84</sup> John M. DeGrove, Land Growth & Politics (Washington, DC: American Planning Assn., 1984), p.51.

<sup>85</sup> Rappa, Miller, and Cook, *supra* note 18, at 42-43.

<sup>86</sup> Telephone interview with Douglas Tom, Planning Program Manager, Coastal Zone Management Program, Office of Planning, Department of Business, Economic Development, and Tourism, September 8, 1998. The better way to achieve planning objectives regarding Waikiki, according to Tom, is by amending land use policies in the City and County’s land use ordinance and general and development plans as they relate Waikiki to include long-term planning objectives for that area. As stated in the 1996-1997 HCZM annual report to the 1998 Hawaii Legislature:

Federal consistency is an extremely important incentive from a state management perspective. This modification of the federal supremacy clause provides for a central focus on coastal resource management for federal, state, and county governments. The federal consistency provision requires all federal actions undertaken in or affecting the state’s coastal zone to be consistent with the state’s approved coastal program. Where national defense or other overriding national interests are concerned, the federal actions must at least be consistent “to the maximum extent practicable” [15 CFR 930.32]. In addition, federally-licensed and permitted activities and federally-funded projects must be consistent with the state’s coastal program if the proposed activity affects the state’s coastal zone. Hence, federal consistency affords states the opportunity to review, influence, and modify federal agency decisions affecting coastal land and water resources. In this way, federal agencies can no longer act independently of, or in conflict with state coastal programs.

Office of Planning, Hawaii Department of Business, Economic Development, and Tourism, Annual Report to the Nineteenth Legislature, Regular Session of 1998, Hawaii Coastal Zone Management (Honolulu, HI: December 1997), pp. 2-3.

<sup>87</sup> The Office of Planning, with the assistance of the State Department of the Attorney General, may also wish to review the issue of whether the statutory standards used in the issuing of SMA use permits under Hawaii's CZM law raise a "regulatory takings" issue under Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), and subsequent regulatory takings cases. Under Lucas, the U. S. Supreme Court held that a land use regulation that takes all economic use from land is a taking of property that is protected by the Fifth Amendment, requiring compensation. The Court in that decision redefined regulatory takings by significantly increasing the likelihood of unconstitutional takings where welfare-based regulations, such as those protecting coastal zones, historic areas, and aesthetics, diminish private property values. The Court emphasized that government may not insulate itself from claims for just compensation by simply asserting that a regulation was imposed for a valid health, safety, or welfare purpose, if there is a lack of factual evidence to support the assertion. In a subsequent case, Dolan v. City of Tigard, 512, U.S. 374 (1994), the Supreme Court emphasized that there must be an "essential nexus" between a legitimate state interest and the regulation. If this nexus exists, then the degree of the exactions demanded by regulation must be rationally related both in nature and extent to the use that is being made of the private property. A regulation that does not satisfy this test will be considered a compensable taking.

University of Hawaii Law School Professor David Callies has noted that concerns in the CZM law, such as ensuring adequate beach access for recreational purposes and other ecological, cultural, historic, aesthetic, and scenic guidelines, "however laudable, are at best welfare concerns, some of which are only marginally related even to the coastal zone. Under recent state court modifications of regulatory taking criteria..., such regulations at the very least will be subject to heightened scrutiny with respect to the economic damage they cause private property." David L. Callies, Preserving Paradise: Why Regulation Won't Work (Honolulu, HI: University of Hawaii Press, 1994), pp. 85-86. Callies further noted that under Lucas, which also concerned a state CZM law that mixed human health and safety with welfare standards, "regulations based upon such standards and criteria are also likely to fail constitutionally if they deprive a landowner of economically beneficial use, or leave only very little of the same." Id. at 86.

For additional information regarding regulatory takings, *see generally* David L. Callies, ed., After Lucas: Land Use Regulation and the Taking of Property Without Compensation (Chicago, IL: American Bar Association, 1993) and Takings: Land-Development Conditions and Regulatory Takings after Dolan and Lucas (Chicago, IL: American Bar Association, 1996); Nancie G. and Roger J. Marzulla, Property Rights: Understanding Government Takings and Environmental Regulation (Rockville, MD: Government Institutes, 1997); Robert H. Freilich and David W. Bushek, "Thou Shalt Not Take Title Without Adequate Planning: The Takings Equation After Dolan v. City of Tigard," The Urban Lawyer, vol. 27, no. 2 (Spring 1995), pp. 187-213; "Dolan v. City of Tigard: Individual Property Rights v. Land Management Systems," University of Hawaii Law Review, vol. 17, no. 1 (Summer 1995), p. 193; Gwen Y. Wood, "The New 'Takings' Proposals in State Legislation: Private Property Rights Protection or a New Entitlement?," State and Local Government Review, vol. 29, no. 3 (Fall 1997), pp. 188-200; Larry Morandi, "Balancing Land Use Management with Protection of Property Rights and the Environment," State Legislative Report, vol 23, no. 1 (Jan. 1998) (entire issue) and "Evaluating the Effects of State Takings Legislation," State Legislative Report, vol 23, no. 2 (Jan. 1998) (entire issue); Pat A. Cerundolo, "The Limited Impact of Lucas v. South Carolina Coastal Council on Massachusetts Regulatory Takings Jurisprudence," Boston College Environmental Affairs Law Review, vol. 25, no. 2 (Winter 1998), p. 431; Richard L. Roe, "Takings: Balancing Public Interest and Private Property Rights," Wisconsin Briefs (Madison, WI: Legislative Reference Bureau, Brief No. 98-2, April 1998); David G. Savage, "Land of Opportunity: Can Property Owners Sue Over a City's Regulatory Decision?," ABA Journal, vol. 84 (Oct. 1998), pp. 34-35.

<sup>88</sup> David L. Callies, Regulating Paradise: Land Use Controls in Hawaii (Honolulu: University of Hawaii Press, 1984), p. 171.

<sup>89</sup> Hawaii Revised Statutes, §226-4.

- <sup>90</sup> Hawaii Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998), pp. 1-2 (second resolved paragraph; emphasis added).
- <sup>91</sup> Waikiki Planning Working Group, Waikiki: Hawaii's Premier Visitor Attraction (Honolulu, HI: State Department of Business, Economic Development, and Tourism, Office of Planning, March 1998), p. iv (emphasis added).
- <sup>92</sup> See *supra* note 60 and accompanying text.
- <sup>93</sup> See note 6 in chapter 2 of this report.
- <sup>94</sup> City and County of Honolulu Planning Department, Waikiki Planning & Program Guide (Honolulu: Feb. 1996), pp. ii, 3-5.
- <sup>95</sup> For example, as noted in chapter 3 of this report, policy 1 of objective VII.A. of the City's General Plan establishes the primary urban center (PUC), of which Waikiki is a part, as the area given the top priority for the construction of new public facilities and utilities. Policy 2 seeks the coordination of the location and timing of new development with the availability of adequate water supply, sewage treatment, drainage, transportation, and public facilities. See City and County of Honolulu, Department of General Planning, General Plan: Objectives and Policies (Honolulu: 1992), pp. 32-33. With respect to City and County Development Plans, Honolulu Ordinance No. 96-70, which in part amended section 24-2.3, Revised Ordinances of Honolulu, changed the ranking for development plan priorities in the primary urban center by placing as the top priority "infrastructure improvements to facilitate the future development of Waikiki, including facilities to support the convention center...." (Emphasis added.) With respect to the Hawaii State Plan, §226-103(b)(3), Hawaii Revised Statutes, as an economic priority guideline to promote the visitor industry, provides for the support of "appropriate capital improvements to enhance the quality of existing resort destination areas and provide incentives to encourage investment in upgrading, repair, and maintenance of visitor facilities...."
- <sup>96</sup> Vision for Waikiki 2020, Planning Recommendations for Waikiki (Honolulu, HI: January 1992), p. IV-7.
- <sup>97</sup> Id. at IV-8 to IV-10.
- <sup>98</sup> Hawaii Revised Statutes, chapter 237D.
- <sup>99</sup> Hawaii Revised Statutes, chapter 46, part VI (§§46-101 – 46-113).
- <sup>100</sup> M. Bradley Segal, "Business Improvement Districts: Tool for Economic Development," MIS Report (International City/County Management Association), vol. 29, no. 3 (March 1997), p. 1.
- <sup>101</sup> Id. at i; see generally Lawrence O. Houston, Jr., BIDs: Business Improvement Districts (Washington, DC: ULI – the Urban Land Institute in cooperation with the International Downtown Assn., 1997); see also Roberta Brandes Gratz, Cities Back From the Edge: New Life for Downtown (New York, NY: John Wiley & Sons, Inc., 1998).
- <sup>102</sup> City and County of Honolulu, Department of General Planning, Waikiki Master Plan (Honolulu, HI: May 15, 1992), pp. 101-102.
- <sup>103</sup> City and County of Honolulu Planning Department, Waikiki Planning & Program Guide (Honolulu: Feb. 1996), p. 8-2.
- <sup>104</sup> Kathryn Wylde and Sally Goodgold, A Public-Private Partnership for Waikiki (Honolulu, HI: Vision for Hawaii 2020, December 1992), pp. V-14, V-16, VII-6 to VII-11.
- <sup>105</sup> The TDR concept "represents an attempt to deal simultaneously with the dual problems of equity for landowners and of effectiveness in land-use regulation":

As the name suggests, TDR assumes that landownership, in the sense of physical possession, can be separated from the right to develop the land in any manner other than the existing use. The development right, viewed independently from landownership, is made a separate article of private

property, which can be shifted from one land parcel to another. TDR establishes a means by which it becomes possible and advantageous to buy and sell development rights without buying and selling land. Stringent public controls on the development of a particular parcel of land need not reduce the land's economic value to the owner, because development rights remain in the owner's hands and can be used on other properties of the owner or sold to others for use elsewhere.

Franklin J. James and Dennis E. Gale, *Zoning for Sale: A Critical Analysis of Transferable Development Rights Programs* (Washington, DC: The Urban Institute, 1977), pp. 2-3; *see also* Jerome Rose, ed., *The Transfer of Development Rights: A New Technique of Land Use Regulation* (New Brunswick, NJ: Rutgers University, Center for Urban Policy Research, 1975); Daniel R. Mandelker, et al., *Transferable Development Rights* (Chicago, IL: American Society of Planning Officials, 1975); Richard J. Roddewig and Cheryl A. Inghram, *Transferable Development Rights Programs: TDRs and the Real Estate Marketplace* (Chicago, IL: American Planning Association, 1987); Sarah J. Stevenson, "[Note:] Banking on TDRs: The Government's Role as Banker of Transferable Development Rights," *New York University Law Review*, vol. 73, no. 4 (Oct. 1998), p. 1329; and David G. Anderson, "[Comment:] Urban Blight Meets Municipal Destiny: Zoning at the Ballot Box, the Regional Welfare, and Transferable Development Rights", *Northwestern University Law Review*, vol. 85, no. 2 (Winter 1991), pp. 519-561.

- <sup>106</sup> Act 296, Session Laws of Hawaii 1998, part of §1. Hawaii law already provides for TDRs in the limited context of historic preservation. Section 6E-15, *Hawaii Revised Statutes*, allows the county councils to provide "by regulations, special conditions, or restrictions for the protection, enhancement, preservation, and use of historic properties or burial sites", which may include "appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view, or both, historic easements, preventing deterioration by wilful neglect, permitting the modification of local health and building code provisions, and transferring development rights." (Emphasis added.)
- <sup>107</sup> Thomas H. Creighton, *The Lands of Hawaii: Their Use and Misuse* (Honolulu, HI: The University Press of Hawaii, 1978), p. 280; *see also* Ferguson & Sutton, "Transferable Development Rights in Hawaii: Issues and Answers" (Honolulu, HI: June 20, 1980) (regarding in part Senate Bill No. 1164 (1980)).
- <sup>108</sup> For example, Professor David Callies has noted that "Honolulu already uses the technique to permit private developers to build taller buildings than might otherwise be permitted by acquiring air rights from nearby lots and transferring them to the development lot." Callies, *Preserving Paradise*, *supra* note 87, at 96, citing §4.40-21 of Honolulu's Land Use Ordinance (Joint Development of Two or More Adjacent Zoning Lots.) Professor Callies notes that this technique was used in the construction of the Pan Pacific Building on Bishop Street, in which air rights on the adjoining Ritz building were transferred to the building site for Pan Pacific Plaza. *Id.* at 96 note 3. Developer Jack Myers also built One Archer Lane based on this concept, "although for technical reasons it is considered a joint development. The Myers Corp. struck a deal with the Catholic Diocese for its unused development rights at its cemetery property, adjacent to Myers' development site." Michelle R. Thompson, "Transferable Development Rights Open the Way for Future Projects," *Pacific Business News*, August 7, 1995, p. 34.
- <sup>109</sup> The *Waikiki Master Plan* previously recommended that the TDR mechanism be explored and incorporated with an amended Waikiki Special District, as appropriate, "since the master planning of Waikiki offers opportunities to minimize hardship for properties planned as public open space, allowing them to sell credits for floor area, and to set aside other areas as 'receiver sites' for the purchase and transfer of density." *Waikiki Master Plan*, *supra* note 102, at 95.
- <sup>110</sup> *See* "Commentary: Should Governor Sign Permit-Deadline Bill?": William Tam, "No: Bill Denies Due Process," and Maile Bay, "No: There Are Better Solutions," *The Honolulu Advertiser*, June 28, 1998, p. B3; David Kimo Frankel, "Automatic Development," *Honolulu Weekly*, vol. 8, no. 24 (June 17-23, 1998), p. 4.
- <sup>111</sup> *See* "Commentary: Should Governor Sign Permit-Deadline Bill?": Dan Davidson, "Yes: Bill Has Safeguards," and Rick Egged, "Yes: It's Part of New Culture," *The Honolulu Advertiser*, June 28, 1998, p. B3.

- <sup>112</sup> A Report to the Governor on Act 227, SLH 1992 (Honolulu, HI: State Streamlining Task Force, Dec. 1993), p. 8.
- <sup>113</sup> See Cal. Govt. Code §§15374 – 15378 (West 1992 and 1998 Supp.) (California Permit Reform Act of 1981); *see also* Cal. Govt. Code §§65920 – 65963.1 (West 1997) (California Permit Streamlining Act of 1977, as amended), Cal. Pub. Res. Code §§71000 – 71035.11 (West 1996 and 1998 Supp.) (Environmental Protection Permit Reform Act of 1993). For a recent study on streamlining the permitting process in California, see Todd Kaufman and Wendy Umino, Streamlining the Permitting Process for Business Development and Regulatory Compliance (Sacramento, CA: California State Assembly Office of Research, Feb. 1992).
- <sup>114</sup> Wash. Rev. Code §§36.70B.010 – 36.70B.900 (1996) (Local Project Review Law).
- <sup>115</sup> Based on Wash. Rev. Code, §36.70B.090(a)(i) and (ii).
- <sup>116</sup> Based on Wash. Rev. Code, §36.70B.090(b).
- <sup>117</sup> Based on Wash. Rev. Code, §36.70B.090(c).
- <sup>118</sup> Based on Wash. Rev. Code, §36.70B.090(d).
- <sup>119</sup> Based on Cal. Govt. Code, §15376(h)(1) and (2).
- <sup>120</sup> According to staff members of the state Office of Planning, it may be easy to abuse or manipulate the process under 164. For example, a default judgment in favor of approval of an application can be forced under Act 164 if a board member comes to a board meeting to establish a quorum, but later either leaves before the permit is voted on or declares a conflict of interest. At that point there is no longer a quorum, and the permit is automatically approved. Interview with Richard Poirier, Scott Derrickson, and Lorene Maki, Office of Planning, Department of Business, Economic Development, and Tourism, July 17, 1998.

## Chapter 6

### RECOMMENDATIONS AND CONCLUSION

#### A. Findings and Recommendations

This section summarizes relevant findings and recommendations made by the Bureau in chapters 4 and 5 of this report, including several possible courses of action for the Legislature and the City and County of Honolulu to consider in streamlining regulations affecting proposed Waikiki developments.<sup>1</sup> Bills drafted to implement several of these recommendations are included in appendices on the LRB Library's Internet website for this report at [www.state.hi.us/lrb/study.html](http://www.state.hi.us/lrb/study.html) (appendix references are to that website):

##### 1. Waikiki Pilot Programs.

As discussed in chapter 4, the Bureau recommends the establishment of a five-year pilot program for proposed Waikiki projects to include various streamlining techniques in addition to those already specified in the existing consolidated application process (CAP) in part IV of chapter 201, Hawaii Revised Statutes, to further increase permit consolidation, coordination, and simplification, including the following:

- Requiring the appointment of a project facilitator to “walk” the applicant through the process and serve as a mediator where necessary;
- Requiring one or more pre-application conferences and a conceptual review of the proposed Waikiki project;
- Providing for a completeness review of applications;
- Requiring City and County of Honolulu participation in the process (and appropriate funds to the City and County as a county mandate under Article VIII, Section 5 of the Hawaii Constitution);
- Allowing both State and City and County agencies to opt out of the process, but deeming non-participating agencies to have approved project permits;
- Requiring project monitoring by the Department to ensure the applicant's compliance with permit terms and conditions;
- Requiring the incorporation of conflict resolution mechanisms to resolve conflicts arising among departments and agencies resulting from conflicting requirements, procedures, or agency perspectives;

- Providing for the consolidation of contested case hearings on permits and for appellate review directly to the Hawaii Supreme Court;
- Providing for joint environmental impact statements and concurrent public review and processing;
- Increasing the Department’s responsibilities with respect to streamlining activities and information services regarding Waikiki developments, including providing for explicit agency standards and incorporating rebuttable presumptions (and appropriate funds to the Department to allow for the efficient implementation of the consolidated permit application and review process, including hiring additional staff for this purpose);
- Providing for the transfer of permitting functions, including enforcement functions, from issuing agencies to the Department upon the written agreement of the parties; and
- Requiring the Department to submit annual reports regarding the effectiveness of the consolidated permit application and review process.

In addition, the Bureau recommends that the Department review the awarding of incentives to applicants to encourage the use of the consolidated permit application and review process for proposed Waikiki developments, including reductions in permit fees and real property, general excise, or other taxes; faster processing times; reductions in State or City and County lease rent; reductions in other user or impact fees; and exemption from certain local ordinances. A bill included on the Bureau’s website as Appendix N creates this pilot program for proposed Waikiki projects.

Chapter 4 also included two other proposals to streamline the regulatory process as it applies to Waikiki developments, namely, the “Waikiki environmental permit assistance pilot program” based on Washington’s Environmental Permit Assistance law, and the “Waikiki permit coordination pilot program” based on Alaska’s Environmental Procedures Coordination Act, which are included on the Bureau’s website as Appendices O and P, respectively.

## **2. Environmental Impact Statement (EIS) Law.**

As discussed in chapter 5, the Bureau makes the following streamlining recommendations with respect to the EIS process:

- Implement the concurrent processing of environmental assessments (EAs) and environmental impact statements (EISs) with permits to the extent practicable for Waikiki projects, including joint hearings, coordinated deadlines, and the incorporation of documents by reference, to streamline the regulatory process. However, the Bureau recommends that sufficient time be allotted for the review of the EA or EIS to ensure that environmental concerns are given appropriate

consideration by the public and in decision making along with economic and technical considerations;

- Provide for the updating and standardization of agency exemption lists to streamline the environmental review process in order to avoid needless bureaucratic procedures and provide greater certainty to the private sector, government, and the public. In particular, the City's Department of Planning and Permitting (DPP) should amend its EIS exemption list, which was last updated in 1981, as a possible streamlining measure for Waikiki projects;
- Require the preparation of master or regional EISs for Waikiki to provide baseline environmental data for that district, which may produce cost savings and prevent duplication of paperwork, preferably in conjunction with City and County's forthcoming development plan for Honolulu's Primary Urban Center, which includes Waikiki. Supplemental or focused EISs may focus on a site-specific project, incorporating the master EIS by reference without repeating the broad environmental, social, or economic considerations addressed in the master EIS;
- Establish a regional environmental impact database for Waikiki (by the OEQC and DPP) in which data from previously prepared EISs and information from new EISs are used to continuously update environmental and land use information about that district. Such a database may help to integrate the environmental review process into the local land use process and assist policy analysts and decision makers in determining cumulative impacts within Waikiki to lay the groundwork for future policy and planning directions for that district. However, the implementation of such a database will likely require additional staff and funding;
- Provide for greater use of the Internet, E-mail, and other computer assisted technologies by permit-issuing agencies, in addition to existing State and City and County Web sites, to further streamline permitting procedures and allow for greater public access, such as by allowing applicants to track the status of applications before those agencies, review agency criteria for application completeness and for approving or denying permits, review time limits for agency decision making, and other areas, as well as to allow for quicker communication of public notices and E-mail with agency staff. This recommendation will also likely require additional agency staff and funding;
- Use environmental dispute resolution strategies, particularly mediation, to streamline the EIS process with respect to proposed Waikiki projects by avoiding litigation where appropriate, since litigation may increase the length, complexity, and expense of the regulatory process, by assisting the parties to resolve their differences in a dispute in an administrative settlement;
- Although establishing statutory time limits for EIS preparation and completion may shorten the overall regulatory process for Waikiki projects, the Bureau recommends that time limits should *not* be adopted at this time, in view of the fact that



decreasing the time allotted for the review of proposed Waikiki projects may not only curtail public participation but, when combined with proposals to accelerate the concurrent processing of permits, may not allow sufficient time for decision makers to sufficiently evaluate the environmental and other impacts of those projects;

- Provide for the use of standardized or joint EIS documents for the State and City and County to increase efficiency and reduce delay with respect to Waikiki projects, to the maximum extent feasible, similar to existing provisions for the use of one EIS document in actions that are subject to both the National Environmental Policy Act (NEPA) and the state EIS law;
- Provide for the use of functional equivalents in the EIS law with respect to Waikiki to avoid duplicative review and reduce time in the permitting process. This issue arises when a project subject to an EIS is also subject to review under equivalent environmental criteria contained in a development permit statute; environmental review under the permit legislation may substitute as the functional equivalent of environmental review under the EIS process if certain criteria are met. In chapter 5, applying federal functional equivalency standards, the Bureau found that the City's Waikiki Special District (WSD) and Special Management Area (SMA) ordinances are *not* functionally equivalent to an EA or EIS under chapter 343, Hawaii Revised Statutes, whether viewed individually or collectively with other City ordinances since the DPP's "organic legislation", i.e., charter provisions creating the DPP, do not mandate specific procedures for considering the environment that are the functional equivalents of the EIS process; and
- Amend the Waikiki trigger in chapter 343, Hawaii Revised Statutes, by limiting its applicability to only proposed "major" uses in Waikiki, as defined by the City and County, and require the OEQC to review the need for continuation of the trigger after five years to determine its effectiveness. Given the Bureau's finding that the WSD and SMA processes are not functional equivalents of the EIS process, there is still a need to retain the Waikiki trigger in some form, but to limit its application to address policy concerns without overburdening that process. The major/minor distinction balances the need for the continued review of major projects that will potentially have greater impact on Waikiki's environment and require more substantial levels of review, with the need to streamline the regulatory process affecting proposed Waikiki developments by eliminating the statutory EIS process for minor Waikiki projects that are essentially ministerial in nature and can be processed with minimal levels of review.

A bill included on the Bureau's website as Appendix Q includes proposed amendments to the EIS law, made applicable only to Waikiki, relating to concurrent processing, master and focused EISs, a Waikiki environmental impact database, standardized or joint EIS documents, functional equivalents, and amendments to the Waikiki trigger.

### 3. Coastal Zone Management (CZM) Law.

As discussed in chapter 5, the Bureau further makes the following streamlining recommendations with respect to the CZM process:

- Establish a coordinated coastal permitting process for proposed projects in Waikiki's SMA to assist in streamlining the issuance of SMA permits for those projects, similar to Louisiana's coordinated permitting process;
- Eliminate the statutory dollar threshold of \$125,000 for SMA permits for Waikiki projects. The Bureau finds that while this dollar amount provides a degree of certainty regarding which projects are covered under the CZM law, it is nevertheless a relatively arbitrary figure that is set too low for Waikiki projects. The Bureau instead recommends that the major/minor permit distinction in the CZM law be amended, similar to that provided in New York's Environmental Conservation Law, to eliminate the *statutory* dollar threshold, but allow for the setting of a dollar figure and other relevant criteria for Waikiki developments, including a list of permissible activities, pursuant to *administrative rules*, which would provide a greater degree of flexibility in granting permits and give greater discretion to the City and County in deciding which projects to approve or deny.
- Provide for a balancing of interests between those who would amend the CZM law to allow for increased development in Waikiki's special management area and those who seek greater protection of the coastal environment. The Bureau finds that exempting Waikiki from the CZM program or adopting a less stringent level of scrutiny for Waikiki may result in the potential loss of certification from the federal CZM program if the federal government finds that this is inconsistent with the purposes of the federal CZM law and cannot reconcile the differences, under which Hawaii would lose its eligibility to receive federal grants-in-aid and would lose its federal consistency review authority. The Bureau recommends that the Office of Planning, as the lead agency responsible for administering the State's CZM program, should further study this issue to determine whether a balancing of competing interests is possible without resulting in decertification.

A bill included on the Bureau's website as Appendix R includes proposed amendments to the CZM law, made applicable only to Waikiki, relating to a coordinated coastal permitting process and elimination of the statutory SMA dollar threshold.

### 4. Planning Laws.

As discussed in chapter 5, the Bureau makes the following streamlining recommendations with respect to the planning process for Waikiki:

- The coordination of state and local plans affecting Waikiki should be conducted by either the Joint Waikiki Task Force, appointed pursuant to Senate Concurrent Resolution No. 191, S.D. 2, H.D. 1, C.D. 1 (1998), or the Waikiki Planning

Working Group, which is chaired by the Office of Planning. Objectives for Waikiki should be framed in terms of a *balancing* of the goals of economic development and environmental protection.

- Establish an area-specific agency to streamline long-range planning for Waikiki, including planning for infrastructure improvements. To the extent that recent City Charter amendments combining the City’s Department of Planning and Permitting and Department of Planning are perceived to have reduced the resulting department’s long-range planning responsibilities, there may be a need to provide a new state-county regulatory structure to assist in implementing a streamlined land use planning and growth management system for Waikiki. In addition, previous state-county disagreements over responsibility and resources for the support of Waikiki have led to inadequate and untimely attention to Waikiki’s infrastructure. There is an immediate need to revitalize Waikiki’s aging physical plant to prevent further decline in that district.
- Finally, there is a need to streamline planning for economic revitalization. Streamlining mechanisms for project financing to assist in Waikiki’s revitalization include the use of existing funding sources, capturing added values created by reinvestment and business improvement, the use of public-private partnerships, the creation of business improvement districts (BIDs), and the transfer of development rights (TDRs).

**5. Automatic Permit Approval Law.**

Hawaii’s automatic permit approval law, Act 164, Session Laws of Hawaii 1998, codified as section 91-13.5, Hawaii Revised Statutes, while winning praise by some for increasing government accountability and efficiency, has also raised concerns that the automatic approval of permits arising from an agency’s failure to take action within established maximum time periods may lead to unfair or unintended results, including the denial of due process rights. As discussed in chapter 5, a new bill included on the Bureau’s website as Appendix S includes provisions based on Act 164, as applicable only to Waikiki, to ensure greater flexibility with respect to proposed Waikiki projects by adding provisions relating to application completeness, additional time limit exceptions, and an expedited appeals procedures, in order to prevent abuse or unanticipated results under Act 164’s automatic approval provisions.

**6. City and County Streamlining.**

**Give the City and County of Honolulu greater responsibility and control over streamlining without State interference, except where necessary to prevent environmental degradation or achieve other statewide objectives.**

As noted in chapter 2, the State and City and County are each responsible for a number of separate functions and services in Waikiki. The failure of the State and City and County to agree on their often conflicting views regarding Waikiki’s development has led to inter-jurisdictional “turf wars” over Waikiki.<sup>2</sup> From the State’s perspective, probably the most direct way to

streamline the regulatory process for Waikiki developments is to establish a “Waikiki Community Development District” as an area-specific “super agency” for Waikiki, as discussed in chapter 4, giving that agency extraordinary powers to accomplish its purposes similar to that of the Kakaako Community Development District.<sup>3</sup>

The Bureau does not believe that such a measure, which would require changes to state laws affecting Waikiki’s governance and management, is appropriate for Waikiki at this point in time. While this measure would effectively consolidate sometimes duplicative state and county functions into one agency, there is no apparent need for a “super-agency” to take over the City and County’s functions in the areas of land use, planning, and zoning, especially given the level of streamlining activities currently being engaged in by the City and County.<sup>4</sup>

While the State benefits overall from Waikiki’s visitor industry, the direction taken by Waikiki is, ultimately, one of local concern. Although the State has a substantial interest in Waikiki, including its coastal areas and natural environment as well as the specific facilities, roads, and programs discussed in chapter 2, the State’s interest in environmental protection and pollution controls extends to *all* areas of the State, not only that of Waikiki. But for the fact that Waikiki is perceived as so vital to the State’s economy, there is no other apparent reason for the State to single out Waikiki for additional regulation. The City and County also has a direct stake in ensuring the future of Waikiki and in taking measures to both protect its natural environment and encourage renovation of its physical plant, and is in fact already engaged in a number of significant streamlining efforts, including the following:

- Primary Urban Center Development Plan Revision Program. The DPP is currently preparing a development plan revision for the Primary Urban Center (which includes Waikiki) to streamline this process based on the 1992 charter amendments that were recommended by the City Charter Commission and adopted by the electorate.<sup>5</sup>
- Proposed Land Use Ordinance (LUO) amendments. City and County Bill No. 72 (1998) proposes a number of streamlining objectives as part of the Department of Planning and Permitting’s program of regulatory reform that affect developments in Waikiki. The bill for an ordinance proposes to simplify the process, reduce permit processing time, reduce the number of permit types, reduce the number of permits, eliminate unnecessary regulations, and refine the DPP’s role in land use permit review and processing.<sup>6</sup>
- Proposed Special Management Area amendments. The DPP is currently working on a proposal to consolidate the environmental review process with the City’s special management area review process,<sup>7</sup> and has streamlined the appeal process for shoreline violations.<sup>8</sup>
- Charter streamlining measures. The City has recently completed streamlining government functions and services through the large-scale reorganization of certain City and County departments and functions, including the merger of the DPP with

the Department of Planning, as discussed earlier, through the ratification of amendments to the City's Charter.<sup>9</sup>

The State should avoid imposing additional regulations affecting *only* Waikiki unless those regulations are deemed necessary to achieve other *statewide* objectives, leaving the day-to-day management of Waikiki to the City and County. While some of the issues affecting Waikiki are of both city and statewide concern, the City and County should otherwise be given the authority to make local decisions on local issues affecting Waikiki under the City's home rule powers when the issue is not clearly one that requires State control.<sup>10</sup> Home rule generally provides for the delegation of authority and accountability to the lowest levels of government.<sup>11</sup> Imposing additional regulations on the City and County affecting Waikiki developments without compelling reasons to do so may be both burdensome and unwarranted unless the current system is so deficient that state controls are justified. The City and County should be given the flexibility to address the specialized needs of Waikiki as that county deems appropriate without unwarranted state intervention.<sup>12</sup>

Too much state interference may lead to greater burdens on the regulatory process for Waikiki developments both by adding to delays and red tape and by requiring additional staff and department resources to implement new regulations.<sup>13</sup> This is not to say that state interference is never justified, however. For example, if the State or the City and County finds that, either through streamlining or because of a lack of other regulatory controls, there is a loss of environmental quality in Waikiki at any time, then each has an *affirmative constitutional obligation* to rectify that situation under Article XI, Section 1 of the State Constitution. As noted in chapter 3, that section requires the State and its political subdivisions to "conserve and protect" Hawaii's natural resources for the benefit of present and future generations, and to "promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State."

Unless the Legislature seeks to take permitting directly out of the hands of the City and County by creating a "Waikiki community development district," the City and County should be afforded greater latitude to provide for streamlining by ordinance and internal departmental procedures. For specific areas in which the State and City and County cannot or are unwilling to resolve these differences for whatever reason, such as long-term planning and infrastructure development, legislation may be appropriate that provides for the creation of an inter-jurisdictional commission or other body to exercise responsibility over those *specific* functions. *In all other areas*, the Bureau recommends that the City and County be given greater autonomy to exercise control over Waikiki as a matter of local concern, including working in partnership with private groups to revitalize Waikiki.

## **B. Conclusion**

Waikiki is in need of a serious make-over, and soon. As discussed in chapter 2 of this report, Waikiki is in danger of losing its strong competitive position in the global market, partly due to a lack of investment in basic infrastructure and revitalization projects. As discussed in that chapter, recent planning analyses have noted the need for a major renovation of Waikiki's aging infrastructure. In view of the fact that about ninety percent of Waikiki's buildings predate

1976, many of which have been allowed to deteriorate, there is an immediate need to encourage reinvestment to prevent urban decay, which would be disastrous to the economies of the State and City and County of Honolulu. Some believe that greater streamlining of the regulatory process is necessary to effectuate this upgrading and thereby promote Waikiki's revitalization. Others see streamlining as nothing more than a code word for cutting the public out of the regulatory process and removing environmental safeguards, and that there is simply too much at stake to rush the permitting process.

This study has sought to resolve some of the tension between these two conflicting viewpoints by proposing various streamlining measures that seek to balance the need for the protection of the environment on the one hand, with the need for the renovation and economic revitalization of Waikiki on the other. Pursuant to Senate Concurrent Resolution No. 153, S.D. 1, H.D. 1 (1998), which requested the Bureau to study existing regulations for proposed projects in Waikiki and "suggest mechanisms to streamline and eliminate duplicative process[es]", this study has outlined streamlining measures ranging from a five-year Waikiki consolidated permit application and review pilot program to amending specific laws, namely, the EIS, CZM, planning, and automatic permit approval laws, as discussed in the first part of this chapter.<sup>14</sup> However, several points made in this report deserve special emphasis:

- While streamlining is important for Waikiki, the lack of streamlining is not the primary reason for Waikiki's economic problems. As discussed in chapter 2, there are in fact a number of other factors that contribute to those problems, including land speculation, the Asian economic crisis, a perceived unfriendly business climate, high commercial lease rents, tourism trends toward Neighbor Island resort areas, and other factors discussed in that chapter. One of the problems in the past that policy makers had in finding solutions to Waikiki's problems was in looking at that district in a relatively short-sighted way. The idea that simply streamlining regulations will fix those problems reflects this way of thinking. Chapter 2 of this report has sought to place the streamlining of Waikiki in that broader context in order to show the complexity of the issues and that streamlining is merely the "tip of the iceberg".
- Streamlining is only a part of the revitalization picture for Waikiki. Streamlining, while necessary to lessen the regulatory burden on development in Waikiki, is not a panacea for Waikiki's economic ills. It will not *in itself* recreate or revitalize Waikiki. Rather, streamlining is simply *one technique* to assist in Waikiki's revitalization. There appear to be other, perhaps more efficient ways to achieve this objective, such as through the use of Business Improvement Districts (BIDs), as discussed in chapter 5 of this report. In one of the most notable use of BIDs, that concept has been used recently to revitalize New York City's Times Square district: "Infamous several years ago for its porno shops, peep shows and pickpockets, Times Square today is a clean, thriving tourist and entertainment mecca, with notable businesses... The annual budget there is \$7 million..."<sup>15</sup> Supporters of BIDs for Waikiki, which has been discussed in Waikiki for about a decade, believe that such a district could have more success now because a single group, the

Waikiki Improvement Association, has embraced that concept and the City Council is more supportive of BIDs than in the past.<sup>16</sup>

- Delays in processing permit applications are not always the result of a lack of streamlining. There are several existing State and City and County laws that apply to proposed Waikiki developments that seek to facilitate streamlining. For example, as discussed in chapter 4, the consolidated application process (CAP) and the central coordinating agency (CCA) laws may already be used by applicants who seek to consolidate the process for multiple permits. As discussed in chapter 4, many applicants choose not to use these laws for a number of different reasons. The primary reason appears to be that applicants simply do not wish to invest large sums of capital in projects up front because of the greater financial risks involved. As recommended in that chapter, however, a streamlined process that promises shorter processing times and addresses these needs, such as providing for pre-application conferences and a conceptual review of proposed Waikiki projects, as well as providing for a completeness review of applications, may help to identify those areas in which changes are necessary before an applicant invests additional funds on more specified plans. If applicants feel more comfortable about the long-term prospects of their particular projects in the initial conceptual or planning stages, they may also be more willing to risk more capital at earlier stages of the project.
- Focusing streamlining initiatives on short-term outcomes without considering long-term objectives may produce unintended negative consequences. For example, while Act 164, Session Laws of Hawaii 1998, the automatic permit approval law, is intended to increase government predictability, accountability, and efficiency, it may nevertheless lead to unanticipated or unwanted results by potentially shortening the review process for the most complex or controversial projects. Approving controversial projects without adequate review may leave the community “stuck” with an unwanted development for years to come. As discussed in that chapter, the Bureau has recommended adding several extensions to the maximum time limits for Waikiki projects to reduce unintended results under that law. While adding extensions may have the overall *short-term* effect of decreasing streamlining for Waikiki, the *long-term* result will be increased streamlining for that district. For example, adding an extension to that law for contested case hearings may delay permit approval until after completion of the administrative and judicial processes. However, failure to allow such an extension may result in the automatic approval of a permit in violation of an applicant’s due process rights, leading to litigation that increases the overall length and expense of the regulatory process.
- Agencies that issue permits need to conduct streamlining analyses of their internal procedures. The Bureau’s analysis of streamlining regulations affecting Waikiki developments is on the *macro* level, examining the range of federal, state, and city and county laws affecting projects in that district for ways to reduce duplication and coordinate and simplify procedures and other requirements. There is a concurrent need, however, to examine streamlining issues on the *micro* level, i.e., for each

individual department or agency that issues permits to closely analyze individual projects in Waikiki to determine where additional streamlining measures can be taken through changes in internal operating procedures. The production of flow charts, checklists, time lines, decision trees, and similar aids can be useful in determining the location of bottlenecks in the regulatory process or duplicative paperwork.<sup>17</sup>

- Involvement of the private sector and the community is crucial to streamlining. The private sector and Waikiki community have long been involved in planning for Waikiki's future, and are critical components to any streamlining efforts and decision making affecting Waikiki, particularly in the areas of growth management and land use development, including "negotiated development."<sup>18</sup> Agencies may also need to demonstrate a change of attitude, that they are "open for business", which may include such measures as setting up satellite offices of state and city agencies in Waikiki and reaching out to developers, environmentalists, and other interested parties in the community to discuss streamlining and related measures to revitalize Waikiki without sacrificing efforts to ensure environmental quality.<sup>19</sup> However, the automatic permit approval law will require all of the parties, including both government and private sector participants, to be exceptionally well prepared in each step of the process, as noted in chapter 4, as there will be fewer chances for public comment.

Persons who must deal with the State and City and County regulatory system to renovate a building or propose some other project in Waikiki are frequently left frustrated by the complexity of the system and the length of time needed before an agency approves or denies a permit. The time and expense involved may serve as a deterrent in moving ahead with proposed developments. In many cases, the statutory review periods in the system allow the opportunity for public participation and meaningful review by agencies. These periods are vital to preserve environmental quality in Waikiki, as ensured by the State Constitution. After all, "the major reason for the growth of bureaucratic controls in government was to prevent mistakes, fraud, and abuse."<sup>20</sup> Streamlining measures must address these dangers.

At the same time, however, State and City and County agencies can do more to prevent delays by pursuing concurrent processing and other streamlining measures as discussed in both this report and in the Bureau's 1992 report on problems affecting the implementation of capital improvement projects, to reduce both the number and scope of applicable state and county laws affecting Waikiki developments.<sup>21</sup> Failure to take these actions may lead to increased cynicism and frustration with both State and City and County governments. As Philip Howard noted in The Death of Common Sense:

Our regulatory system has become an instruction manual. It tells us and bureaucrats exactly what to do and how to do it. Detailed rule after detailed rule addresses every eventuality, or at least every situation lawmakers and bureaucrats can think of. Is it a coincidence that almost every encounter with government is an exercise in frustration?<sup>22</sup>



## Endnotes

<sup>1</sup> While each of the Bureau’s statutory recommendations are applicable only to Waikiki, they can be extended to other areas of the State or to the entire State in the discretion of state lawmakers. Limiting legislation to a specific geographical area is apparently permissible under Article VIII, Section 2 of the Hawaii Constitution (“Local Self-Government; Charter”): “A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section.” See also “Note: Statute Applicable to a Single County Does Not Violate Constitutional Prohibition Against Special Legislation: *Williams v. Rolfe*,” 76 Harvard Law Review 652 (1963), in Gerald E. Frug, Local Government Law (St. Paul, MN: West Publishing Co., 1988), pp. 192-194; Sutherland Stat. Const. §40.08 (“Acts relating to local political subdivisions by name”) (5<sup>th</sup> ed.). The Legislature has already enacted several statutory provisions that reference Waikiki, ranging from the “Waikiki trigger” in the state Environmental Impact Statement law in section 343-5(a)(5), Hawaii Revised Statutes, as discussed in chapters 3 and 5 of this report, to section 712-1207, Hawaii Revised Statutes, of the Hawaii Penal Code, prohibiting the street solicitation of prostitution within Waikiki, as enacted by Act 149, Session Laws of Hawaii 1998.

<sup>2</sup> For example, the report commissioned by the nonprofit organization “Vision for Hawaii 2020” noted that “[o]ften contentious relations between the city and state and between the Mayor and the City Council have contributed to a general perception that the public decision-making process – administrative and legislative – is more political and personal than deliberative and substantive. There is little confidence that solutions to Waikiki’s complex problems will emerge from this system.” Kathryn Wyld and Sally Goodgold, A Public-Private Partnership for Waikiki (Honolulu, HI: Vision for Hawaii 2020, December 1992), p. II-7.

<sup>3</sup> For example, under current law, the Legislature may designate Waikiki as a community development district by statute “if it determines that there is a need for replanning, renewal, redevelopment of that area.” Hawaii Revised Statutes, §206E-5(a). Upon the final adoption of a community development plan, the Authority’s administrative rules relating to planning, zoning, land use, and other areas supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction. Hawaii Revised Statutes, §206E-7.

<sup>4</sup> The 1992 report by “Vision for Waikiki 2020” recommended the creation of a special development management entity for Waikiki, such as a local or private development corporation or authority, to assume responsibility for the continued “planning, guidance, improvement, development and maintenance” of that district for the following reasons:

- Waikiki is a special district because of its economic importance to the state of Hawaii. It is not just another neighborhood in the city and county of Honolulu.
- Waikiki is the world’s leading international resort center and, as such, is the dominant economic generator of the state.
- Waikiki’s dominant position is threatened with future decline and increased competition world-wide. Vision for Waikiki 2020, Planning Recommendations for Waikiki (Honolulu, HI: January 1992), p. IV-3.

However, the City and County’s Waikiki Master Plan rejects the establishment of a development authority, under the jurisdiction of either the State or the City, as unworkable:

The creation of a new, semi-autonomous development authority under the aegis of either the City or State government is not recommended. While the concept may seem attractive as a way to consolidate planning and services, it is very unlikely that any of the three levels of government would be willing to relinquish planning or regulatory control over their respective jurisdictions. As a practical matter, the development decisions for Waikiki have a direct and significant effect on the City which surrounds it. The establishment of a separate development authority would tend to weaken the coherence of comprehensive planning for the City and County of Honolulu, to the detriment of both Waikiki and the island as a whole.

City and County of Honolulu, Department of General Planning, Waikiki Master Plan (Honolulu, HI: May 15, 1992), p. 100.

- <sup>5</sup> The Development Plan Revision Program for the Primary Urban Center, which includes Waikiki, will replace existing detailed plans with visionary, conceptual plans, and will simplify the development approval process by eliminating the need to process amendments to the existing parcel specific Development Plan map. Development projects in areas identified for urban development will instead be able to go directly to the zone change application, saving 12 to 18 months in processing time. The Revision Program is expected to be ready for submission to the City Planning Commission in the late spring of 1999. Letter from Patrick T. Onishi, Chief Planning Officer, to Wendell K. Kimura, Acting Director of the Legislative Reference Bureau, August 13, 1998, p. 2.
- <sup>6</sup> Memorandum and attached report relating to a bill to amend chapter 21, ROH, Land Use Ordinance, from Jan Naoe Sullivan, Director, Department of Land Utilization, to Charlie Rodgers, Chair, and Members of the Planning Commission, dated June 26, 1998; *see also* Kusao & Kurahashi, Inc., and McCorriston Miho Miller Mukai, Report on the Proposed Streamlining Amendments to the Land Use Ordinance (Honolulu, HI: City and County of Honolulu Department of Land Utilization, June 1998).
- <sup>7</sup> The Department is working on a proposal to amend chapter 25, ROH, to offer the option to applicants to “fast track” applications by allowing them to offer a greater amount of information up front with respect to WSD and SMA permit applications. This option would allow applicants to get through the process more quickly by using only the EA or EIS as the application itself, thereby avoiding duplicative paperwork under the existing process, which entails filing an EA or EIS and subsequently filing a separate application for the WSD or SMA permit. Interview with Arthur Challacombe, City and County of Honolulu Department of Planning and Permitting, July 9, 1998.
- <sup>8</sup> Office of Planning, Hawaii Department of Business, Economic Development, and Tourism, Annual Report to the Nineteenth Legislature, Regular Session of 1998, Hawaii Coastal Zone Management (Honolulu, HI: December 1997), p. 10.
- <sup>9</sup> Other City Charter streamlining measures that were ratified in the November 3, 1998 election included the merger of the Department of the Budget and the Department of Budget and Fiscal Services into one department, and the merger of the Office of Information and Complaint, the Municipal Reference and Records Center, and Drivers Licensing and Motor Vehicle Registration functions into a new Department of Customer Services.
- <sup>10</sup> As noted in chapter 3, while the Hawaii Constitution gives to the counties the power to adopt charters for their own self-governance, the home rule power is not absolute. Instead, the Constitution provides that only those charter provisions relating to a political subdivision’s “executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.” *See* Hawaii Constitution, Article VIII, Section 2 (“Local Self-Government; Charter”).
- <sup>11</sup> Although delegating authority and accountability to the lowest levels of government, with respect to Waikiki, means to the City and County of Honolulu, another perspective that is often omitted from the Waikiki jurisdictional question is that of the Waikiki community itself. From Waikiki residents’ perspectives, perhaps the most direct way to streamline regulations affecting that district and establish a greater measure of control over their community’s future would be the establishment of Waikiki as a city that is independent of the City and County of Honolulu, as proposed in the late 1950s. *See* Donald D. Johnson, The City and County of Honolulu: A Governmental Chronicle (Honolulu, HI: University of Hawaii Press and Honolulu City Council, 1991), p. 363 (emphasis added; footnote omitted).

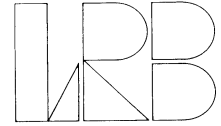
Establishing Waikiki as a separate city would give that district independent municipal authority to streamline its functions affecting developments in the City of Waikiki, subject to State and City and County laws that supersede that City’s functions. Such a measure would require both constitutional and statutory enabling authority, as well as a subsequent charter amendment, to create a third (municipal) level of government, since currently there is no legal process under the State Constitution or statutes to give Waikiki or any other area separate municipal authority. However, it may be argued that the establishment of a new level of government for Waikiki on the municipal level may lead to even greater red tape by the introduction of an additional level of bureaucracy on top of the existing federal, state, and county bureaucracies.

- <sup>12</sup> One view posits that state intervention in land use disputes is actually an attempt to secure a disturbance-free environment that is essential for capital growth and expansion. *See, e.g.*, Neghin Modavi, Land, Environment and Power: State, Capital and Community Forces in Environmental Disputes in Hawaii (Ph.D. dissertation in sociology) (Honolulu, HI: University of Hawaii, May 1992), p. 23: “State intervention in land use conflicts is critical because such disputes represent a threat to Hawaii’s dominant land development and tourism industries. In essence, land use and environmental conflicts are a response to the normal and inherently expansionist process of capital production and accumulation.”
- <sup>13</sup> *See, e.g.*, A Report to the Governor on Act 227 SLH 1992 (Honolulu, HI: State Streamlining Task Force, December 1993), at 11: “New laws which impose more requirements on government may not only add to the processing time, but may also increase workload and necessitate increasing staff to meet demands.”
- <sup>14</sup> The other major law discussed in chapter 3 affecting Waikiki developments – the City and County’s Land Use Ordinance (LUO), particularly the provisions of that law relating to the Waikiki Special District – is to some extent beyond the control of the State, pursuant to the State’s delegation of responsibility to the counties to exercise local land use controls in the urban district, of which Waikiki is a part. *See* Hawaii Revised Statutes, §205-2(b). However, the Bureau finds that there is no need for changes in that area, given the fact that the City and County has recently completed a major streamlining initiative of its LUO.
- <sup>15</sup> Michele Kayal, “Extra Waikiki Services Sought,” The Honolulu Advertiser, December 2, 1998, p. B7; *see also* Roberta Brandes Gratz, Cities Back From the Edge: New Life for Downtown (New York, NY: John Wiley & Sons, Inc., 1998), pp. 68-78.
- <sup>16</sup> Id.; *see also* [Editorial], “Improvement District Is a Good Start for Waikiki,” The Honolulu Advertiser, December 3, 1998, p. A10.
- <sup>17</sup> *See* note 20 in chapter 4 of this report.
- <sup>18</sup> *See, e.g.*, David L. Callies, Regulating Paradise: Land Use Controls in Hawaii (Honolulu: University of Hawaii Press, 1984), pp. 170-171: “For some projects, especially those jointly commenced by both public and private sector, negotiated development should perhaps replace existing planning and land use controls altogether.”
- <sup>19</sup> For example, Chicago’s new Department of Buildings Commissioner has sought to change that Department’s adversarial image by reaching out “to people in the construction industry to convince them that the city was truly committed to reform” and by announcing “plans for a one-stop permit shop within the main Buildings Department office, neighborhood satellite branches where homeowners can apply for home-improvement permits, and self-certification of some projects built from standardized blueprints.” Charles Mahtesian, “Mary Richardson-Lowry: Expediter,” Governing (Nov. 1998), p. 84.
- <sup>20</sup> Russell M. Linden, Seamless Government: A Practical Guide to Re-Engineering in the Public Sector (San Francisco, CA: Jossey-Bass Publishers, 1994), p. 169.
- <sup>21</sup> *See* Keith Fukumoto, Bends in the Road: Problems Affecting the Implementation of Capital Improvement Projects (Honolulu, HI: Legislative Reference Bureau, Report No. 16, 1992). In particular, that report recommended that the Legislature “[r]educe, through consolidation, elimination, or modification, the number or scope of individual state and county land use and development laws, plans, and ordinances...” Id. at 111.
- <sup>22</sup> Philip K. Howard, The Death of Common Sense: How Law is Suffocating America (New York, NY: Random House, 1994), pp. 10-11.

## Appendix C

Wendell K. Kimura  
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LEGISLATIVE REFERENCE BUREAU

State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

July 14, 1998

«FirstName»«LastName»  
«JobTitle»  
«Company»  
«Address1»  
«Address2»  
«City»«State»«PostalCode»

RE: Survey on Senate Concurrent Resolution No. 153, H.D. 1, S.D. 1 (1998), requesting a study on existing regulations for proposed use projects in Waikiki.

Dear «Salutation»:

This survey is being distributed as part of a study by the Legislative Reference Bureau regarding S.C.R. No. 153, which was adopted by the Legislature during the 1998 Regular Session. As requested by that Concurrent Resolution, the Bureau is studying ways to streamline relevant regulations in Waikiki, including those related to the Environmental Impact Statement law, the Coastal Zone Management law (regarding Special Management Area permits), and other areas, including Waikiki Special District permits.

This survey seeks to ascertain the viewpoint on these issues from knowledgeable persons, organizations, and agencies representing various diverse interests selected by the Bureau. Please note, however, that **this is not a scientific survey**, and information obtained from this survey will **not** be quantified in any way. Rather, this survey is simply intended to elicit new ideas and suggestions on the topics requested for study by the Concurrent Resolution.

We have enclosed a copy of the Concurrent Resolution for your review. In view of the fact that the Concurrent Resolution requests information regarding how to streamline, rather than whether it is appropriate to streamline, please address your comments accordingly. If you feel that streamlining in any form is inappropriate, please indicate your reasons why. In addition, feel free to discuss your proposals in terms of any specific projects that you have worked on or with which you may be familiar as examples in which your proposal would have helped to streamline the regulatory or permitting process. Please attach additional pages as necessary.

We would appreciate receiving your comments in response to the following questions:

(1) Should the “Waikiki trigger” in section 343-5(a)(5), *Hawaii Revised Statutes* (Environmental Impact Statements), be repealed, as proposed by Senate Bill No. 2665 (1998)? YES\_\_\_\_\_ NO\_\_\_\_\_ Why or why not? \_\_\_\_\_

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(2) Should any changes be made to chapter 205A, *Hawaii Revised Statutes* (Coastal Zone Management), or to any ordinances or administrative rules adopted pursuant to the authority conferred by that chapter, to assist in streamlining regulations in Waikiki? YES\_\_\_\_\_ NO\_\_\_\_\_ Why or why not? If you answered YES, what kinds of changes should be made? \_\_\_\_\_

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(3) Should any changes be made to section 21-7.80 *et seq.*, *Revised Ordinances of Honolulu* (Land Use Ordinances), regarding the Waikiki Special District, to assist in streamlining regulations in Waikiki? YES\_\_\_\_\_ NO\_\_\_\_\_ Why or why not? If you answered YES, what kinds of changes should be made? \_\_\_\_\_

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(4) In addition to your responses to the above questions, what other specific measures can be taken by the State, the City and County of Honolulu, or both, to streamline and eliminate duplicative regulations in Waikiki? Please explain how your suggestions will promote streamlining, whether substantive or procedural in nature. \_\_\_\_\_

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«FirstName»«LastName»

3

July 14, 1998

Thank you in advance for any assistance you may be able to provide in this matter. We would appreciate receiving your written response by August 7, 1998, either by mail to the attention of Mr. Mark Rosen at the above address or by E-mail to: [rosen@capitol.hawaii.gov](mailto:rosen@capitol.hawaii.gov). Please call Mr. Rosen at 587-0666 or contact him by E-mail if you have any questions.

Very truly yours,

Wendell K. Kimura  
Acting Director

Enc.

## Appendix C (continued)

### Waikiki Streamlining Survey – Summary of Responses

1. *Should the “Waikiki trigger” in section 343-5(a)(5), Hawaii Revised Statutes (Environmental Impact Statements), be repealed, as proposed in S.B. No. 2665 (1998)?*

YES:

- There are seven special districts in Honolulu, including Hawaii Capital, Diamond Head, Punchbowl, Chinatown, Thomas Square, Haleiwa and Waikiki. There is no reason to single out Waikiki, especially when most, if not all, of the district is within the Special Management Area which also is a trigger. Further, it is inappropriate that this provision is in a state law. It is a matter of local concern. If Waikiki is to be subject to special rules, it should be done by ordinance, not in state law.
- The “Waikiki trigger” should be repealed to eliminate duplicative environmental review which currently exists within the City and State. Duplicative regulatory requirements mean additional time and expense for both applicants and government agencies responsible for processing permits. Repealing the Waikiki trigger would stimulate economic activity and encourage revitalization by streamlining the permit review process without sacrificing reasonable public input regarding project suitability. While Chapter 343 review requirements were appropriate when the state law was first enacted in 1974, in which uncontrolled growth in Waikiki threatened to erode that area, over the past 24 years, there has been a proliferation of federal, state, and county regulatory programs, including the WSD regulations, the Oahu Development Plans, SMA use permitting requirements, flood hazard districts, and other City LUO and Building Code amendments. At the same time, the State enacted stricter requirements on water, wastewater, and air quality permitting. These regulations have created a system of review that is separate but duplicative of the state system under chapter 343. Moreover, the WSD regulations provide a similar or even more rigorous or stringent level of review than chapter 343 requirements. Given the City’s ample regulatory authority in Waikiki to properly evaluate the potential impacts of Waikiki projects, there is no longer any justification for requiring Waikiki to be the only area in the State that automatically triggers the environmental disclosure requirements.
- Yes, for all of the reasons set out in the “whereas” clause [to S.C.R. No. 153], especially the WSD designation.
- The “Waikiki trigger” was established in 1974 largely in response to the rapid development that took place during that time. Since then, other mechanisms – such as the Waikiki Special District requirements and other environmental regulations, have been put in place; thus there no longer appears to be any justification for Waikiki to be the only location on Oahu that automatically triggers an EA.
- It takes developers/others tremendous effort and costs to prepare environmental studies, public hearings, etc. and duplicative processes are too costly.

- The “Waikiki trigger” in Section 343-5(a)(5), HRS should be repealed. Waikiki is the only location-specific trigger in Chapter 343. While projects in Waikiki should continue to be subject to the other triggers in Chapter 343, there is no justification for the imposition of a state environmental review based solely on location. The requirement for an EA to be done for any project in Waikiki may have been necessary in 1974 when Waikiki faced rapid growth and development and there were no other mechanisms in place to ensure a comprehensive review of proposed projects. However, in the 24 years since 1974, stringent regulations and permit procedures have evolved for Waikiki, including the Waikiki Special District requirements, Special Management Area permit requirements, and State water and air quality permit requirements. Today, the cumulative result of all these requirements is excessive regulation and duplication that is not needed to ensure a comprehensive review of environmental concerns in Waikiki. Given the current level of land use review that exists for projects in Waikiki, there is no longer any justification for requiring Waikiki to be the only area in the State that automatically triggers an EA.
- Development in Waikiki is already highly regulated by the City. This provision is a wasteful, redundant, and inefficient use of resources.
- It is an anomaly. Under the Waikiki Special District, any major project would require a permit. The City can require the same info as would be provided in an EIS – with the SDP application.

NO:

- Waikiki is the most important visitor destination in the State. The EIS laws serve to disclose the nature and extent of impacts on this important area. Private developments which are not in the SMA, or don’t use public lands and resources would in some circumstances be exempt from review.
- As the “economic engine” that drives Hawaii’s economy, Waikiki is a resource worthy of protection. Eliminating the Waikiki trigger places this unique resource at the mercy of the City and County, where recent experience has shown that economic development takes precedent over environmental, cultural, and resource protection. An EA/EIS is a disclosure document; chapter 343 requires that systematic consideration be given to the environmental, social, economic, and cultural consequences of a proposed project. In contrast, the SMA use permit is a set of narrow guidelines that does not look at cumulative impacts, overall environmental concerns, and traffic noise, and is not intended to be a comprehensive disclosure document. The SMA permit process gives the Director of the DPP too much discretion to decide which actions are “significant” before the EIS trigger is activated, and defines “development” too narrowly. Similarly, the LUO provides design and zoning changes and does not address environmental and cumulative impacts as required in chapter 343. Chapter 343 offers greater public participation and administrative redress opportunities than are available under the LUO and SMA permit processes.



- I don't see a dramatic extra burden if there are two triggers (under chapter 343 and with an SMA permit application), since only one EA is actually required and thus will fulfill both the triggering requirements.
- Removing the requirement for an Environmental Assessment would put Waikiki in dire jeopardy, and at the mercy of the many "geese" who are so greedy they would kill the Golden Egg of Waikiki without thinking twice! Since all agree that Waikiki is well known as "the engine that drives tourism in Hawaii", it would behoove us to take extreme care with this engine. Recently, the City and County of Honolulu pushed through a series of amendments to the Waikiki Special (Design) District, which rather than strengthening restrictions on Waikiki development have weakened the WSD considerably. This was accomplished without regard to considerable opposition voiced by not only residents, but by many highly regarded City planners and other experts.
- Judging from the callous disregard for environmental concerns apparent in the City's 1996 revision of the WSD, Waikiki needs more environmental protection – not less. The WSD regulations never equaled Chapter 343 in providing information on possible impacts.
- Chapter 343 assesses environmental, social and economic impacts prior to decision-making. Development in the middle of our economic engine should be carefully considered.
- This area has been becoming more and more crowded and over-developed. Present tourist statistics clearly show a trend to the other islands and from Waikiki. It is essential that all redevelopment or new development be carefully analyzed through EISs and other measures to reverse these trends if Waikiki is to survive.
- SCR No. 153 (enacted in 1998) states, "because Chapter 343 provides review of the environmental impact of development projects in Waikiki that is more comprehensive than City & County of Honolulu regulations, there is a justified concern that it may be premature to eliminate the Waikiki Special District trigger from Chapter 343 because, currently, there are no assurances that coverage under the county regulatory framework would provide the Waikiki area with the level of environmental review that exists under state law." [The survey respondent] concurs with this legislative statement.

2. *Should any changes be made to chapter 205A, Hawaii Revised Statutes (Coastal Zone Management), or to any ordinances or administrative rules adopted pursuant to the authority conferred by that chapter, to assist in streamlining regulations in Waikiki?*

YES:

- Given the nature of Waikiki (urban/high density resort), *except* Waikiki from the CZM altogether *or* radically increase the dollar amount for exempt projects to, say, \$50 million so that replacement hotels, condos, etc., can be contracted without needless CZM review, as if in a pristine and undeveloped beach area.

- The environmental assessment process should be collapsed with the SMA application process procedures.
- Possibly information required under 205A could be “piggy-backed” on the evaluations made under 343 in making environmental assessments in Waikiki.
- The city could consider changing the criteria for minor SMA permits from the \$125,000 cost threshold to a measure of magnitude or impact.
- Need to coordinate between State & County to have only one general environmental permit process to address all concerns for Waikiki.
- Redundant and subject to arbitrary and political enforcement/implementation.

NO:

- The same protections and standards that apply to the rest of the state with regard to coastal resources should apply to Waikiki.
- To answer yes to this question assumes that there is something wrong with the present process that needs to be fixed. Waikiki is a valuable resource and should be afforded more, not less, protection and public participation.
- Since the DPP requires an EA in conjunction with SMA permit applications, the only relevant change would be to take Waikiki out of the SMA. This is a very drastic change under any circumstances, especially if the goal is to merely streamline regulations in Waikiki.
- The best change which could be made to HRS Chapter 205A or ordinances adopted pursuant to that Chapter would be to put the requirements in the EA required by Chapter 343, so that projects would trigger both for this as well as for the EIS.
- No changes are necessary. Reviews under 205A & 343 can be done simultaneously. Actually, 343 should be amended to include any project requiring an SMA permit.
- Every effort should be made to preserve what little is left in Waikiki of coastal areas. Before an existing shore development is allowed to expand or be re-built, CZM procedures should be strictly followed. “Streamlining” is not the real issue – environmental protection is.
- There does not appear to be any need to change Chapter 205A in order to assist in streamlining regulations in Waikiki.
- There should not be changes made to Chapter 205A, HRS to assist in streamlining regulations in Waikiki. Since its enactment, Chapter 205A has been amended frequently. At this point it is best to leave it as is.
- Under Chapter 205A, counties administer SMA regulations – county can remove Waikiki from the SMA.

3. *Should any changes be made to section 21-7.80 et seq., Revised Ordinances of Honolulu (Land Use Ordinance), regarding the Waikiki Special District, to assist in streamlining regulations in Waikiki?*

YES:

- We support the proposed streamlining amendments to the Land Use Ordinance currently under consideration, including the changes to the Special District regulations that would pertain to Waikiki.
- Waikiki SD regulations were so harsh that they discouraged any development and redevelopment or improvement projects.
- There should be changes made to the Land Use Ordinance (LUO) to assist in streamlining regulations in Waikiki. Currently, the City and County of Honolulu Department of Planning and Permitting has proposed ambitious streamlining amendments to the LUO. We strongly support these amendments. Specific amendments are proposed to the Special District regulations, including the Waikiki Special District. For example all of the “exempt” (E) categories would be removed from Tables 7.1 through 7.7, and the need for a special district permit for relatively minor work would be eliminated. In addition, in other proposed streamlining amendments of the LUO, the various permits required for development are reorganized into two general types: Major and Minor. There are specific time periods for the processing of each of these types of permits, with automatic approval if the time periods are not met. With these types of progressive proposed amendments, the City and County of Honolulu is taking an aggressive position to streamline and improve land use regulation, not only in Waikiki, but throughout Oahu.
- Design guidelines should be established and implemented by architects/engineers in the design and permitting phase.

NO:

- Regulations covering Waikiki do not need to be streamlined; “streamlining” is for some a euphemism for diluting substantive provisions. The major amendments to the WSD in 1996 make retention of the oversight of chapter 343 even more critical. Processes *were* streamlined in the 1996 WSD review; revisions were touted as monumental and important to Waikiki’s revitalization. To our knowledge, projects have not been proposed to take advantage of some of the streamlined processes, so a history has not been built to see if further changes are needed or necessary.

- The concept of a “special district” is the best way to deal with the particular circumstances of a unique geographical area. However, a big issue is political control, since the WSD is a wholly county mechanism, while the SMA process allows for some State oversight for Waikiki, which is arguably a valuable state resource.
- The City has done enough damage to weaken the WSD with its 1996 amendments – there is little or no duplication with Chapter 343, and if Waikiki is to grow and prosper, thus helping tourism, the growth must of necessity be slow and orderly. The purpose of both Chapter 343 and the WSD was to slow down development and add restrictive requirements in order to prevent any more the of rapid and chaotic growth of 60's and early 70's.
- The City is proposing a number of amendments to streamline permitting within the Waikiki Special District and elsewhere. No state action is required.
- The DPP has recently submitted a report and set of recommendations for streamlining the LUO to the City Planning Commission on June 26, 1998. The package of amendments is oriented toward, and seeks specifically to benefit, the average homeowner, the small business owner, and contractors and developers specializing in mid-size projects. DPP is also preparing a second streamlining proposal to significantly restructure regulations for the development of larger projects. Both of these proposals build on discussions and consensus for streamlining initiatives that resulted in approval of various LUO amendments by the City Council in Oct. 1996.
- The WSD provisions are the locally determining zoning controls and design guidelines which provide the appropriate regulatory context affirming Waikiki’s heritage and importance to our community. They were comprehensively amended in 1996 to achieve an intended balance in Waikiki between “streamlining”, economic feasibility, and the promotion, enhancement, and preservation of a Hawaiian sense of place.
- A year or two ago the zoning regulations for the WSD were changed to permit significantly higher densities, less open space, and other concessions. “Streamlining” was not the real reason for this. If anything, we should repeal at least some of these recent WSD amendments. We do not need more streamlining, but better land use planning to ensure the future of Waikiki.
- This is county jurisdiction. The City Council recently adopted an ordinance overhauling the Waikiki Special District.

4. *Other specific streamlining measures:*

- The Development Plan Revision Program for the Primary Urban Center (“PUC”, which includes Waikiki) will streamline the development approval process. Under City Charter changes approved by the voters in 1992, all eight of the Development Plans for Oahu will have been revised within the next two years. The new plans will replace the existing relatively detailed plans with visionary, conceptual plans. In addition, the development approval process will be simplified by eliminating the need to process amendments to the existing parcel specific Development Plan map. Instead,

development projects within areas identified for urban development will be able to go straight to the zone change application, saving 12 to 18 months in processing time. The revised Development Plan for the PUC is expected to be ready for submission to the City Planning Commission in the late spring of 1999.

- Better planning. Develop an appropriate, on-going planning process to guide Waikiki development, including the possible creation of a redevelopment authority to plan and finance very large infrastructure improvements. Use innovative capital financing (special assessments, tax increment financing, revenue bonds) to enhance public space. Emphasize the quality of development, not the quantity;
- The City should provide an administrative redress process similar to that offered through chapter 343 to save time and money in court appeals. Placing all SMA use permit applications in the OEQC *Environmental Notice* will eliminate the County requirement that notices be placed in state and county newspapers. Has a cost analysis been conducted that verifies the Resolution statement that “streamlining is necessary to eliminate duplicative regulations that add to the cost of doing business in Waikiki?” Currently, we know of three retail developments totally over 200,000 feet of retail space being proposed for Waikiki. So it doesn’t appear that the current requirements have curtailed developments.
- Waikiki’s land area *mauka* of the shoreline is primarily a heavily urbanized area devoid of significant *natural* resources. To help streamline regulations affecting the management of natural resources *makai* of the shoreline, there should be a continuing dialog between the City and State, which has already led to the establishment of the State’s coastal erosion management plan.
- I don't believe there is much duplication to begin with. Perhaps streamlining could begin with efforts in the various agencies and departments to streamline their own work efforts – in other words become more efficient in dealing with applications and with the public. Many times the problem is simply bureaucratic – employees who "lean on their brooms", so to speak.
- As a strong believer in keeping decision making at the level of government closest to the people unless there are compelling reasons to move it to a higher level, I support any changes that will eliminate state interference with local government. I would like the Legislative Reference Bureau to recommend that the State remove itself from all areas of local decision making unless there exists a vital State interest (e.g., the action affects another county). That would do wonders for removing "duplicatory regulatory requirements."
- Rather than “overlay” zones, consider making the WSD the only collection of regulations applicable to Waikiki and leave permitting to the Planning Commission, with “appeals” to the Council. In the WSD, permit certain uses in certain areas “of right” so long as within bulk regulations (height, etc.) with review by Planning Commission or Building Department only for conformance to bulk or use requirements, so as to eliminate lengthy and duplicative permit hearings.

- The county and state permitting processes should be coordinated through electronic tracking systems.
- Please be careful in your analysis of “streamlining” proposals. Some use “streamlining” as a euphemism to cover their real intent of getting rid of regulations. Waikiki is a public resource and appropriate regulations must be kept in place to protect this resource.
- There is no duplication, just a bunch of hot air re. duplication. Waikiki Special Design District was substantially amended in the past few years.
- The whole planning and zoning process was simplified in 1992 by Charter amendment to eliminate duplication between planning and zoning. A “master” or “development” plan for Waikiki has not yet been adopted. No capacity study has been completed though some incompetent and incomplete reports have been issued, traffic problems, especially those created by the Convention Center have not been adequately addressed. What we need is more and better planning, not “streamlining”. (If any bona fide duplicatory regulations exist, they can be addressed on a case-by-case basis.)
- Elimination of duplicative processes between State & County. Possible elimination of state land use, except for state land. County or local rule more efficient. State & County planners meet once per year to update or clarify problems with land use.
- The EIS requirement is the major impediment.
- Procedural Streamlining: (1) To the extent practicable and allowable, environmental assessments and permit applications should be processed concurrently. Concurrent processing will save applicants time and money. (2) Agencies and applicants should be encouraged to use the existing consolidated permit application process administered by the State Department of Business, Economic Development and Tourism. (See chapter 210, part IV, HRS.) Substantive Streamlining: The City Department of Planning and Permitting (formerly DLU) should amend its EIS exemption list which was last updated in 1981. It is possible that the list can be expanded to include some projects that are currently not exempted by the city.

## Appendix D

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## Appendix N

REPORT TITLE:

Permit Consolidation; Waikiki

DESCRIPTION:

Establishes a 5-year consolidated permit application and review pilot program for proposed Waikiki developments. Designates the department of business, economic development, and tourism as the lead agency for the process. Requires reports and a review of incentives to encourage applicants to use the process.

**.B. NO.**

1 RELATING TO A CONSOLIDATED PERMIT APPLICATION AND REVIEW PROCESS  
2 FOR WAIKIKI PROJECTS.

3  
4  
5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

7  
8 SECTION 1. The Hawaii Revised Statutes is amended by adding  
9  
10 a new chapter to be appropriately designated and to read as  
11  
12 follows:

13  
14  
15 "CHAPTER

16  
17 WAIKIKI CONSOLIDATED PERMIT APPLICATION AND REVIEW PROCESS

18  
19 § -1 Purpose. (a) The purpose of this Act is to  
20 establish a consolidated permit application and review process  
21 for proposed Waikiki developments. The process established under  
22 this chapter utilizes elements of the existing consolidated  
23 application process established in section 201-62, but  
24 incorporates useful streamlining elements contained in the  
25 geothermal and cable system development process in chapter 196D,  
26 as well as other streamlining techniques, to increase the  
27 potential for consolidation, simplification, and coordination of  
28 the regulatory and permitting processes relating to proposed  
29 projects in Waikiki.

30  
31 (b) The consolidated permit application and review process  
32 established by this Act for Waikiki developments differs from the  
33 consolidated application process in section 201-62 in several  
34 respects. For example, the process established in this Act:

- 35  
36 (1) Requires the appointment of a project facilitator to  
37 "walk" the applicant through the process;  
38  
39 (2) Specifically requires pre-application conferences and a  
40 conceptual review of the proposed project;  
41  
42 (3) Provides for a completeness review of applications by  
43 the department;  
44  
45 (4) Requires city and county participation in the process;  
46  
47

**.B. NO.**

- 1 (5) Allows state and city and county agencies to opt out of  
2  
3 the process, but deems nonparticipating agencies to  
4  
5 have approved project permits;  
6  
7  
8  
9 (6) Requires project monitoring by the department to ensure  
10 the applicant's compliance with permit terms and  
11 conditions;  
12  
13 (7) Requires the incorporation of conflict resolution  
14 mechanisms to resolve conflicts arising among  
15 departments and agencies resulting from conflicting  
16 requirements, procedures, or agency perspectives;  
17  
18 (8) Provides for the consolidation of contested case  
19 hearings on permits and for appellate review directly  
20 to the supreme court;  
21  
22 (9) Provides for joint environmental impact statements and  
23 concurrent public review and processing;  
24  
25 (10) (Increases the department's responsibilities with  
26 respect to streamlining activities and information  
27 services regarding Waikiki developments, including  
28 providing for explicit agency standards and  
29 incorporating rebuttable presumptions;  
30  
31 (11) (Provides for the transfer of permitting functions,  
32 including enforcement functions, from issuing agencies  
33 to the department upon the written agreement of the  
34 parties; and  
35  
36 (12) Requires the department to submit annual reports  
37 regarding the effectiveness of the consolidated permit  
38 application and review process.  
39

40 § -2 Definitions. As used in this chapter, unless the  
41 context clearly requires otherwise:  
42

43 "Agency" or "issuing agency" means any department, office,  
44 board, or commission of the State or the City and County  
45 government which is a part of the executive branch of that  
46 government and which issues permits.  
47  
48

**.B. NO.**

1 "Applicant" means any person who, pursuant to statute,  
2  
3 ordinance, rule, or regulation, requests approval or a permit of  
4  
5 a proposed project in Waikiki.  
6

7 "Approval" means a discretionary consent required from an  
8 agency prior to the actual implementation of a project.  
9

10 "County" means the City and County of Honolulu.  
11

12 "Department" means the department of business, economic  
13 development, and tourism or any successor agency.  
14

15 "Director" means the director of business, economic  
16 development, and tourism or any successor agency.  
17

18 "Discretionary consent" means a consent, sanction, or  
19 recommendation from an agency for which judgment and free will  
20 may be exercised by the issuing agency, as distinguished from a  
21 ministerial consent.  
22

23 "Environmental impact statement" means, as applicable, an  
24 informational document prepared in compliance with chapter 343 or  
25 with the National Environmental Policy Act of 1969 (Public Law  
26 91-190).  
27

28 "Interagency group" means the body established pursuant to  
29 section -5.  
30

31 "Permit" means any license, permit, certificate,  
32 certification, approval, compliance schedule, or other similar  
33 document or decision pertaining to any regulatory or management  
34 program which is related to the protection, conservation, use of,  
35 or interference with the natural resources of land, air, or water  
36 in the State and which is required prior to or in connection with  
37 the undertaking of a project.  
38

39 "Process" means the consolidated permit application and  
40 review pilot process established in this chapter for proposed  
41 Waikiki projects.  
42

43 "Project" means a proposed use, development, or activity in  
44 Waikiki, the conduct of which requires the issuance of permits  
45 from one or more agencies.  
46  
47

**.B. NO.**

1 "Waikiki" means the area of Oahu whose boundaries are  
2 delineated in the city and county of Honolulu land use ordinance  
3 establishing the Waikiki Special District.  
4

5  
6 § -3 Consolidated permit application and review process  
7 for Waikiki projects. (a) This chapter shall apply only to  
8 proposed projects in Waikiki. The consolidated application  
9 process established in section 201-62 shall apply to all other  
10 projects as provided in that section.  
11

12  
13 (b) The department, in addition to its existing functions,  
14 shall establish and administer the consolidated permit  
15 application and review process provided for in this chapter.  
16

17 (c) The consolidated permit application and review process  
18 shall incorporate the following:  
19

- 20 (1) One or more pre-application conferences and a  
21 conceptual review of the project  
22
- 23 (2) The designation of a project facilitator;  
24
- 25 (3) Specification of completeness requirements for  
26 applications;  
27
- 28 (4) The creation of an interagency group pursuant to  
29 section -5;  
30
- 31 (5) The role and functions of the department as the lead  
32 agency and the interagency group;  
33
- 34 (6) A schedule for meetings and actions of the interagency  
35 group;  
36
- 37 (7) A list of all permits required for the project;  
38
- 39 (8) All permit review and approval deadlines;  
40
- 41 (9) A mechanism to resolve any conflicts that may arise  
42 between or among the department and any other agencies,  
43 including any federal agencies, as a result of  
44 conflicting permit, approval, or other requirements,  
45 procedures, or agency perspectives;  
46  
47

**.B. NO.**

1 (10) Any other administrative procedures related to the  
2  
3 foregoing, including provisions for joint hearings and  
4  
5 concurrent processing and review, as may be  
6  
7 practicable; and  
8  
9

10  
11 (11) A consolidated permit application form or master  
12 application form to be used for the project for all  
13 permitting purposes.  
14

15 (d) The department shall perform all of the permitting  
16 functions for which it is currently responsible for the purposes  
17 of the project, and shall coordinate and consolidate all required  
18 permit reviews by other agencies, and to the fullest extent  
19 possible by all federal agencies, having jurisdiction over any  
20 aspect of the project.  
21

22 § -4 Consolidated permit application and review procedure  
23 for Waikiki projects. (a) The department shall serve as the  
24 lead agency for the consolidated permit application and review  
25 process established pursuant to section -3 and as set forth in  
26 this section for the project. Except as provided in this  
27 section, all affected issuing agencies shall participate in the  
28 consolidated permit application and review process.  
29

30 (b) To the greatest extent possible, the department and  
31 each issuing agency shall complete all of their respective  
32 permitting functions for the purposes of the project, in  
33 accordance with the timetable for regulatory review set forth in  
34 the joint agreement described in subsection (c)(3) and within the  
35 time limits contained in the applicable permit statutes,  
36 ordinances, regulations, or rules; except that, notwithstanding  
37 section 91-13.5, the department or any agency shall have good  
38 cause to extend the applicable time limit if the permit-issuing  
39 agency must rely on another agency, including any federal agency,  
40 for all or part of the permit processing and the delay is caused  
41 by the other agency.  
42

43 (c) The procedure shall be as follows:  
44

45 (1) On the request of the applicant, the department shall  
46 hold one or more pre-application conferences and  
47 undertake a conceptual review of the proposed Waikiki  
48 project, evaluating the general approvability or  
49 nonapprovability of the proposed project, including all  
50 proposed phases thereof, subject to the development and  
51

**.B. NO.**

1 submission of more detailed plans and information and  
2  
3 such additional applications for permits in the future  
4  
5 as may be necessary. The department shall adopt rules  
6  
7 pursuant to chapter 91 to establish guidelines and  
8 criteria for the conceptual review of proposed projects  
9 in Waikiki.

- 10  
11 (2) The department shall designate a project facilitator  
12 within the department, who shall:  
13  
14 (A) Assist the applicant regarding which permits may  
15 be required for the project;  
16  
17 (B) Explain available options in obtaining permits;  
18  
19 (C) Serve as the main point of contact for the  
20 applicant;  
21  
22 (D) Manage the procedural aspects of the consolidated  
23 permit application and review pilot process;  
24  
25 (E) Ensure that the applicant has necessary  
26 information to apply for the required permits;  
27  
28 (F) Coordinate the review of those permits by  
29 applicable agencies;  
30  
31 (G) Ensure that timely permit decisions are made by  
32 those agencies; and  
33  
34 (H) Assist in resolving conflicts or inconsistencies  
35 among permit requirements and conditions imposed  
36 on permits with respect to the project, and  
37 mediate any other disputes that may arise from  
38 permit applications;  
39  
40 (3) The applicant shall submit the consolidated permit  
41 application using the consolidated permit application  
42 form, which shall include whatever data about the  
43 proposed project that the department deems necessary to  
44 fulfill the purposes of this chapter and to determine  
45 which other agencies may have jurisdiction over any  
46 aspect of the proposed project.  
47  
48



**.B. NO.**

- 1 (4) Upon receipt of the consolidated permit application,  
2  
3 the department shall notify all issuing agencies, as  
4 well as all federal agencies, that the department  
5 determines may have jurisdiction over any aspect of the  
6 proposed project as set forth in the application, and  
7 shall invite the federal agencies so notified to  
8 participate in the consolidated permit application  
9 process. The agencies, and those federal agencies that  
10 accept the invitation, thereafter shall participate in  
11 the consolidated permit application and review process;  
12 provided that any such state or county agency that is  
13 unable to participate shall be deemed to have approved  
14 all permits required for that project;  
15
- 16 (5) The representatives of the department and the state,  
17 county, and federal agencies and the applicant shall  
18 develop and sign a joint agreement among themselves  
19 which shall:  
20  
21 (A) Identify the members of the interagency group;  
22  
23 (B) Identify all permits required for the project;  
24  
25 (C) Specify the regulatory and review responsibilities  
26 of the department and each state, county, and  
27 federal agency and set forth the responsibilities  
28 of the applicant;  
29  
30 (D) Establish a timetable for regulatory review, the  
31 conduct of necessary hearings, the preparation of  
32 an environmental impact statement if necessary,  
33 and other actions required to minimize duplication  
34 and to coordinate and consolidate the activities  
35 of the applicant, the department, and the state,  
36 county, and federal agencies; and  
37  
38 (E) Provide for joint hearings and concurrent  
39 processing and review as may be practicable.  
40  
41
- 42 (6) An interagency group shall be established pursuant to  
43 section -5. The applicant shall designate its  
44 representative to be available to the interagency  
45 group, as it may require, for purposes of processing  
46 the applicant's consolidated permit application.  
47  
48

**.B. NO.**

- 1 (7) The department, each issuing agency, and each federal  
2  
3 agency shall issue its own permit or approval based  
4 upon its own jurisdiction. The consolidated permit  
5 application and review process shall not affect or  
6 invalidate the jurisdiction or authority of any agency  
7 under existing law.  
8
- 9 (8) The applicant shall apply directly to each state,  
10 county, or federal agency that does not participate in  
11 the consolidated permit application and review process.  
12
- 13 (9) Not later than thirty days after receiving an  
14 application for a proposed Waikiki project, the  
15 department, or a state or county agency to which the  
16 department has forwarded the application, shall review  
17 the application for completeness, state in writing  
18 whether the application is complete, and immediately  
19 transmit that writing to the applicant. If the  
20 application is determined not to be complete, the  
21 department's or agency's determination shall specify  
22 those parts of the application which are incomplete and  
23 shall indicate the manner in which they can be made  
24 complete. After the department or agency accepts the  
25 application as complete, the department or agency shall  
26 not subsequently request of the applicant any new or  
27 additional information that was not required as part of  
28 the application; provided that the department or  
29 agency, in the course of processing the application,  
30 may request that the applicant clarify, amplify,  
31 correct, or otherwise supplement the information  
32 required for the application.  
33
- 34 (10) Upon making a determination of completeness, the  
35 department shall process the consolidated permit  
36 application submitted by an applicant for the project,  
37 and shall monitor the processing of the permit  
38 application by issuing agencies. The department shall  
39 coordinate, and seek to consolidate where possible, the  
40 permitting functions and shall monitor and assist in  
41 the permitting functions conducted by all of these  
42 agencies, and to the fullest extent possible the  
43 federal agencies, in accordance with the consolidated  
44 permit application and review process.  
45  
46

**.B. NO.**

1 (11) Once the processing of the consolidated permit  
2  
3 application has been completed and the permits  
4  
5 requested have been issued to the applicant, the  
6  
7 department shall monitor the applicant's work  
8 undertaken pursuant to the permits to ensure the  
9 applicant's compliance with the terms and conditions of  
10 the permits.  
11

12 (d) Where the contested case provisions under chapter 91  
13 apply to any one or more of the permits to be issued by the  
14 agency for the purposes of the project, the agency may, if there  
15 is a contested case involving any of the permits, be required to  
16 conduct only one contested case hearing on the permit or permits  
17 within its jurisdiction. Any appeal from a decision made by the  
18 agency pursuant to a public hearing or hearings required in  
19 connection with a permit shall be made directly on the record to  
20 the supreme court for final decision subject to chapter 602.  
21

22 § -5 Interagency group. (a) The department shall  
23 establish an interagency group comprised of those agencies which  
24 have jurisdiction over any aspect of a project. Each of these  
25 agencies shall designate an appropriate representative to serve  
26 on the interagency group as part of the representative's official  
27 responsibilities. The interagency group shall perform liaison  
28 and assisting functions as required by this chapter and the  
29 department. The department shall invite and encourage the  
30 appropriate federal agencies having jurisdiction over any aspect  
31 of the project to participate in the interagency group.  
32

33 (b) The department and agencies shall cooperate with the  
34 federal agencies to the fullest extent possible to minimize  
35 duplication between and, where possible, promote consolidation of  
36 federal and state requirements. To the fullest extent possible,  
37 this cooperation shall include, among other things, joint  
38 environmental impact statements with concurrent public review and  
39 processing at all levels of government. Where federal law has  
40 requirements that are in addition to but not in conflict with  
41 state law requirements, the department and the agencies shall  
42 cooperate to the fullest extent possible in fulfilling their  
43 requirements so that all documents shall comply with all  
44 applicable laws.  
45

46 § -6 Streamlining activities. In administering the  
47 consolidated permit application and review process for proposed  
48

**.B. NO.**

1 Waikiki projects, the department, in addition to its activities  
2 under section 201-64, shall:

- 3
- 4 (1) Monitor all permit applications submitted under this  
5 chapter and the processing thereof on an ongoing basis  
6 to determine the source of any inefficiencies, delays,  
7 and duplications encountered and the status of all  
8 permits in process;
- 9
- 10 (2) Adopt and implement needed streamlining measures  
11 identified by the interagency group, in consultation  
12 with issuing agencies and with members of the public;
- 13
- 14 (3) Design, in addition to the consolidated permit  
15 application form, other applications, checklists, and  
16 forms essential to the implementation of the  
17 consolidated permit application and review process;
- 18
- 19 (4) Recommend to the legislature, as appropriate, suggested  
20 changes to existing laws to eliminate any duplicative  
21 or redundant permit requirements;
- 22
- 23 (5) Coordinate with agencies to ensure that all standards  
24 used in any agency decisionmaking for any required  
25 permits are clear, explicit, and precise; and
- 26
- 27 (6) Incorporate, where possible, rebuttable presumptions  
28 based upon requirements met for permits issued  
29 previously under the consolidated permit application  
30 and review process.

31

32 § -7 Information services. In addition to its  
33 requirements under section 201-63, the department shall:

- 34
- 35 (1) Establish a separate section within its permit  
36 information and coordination center for services  
37 related only to proposed Waikiki developments, which  
38 shall be available for public use during normal working  
39 hours, and which provides guidance to potential  
40 applicants for Waikiki projects with regard to the  
41 permits and procedures that may apply to those  
42 projects; and
- 43
- 44 (2) Maintain and update a separate repository of the laws,  
45 rules, procedures, permit requirements, and criteria of  
46

**.B. NO.**

1 agencies and which have control or regulatory power  
2  
3 over any aspect of proposed Waikiki projects and of  
4  
5 federal agencies having jurisdiction over any aspect of  
6  
7 those project.  
8  
9

10  
11 § -8 Construction of this chapter; rules. This chapter  
12 shall be construed liberally to effectuate its purposes, and the  
13 department shall have all powers which may be necessary to carry  
14 out the purposes of this chapter, including the authority to  
15 make, amend, and repeal rules pursuant to chapter 91 to implement  
16 this chapter; provided that:

- 17  
18 (1) All procedures for public information and review under  
19 chapter 91 shall be preserved; and  
20  
21 (2) The consolidated permit application and review process  
22 shall not affect or invalidate the jurisdiction or  
23 authority of any agency under existing law.  
24

25 § -9 Transfer of functions. (a) Nothing in this chapter  
26 shall prohibit the department, issuing agencies, and the  
27 applicant from entering into any written agreement that provides  
28 that certain specified functions of those agencies shall be  
29 transferred to the department, insofar as they relate to the  
30 permit application, review, processing, issuance, and monitoring  
31 of laws and rules with respect to proposed Waikiki projects, and  
32 the enforcement of terms, conditions, and stipulations of permits  
33 and other authorizations issued by agencies with respect to the  
34 development, construction, installation, operation, maintenance,  
35 repair, and replacement of those projects, or any portion or  
36 portions thereof.  
37

38 (b) Any agreed-upon transfer of functions pursuant to  
39 subsection (a) shall include all enforcement functions of the  
40 respective agencies or their officials as may be related to the  
41 enforcement of the terms, conditions, and stipulations of  
42 permits. "Enforcement", for purposes of this transfer of  
43 functions, includes monitoring and any other compliance or  
44 oversight activities reasonably related to the enforcement  
45 process.  
46

47 (c) Nothing in this section shall be construed to relieve  
48 an applicant from the laws, ordinances, and rules of any agency  
49 whose functions are not transferred by this section to the  
50 department for the purposes of a project."  
51

**.B. NO.**

1           SECTION 2. Reports. The department of business, economic  
2  
3 development, and tourism shall submit reports to the governor and  
4  
5 the legislature no later than twenty days before the convening of  
6  
7 the regular sessions of 2001, 2002, 2003, and 2004, regarding:  
8

- 9           (1) The department's work during the preceding year  
10           relating to the consolidated permit application and  
11           review process established in this Act;  
12  
13           (2) The status of Waikiki projects utilizing the  
14           consolidated permit application and review process;  
15  
16           (3) Any problems encountered;  
17  
18           (4) Incentives that may be used to encourage applicants to  
19           use the process, pursuant to section 3 of this Act; and  
20  
21           (5) Any legislative actions that may be needed to improve  
22           the process and implement the intent of this Act.  
23

24           SECTION 3. Incentives. The department of business,  
25 economic development, and tourism shall review the awarding of  
26 incentives to applicants who use the consolidated permit  
27 application and review process for proposed Waikiki developments  
28 established in this Act, including the following:  
29

- 30           (1) A reduction in permit fees;  
31  
32           (2) A reduction in real property, general excise, or other  
33           taxes;  
34  
35           (3) Faster processing times;  
36  
37           (4) A reduction in state or city and county lease rent if  
38           the proposed project is situated on public lands;  
39  
40           (5) A reduction in other user or impact fees;  
41  
42           (6) Exemptions from certain ordinances, other than those  
43           affecting density, open space, and other land use or  
44           environmental provisions; or  
45  
46           (7) Other public incentives as the department finds  
47           appropriate.  
48  
49



## Appendix O

REPORT TITLE:

Environmental Permits; Waikiki

DESCRIPTION:

Establishes a 5-year environmental permit assistance pilot program for proposed developments in Waikiki. Provides for the establishment of a Waikiki permit assistance center and the voluntary appointment of project facilitators and coordinating permit agencies to streamline the processing of permits.



1  
2  
3 RELATING TO ENVIRONMENTAL PERMIT ASSISTANCE.  
4  
5  
6  
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:  
9

10  
11 SECTION 1. The legislature finds that:  
12

13 (1) Hawaii's environmental protection programs have  
14 established strict standards to reduce pollution and  
15 protect the public health and safety and the  
16 environment. The single-purpose programs instituted to  
17 achieve these standards have been successful in many  
18 respects, and have produced significant gains in  
19 protecting Hawaii's environment in the face of  
20 substantial population growth.  
21

22 (2) As the number of environmental laws and regulation have  
23 grown in Hawaii, so have the number of permits required  
24 for proposed development projects. This regulatory  
25 burden has significantly added to the cost and time  
26 needed to obtain essential permits throughout Hawaii,  
27 and especially in Waikiki. The increasing number of  
28 individual permits and permit authorities has generated  
29 the continuing potential for conflict, overlap, and  
30 duplication between the various state, local, and  
31 federal permits. There is a need to establish a pilot  
32 program for Waikiki to streamline the permitting  
33 process for proposed developments in Waikiki without  
34 sacrificing environmental quality.  
35

36 SECTION 2. The Hawaii Revised Statutes is amended by adding  
37 a new chapter to be appropriately designated and to read as  
38 follows:  
39

40 "CHAPTER  
41 WAIKIKI ENVIRONMENTAL PERMIT ASSISTANCE

42 § -1 Waikiki environmental permit assistance pilot  
43 program; established. The Waikiki environmental permit  
44 assistance pilot program is established within the department of  
45 health to:  
46  
47

- 1 (1) Institute new, efficient procedures for proposed  
2  
3 developments in Waikiki that will assist businesses and  
4 public agencies in complying with the environmental  
5 quality laws in an expedited fashion, without reducing  
6 protection of public health and safety and the  
7 environment;  
8
- 9 (2) Promote effective dialogue and ensure ease in the  
10 transfer and clarification of technical information,  
11 while preventing duplication. It is necessary that the  
12 program establish a process for preliminary and ongoing  
13 meetings between the applicant, the coordinating permit  
14 agency, and the participating permit agencies, but do  
15 not preclude the applicant or participating permit  
16 agencies from individually coordinating with each  
17 other;  
18
- 19 (3) Ensure, to the maximum extent practicable, that the  
20 coordinated permit agency process and applicable permit  
21 requirements and criteria are integrated and run  
22 concurrently, rather than consecutively;  
23
- 24 (4) Provide a reliable and consolidated source of  
25 information concerning federal, state, and city and  
26 county environmental and land use laws and procedures  
27 that apply to any given proposal;  
28
- 29 (5) Provide an optional process by which a project  
30 proponent may obtain active coordination of all  
31 applicable regulatory and land use permitting  
32 procedures. This program is not to replace individual  
33 laws, or diminish the substantive decision-making role  
34 of individual jurisdictions. Rather, it is to provide  
35 predictability, administrative consolidation, and,  
36 where possible, consolidation of appeal processes; and  
37
- 38 (6) Provide consolidated, effective, and easier  
39 opportunities for members of the public to receive  
40 information and present their views about proposed  
41 projects.  
42

43 § -2 Definitions. As used in this chapter, unless the  
44 context clearly requires otherwise:  
45  
46

1 "Center" means the Waikiki permit assistance center  
2  
3 established in the department.  
4

5  
6  
7 "City and county" means the city and county of Honolulu.  
8  
9

10  
11 "Coordinating permit agency" means the permit agency that  
12  
13 has the greatest overall jurisdiction over a project.  
14

15 "Department" means the department of health.  
16

17 "Participating permit agency" means a permit agency, other  
18 than the coordinating permit agency, that is responsible for the  
19 issuance of a permit for a project.  
20

21 "Permit" means any license, certificate, registration,  
22 permit, or other form of authorization required by a permit  
23 agency to engage in a particular activity in Waikiki.  
24

25 "Permit agency" means:

- 26  
27 (1) The department of health and the department of land and  
28 natural resources;  
29  
30 (2) Any other city and county, state, or federal agency  
31 that participates at the request of the permit  
32 applicant and upon the agency's agreement to be subject  
33 to this chapter.  
34

35 "Project" means a proposed use, development, or activity in  
36 Waikiki, the conduct of which requires permits from one or more  
37 permit agencies.  
38

39 "Waikiki" means the area of Oahu whose boundaries are  
40 delineated in the city and county of Honolulu land use ordinance  
41 establishing the Waikiki Special District.  
42

43 § -3 Waikiki permit assistance center; duties. The  
44 Waikiki permit assistance center is established within the  
45 department to:

- 46  
47 (1) Publish and keep current one or more handbooks  
48 containing lists and explanations of all permit laws  
49 that apply to proposed developments in Waikiki. The  
50 center shall coordinate with the office of planning in  
51 providing and maintaining this information to  
52

1 applicants and others. To the extent possible, the  
2  
3 handbook shall include relevant federal and city and  
4  
5 county laws. A state or city and county agency shall  
6  
7 provide a reasonable number of copies of application  
8 forms, statutes, ordinances, rules, handbooks, and  
9 other informational material requested by the center  
10 and shall otherwise fully cooperate with the center.  
11 The center shall seek the cooperation of relevant  
12 federal and city and counties agencies;

- 13
- 14 (2) Establish, and make known, a point of contact for  
15 distribution of the handbook and advice to the public  
16 as to its interpretation in any given case;  
17
- 18 (3) Work closely and cooperatively with the office of  
19 planning in providing efficient and nonduplicative  
20 service to the public;  
21
- 22 (4) Seek the assignment of employees from permit agencies  
23 to serve on a rotating basis in staffing the center;  
24 and  
25
- 26 (5) Provide an annual report to the legislature on  
27 potential conflicts and perceived inconsistencies among  
28 existing statutes. The first report shall be submitted  
29 to the appropriate standing committees of the house of  
30 representatives and senate by December 1, 2000.

31  
32 § -4 Designation of coordinating permit agency; process.

33 (a) Not later than January 1, 2000, the department shall  
34 establish an administrative process for the designation of a  
35 coordinating permit agency for a project.  
36

37 (b) The administrative process shall consist of the  
38 establishment of guidelines for designating the coordinating  
39 permit agency for a project. The guidelines shall require that  
40 at least the following factors be considered in determining which  
41 permit agency has the greatest overall jurisdiction over the  
42 project:

- 43
- 44 (1) The types of facilities or activities that make up the  
45 project;  
46  
47

1 (2) The types of public health and safety and environmental  
2 concerns that should be considered in issuing permits  
3 for the project;  
4  
5

6  
7  
8  
9 (3) The environmental medium that may be affected by the  
10 project, the extent of those potential effects, and the  
11 environmental protection measures that may be taken to  
12 prevent the occurrence of, or to mitigate, those  
13 potential effects;  
14

15  
16 (4) The regulatory activity that is of greatest importance  
17 in preventing or mitigating the effects that the  
18 project may have on public health and safety or the  
19 environment; and  
20

21 (5) The statutory and regulatory requirements that apply to  
22 the project and the complexity of those requirements.  
23

24 § -5 Project facilitator. Upon the request of a project  
25 applicant, the center shall appoint a project facilitator to  
26 assist the applicant in determining which regulatory  
27 requirements, processes, and permits may be required for  
28 development and operation of the proposed project. The project  
29 facilitator shall provide the information to the applicant and  
30 explain the options available to the applicant in obtaining the  
31 required permits. If the applicant requests, the center shall  
32 designate a coordinating permit agency as provided in section  
33 -6.  
34

35 § -6 Coordinating permit agency; designation; duties.  
36 (a) A permit applicant who requests the designation of a  
37 coordinating permit agency shall provide the center with a  
38 description of the project, a preliminary list of the permits  
39 that the project may require, and the identity of the  
40 participating permit agencies. The center may request any  
41 information from the permit applicant that is necessary to make  
42 the designation under this section, and may convene a scoping  
43 meeting of the likely coordinating permit agency and  
44 participating permit agencies in order to make that designation.  
45

46 (b) The coordinating permit agency shall serve as the main  
47 point of contact for the permit applicant with regard to the  
48 coordinated permit process for the project and shall manage the  
49 procedural aspects of that processing consistent with existing  
50 laws governing the coordinating permit agency and participating  
51

1 permit agencies, and with the procedures agreed to by those  
2  
3 agencies in accordance with section -7. In carrying out these  
4  
5 responsibilities, the coordinating permit agency shall ensure  
6  
7 that the permit applicant has all the information needed to apply  
8 for all the component permits that are incorporated in the  
9 coordinated permit process for the project, coordinate the review  
10 of those permits by the respective participating permit agencies,  
11 ensure that timely permit decisions are made by the participating  
12 permit agencies, and assist in resolving any conflict or  
13 inconsistency among the permit requirements and conditions that  
14 are to be imposed by the participating permit agencies with  
15 regard to the project. The coordinating permit agency shall keep  
16 in contact with the applicant as well as other permit agencies in  
17 order to assure that the process is progressing as scheduled.  
18 The coordinating permit agency shall also make contact, at least  
19 once, with the city and county if the city and county has not  
20 agreed to be a participating permit agency.

21  
22 (c) This chapter shall not be construed to limit or abridge  
23 the powers and duties granted to a participating permit agency  
24 under the law that authorizes or requires the agency to issue a  
25 permit for a project. Each participating permit agency shall  
26 retain its authority to make all decisions on all nonprocedural  
27 matters with regard to the respective component permit that is  
28 within the scope of its responsibility, including the  
29 determination of permit application completeness, permit approval  
30 or approval with conditions, or permit denial. The coordinating  
31 permit agency may not substitute its judgment for that of a  
32 participating permit agency on any such nonprocedural matters.

33  
34 § -7 Coordinating permit agency; meeting with permit  
35 applicant and participating permit agencies. (a) Within twenty-  
36 one days of the date that the coordinating permit agency is  
37 designated, it shall convene a meeting with the permit applicant  
38 for the project and the participating permit agencies. The  
39 meeting agenda shall include at least all of the following  
40 matters:

- 41  
42 (1) A determination of the permits that are required for  
43 the project;  
44  
45 (2) A review of the permit application forms and other  
46 application requirements of the agencies that are  
47 participating in the coordinated permit process;  
48  
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- (3) (A) A determination of the timelines that will be used by the coordinating permit agency and each participating permit agency to make permit decisions, including the time periods required to determine if the permit applications are complete, to review the application or applications, and to process the component permits. In the development of this timeline, full attention shall be given to achieving the maximum efficiencies possible through concurrent studies, consolidated applications, hearings, and comment periods. Except as provided in subparagraph (B), the timelines established under this subsection, with the assent of the coordinating permit agency and each participating permit agency, shall commit the coordinating permit agency and each participating permit agency to act on the component permit within time periods that are different than those required by other applicable provisions of law.
- (B) An accelerated time period for the consideration of a permit application may not be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires any of the following:
  - (i) Other agencies, interested persons, or the public to be given adequate notice of the application;
  - (ii) Other agencies to be given in a role in, or be allowed to participating in, the decision to approve or disapprove the application; or
  - (iii) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application;
- (4) The scheduling of any public hearings that are required to issue permits for the project and a determination of

1 the feasibility of coordinating or consolidating any of  
2 those required public hearings; and

- 3  
4 (5) A discussion of fee arrangements for the coordinated  
5 permit process, including an estimate of the costs  
6 allowed under section -10 and the billing schedule.

7  
8 (b) Each agency shall send at least one representative  
9 qualified to make decisions concerning the applicability and  
10 timeline associated with all permits administered by that  
11 jurisdiction. At the request of the applicant, the coordinating  
12 permit agency shall notify any relevant federal agency of the  
13 date of the meeting and invite that agency's participation in the  
14 process.

15  
16 (c) If a permit agency or the applicant foresees, at any  
17 time, that it will be unable to meet its obligations under the  
18 agreement, it shall notify the coordinating permit agency of the  
19 problem. The coordinating permit agency shall notify the  
20 participating permit agencies and the applicant and, upon  
21 agreement of all parties, adjust the schedule, or, if necessary,  
22 schedule another work plan meeting.

23  
24 (d) The coordinating permit agency may request any  
25 information from the applicant that is necessary to comply with  
26 its obligations under this section, consistent with the timelines  
27 set pursuant to this section.

28  
29 (e) A summary of the decisions made under this section  
30 shall be made available for public review upon the filing of the  
31 coordinated permit process application or permit applications.

32  
33 § -8 Withdrawal from coordinating permit process. (a)  
34 The permit applicant may withdraw from the coordinated permit  
35 process by submitting the coordinating permit agency a written  
36 request that the process be terminated. Upon receipt of the  
37 request, the coordinating permit agency shall notify the center  
38 and each participating permit agency that a coordinated permit  
39 process is no longer applicable to the project.

40  
41 (b) The permit applicant may submit a written request to  
42 the coordinating permit agency that the permit applicant wishes a  
43 participating permit agency to withdraw from participation on the  
44 basis of a reasonable belief that the issuance of the coordinated  
45 permit process would be accelerated if the participating permit  
46



1 agency withdraws. In that event, the participating permit agency  
2 shall withdraw from participation if the coordinating permit  
3 agency approves the request.

4  
5 § -9 Coordinating permit agency to oversee participating  
6 permit agencies. The coordinating permit agency shall ensure  
7 that the participating permit agencies make all the permit  
8 decisions that are necessary for the incorporation of the permits  
9 into the coordinated permit process and act on the component  
10 permits within the time periods established pursuant to section  
11 -7.

12  
13 § -10 Recovery of costs by coordinating permit agency.  
14 (a) The coordinating permit agency may enter into a written  
15 agreement with the applicant to recover from the applicant the  
16 reasonable costs incurred by the coordinating permit agency in  
17 carrying out the requirements of this chapter.

18  
19 (b) The coordinating permit agency may recover only the  
20 costs of performing those coordinated permit services and shall  
21 be negotiated with the permit applicant in the meeting required  
22 pursuant to section -7. The billing process shall provide for  
23 accurate time and cost accounting and may include a billing cycle  
24 that provides for progress payments.

25  
26 § -11 Review of agency action; petition. A petition by  
27 the permit applicant for review of an agency action in issuing,  
28 denying, or amending a permit, or any portion of a coordinating  
29 permit agency permit shall be submitted by the permit applicant  
30 to the coordinating permit agency or the participating permit  
31 agency having jurisdiction over that permit and shall be  
32 processed in accordance with the procedures of that permit  
33 agency. Within thirty days of receiving the petition, the  
34 coordinating permit agency shall notify the other environmental  
35 agencies participating in the original coordinated permit  
36 process.

37  
38 § -12 Amendments or modifications; procedure. If an  
39 applicant petitions for a significant amendment or modification  
40 to a coordinated permit process application or any of its  
41 component permit applications, the coordinating permit agency  
42 shall reconvene a meeting of the participating permit agencies,  
43 conducted in accordance with section -7.

44  
45

1           § -13 Failure to provide information; effect. If an  
2 applicant fails to provide information required for the  
3 processing of the component permit applications for a coordinated  
4 permit process or for the designation of a coordinated permit  
5 agency, the time requirements of this chapter shall be held in  
6 abeyance until such time as the information is provided.  
7

8           § -14 Appeals. (a) The department, by rule, shall  
9 establish an expedited appeals process by which a petitioner or  
10 applicant may appeal any failure by a permit agency to take  
11 timely action on the issuance or denial of a permit in accordance  
12 with the time limits established under this chapter.  
13

14           (b) If the department finds that the time limits under  
15 appeal have been violated without good cause, it shall establish  
16 a date certain by which the permit agency shall act on the permit  
17 application with adequate provision for the requirements of  
18 section -7(a)(3), and provide for the full reimbursement of  
19 any filing or permit processing fees paid by the applicant to the  
20 permit agency for the permit application under appeal.  
21

22           (c) Any person aggrieved by a final decision issued by an  
23 agency with respect to a permit under this chapter shall be  
24 entitled to administrative and judicial review in accordance with  
25 chapter 91.  
26

27           § -15 Final permit decision; notice forwarded. A state  
28 permit agency shall forward to the appropriate city and county  
29 agencies a notice of the agency's final decision with respect to  
30 a permit sought from the agency.  
31

32           § -16 Rules. The department may adopt rules pursuant to  
33 chapter 91 as it deems necessary to implement this chapter."  
34

35           SECTION 3. The department of health shall study the  
36 effectiveness of the pilot program established by this Act and  
37 report its findings and recommendations, including any proposed  
38 legislation, to the governor and legislature no later than twenty  
39 days before the convening of the regular sessions of 2001, 2002,  
40 2003, and 2004. The department's final report shall include:  
41

- 42           (1) The number of instances in which a coordinating permit  
43 agency has been requested and used, and the disposition  
44 of those cases;  
45  
46

- 1 (2) The amount of time elapsed between an initial request  
2 by a permit applicant for a coordinated permit process  
3 and the ultimate approval or disapproval of the permits  
4 included in the process;  
5  
6 (3) The number of instances in which the expedited appeals  
7 process was requested, and the disposition of those  
8 cases; and  
9  
10 (4) A recommendation as to whether or not the pilot program  
11 should be extended to other areas of the State or to  
12 the entire State.

13  
14 SECTION 4. It is the intent of this Act not to jeopardize  
15 the receipt of any federal aid nor to impair the obligation of  
16 the State or any agency thereof to the holders of any bond issued  
17 by the State or by any such agency, and to the extent, and only  
18 to the extent, necessary to effectuate this intent, the governor  
19 may modify the strict provisions of this Act, but shall promptly  
20 report any such modification with reasons therefor to the  
21 legislature at its next session thereafter for review by the  
22 legislature.

23  
24 SECTION 5. There is appropriated out of the general  
25 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_, or so  
26 much thereof as may be necessary for fiscal year 1999-2000, to  
27 implement the pilot program established by this Act. The sum  
28 appropriated shall be expended by the department of health for  
29 the purposes of this Act.

30  
31 SECTION 6. This Act shall take effect on July 1, 1999, and  
32 shall be repealed on July 1, 2004.

33  
34  
35  
36

INTRODUCED BY: \_\_\_\_\_

Appendix P

REPORT TITLE:

Permit Coordination; Waikiki

DESCRIPTION:

Establishes a 5-year permit coordination pilot program for proposed developments in Waikiki. Provides for master applications, joint hearings, and consolidated processing of permits that must be obtained from state and local agencies before constructing or operating a project in Waikiki.

1  
2  
3 RELATING TO PERMIT COORDINATION.  
4  
5  
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:  
8  
9

10 SECTION 1. The Hawaii Revised Statutes is amended by adding  
11 a new chapter to be appropriately designated and to read as  
12 follows:

13 "CHAPTER  
14 WAIKIKI PERMIT COORDINATION AND STREAMLINING

15 PART I. GENERALLY

16 § -1 Legislative determination. The legislature finds  
17 that the substantial burdens placed upon persons who are  
18 proposing to undertake certain types of projects in Waikiki  
19 through requirements to obtain numerous permits and related  
20 documents from various federal, state, and local agencies are  
21 undesirable and should be alleviated. The legislature further  
22 finds that present methods for obtaining public views relating to  
23 applications to state and local agencies pertaining to these  
24 projects are cumbersome and place undue hardships on members of  
25 the public with the result that the public ability to express its  
26 views is hindered and not facilitated.  
27  
28

29 § -2 Waikiki permit coordination pilot program; purpose.  
30 The Waikiki permit coordination pilot program is established  
31 within the department of business, economic development, and  
32 tourism, to:  
33

- 34 (1) Establish a simplified procedure to assist those who,  
35 to satisfy the requirements of federal, state, and city  
36 and county law, must obtain a permit for proposed  
37 developments in Waikiki from one or more federal,  
38 state, or city and county government agencies by  
39 establishing a procedure to coordinate the  
40 administrative decision-making process;  
41  
42 (2) Provide to the members of the public a better  
43 opportunity to present their views for proposed  
44 developments in Waikiki and related environmental  
45 concerns before federal, state, and city and county  
46 agencies decide on applications for permits;  
47  
48

- 1 (3) Provide to applicants for proposed developments in  
2 Waikiki a greater degree of certainty on permit  
3 requirements of federal, state, and city and county  
4 governments;  
5  
6 (4) Increase the coordination between federal, state, and  
7 city and county agencies in their administration of  
8 programs affecting proposed Waikiki developments; and  
9  
10 (5) Establish an opportunity for members of the public to  
11 obtain information pertaining to requirements of  
12 federal, state, and city and county laws which must be  
13 satisfied before undertaking proposed Waikiki  
14 developments.  
15

16 § -3 Definitions. As used in this chapter, unless the  
17 context clearly indicates otherwise:  
18

19 "Agency" means a state department, commission, board, or  
20 other agency of the State.  
21

22 "City and county" means the city and county of Honolulu.  
23

24 "Department" means the department of business, economic  
25 development, and tourism.  
26

27 "Director" means the director of business, economic  
28 development, and tourism.  
29

30 "Permit" means:  
31

- 32 (1) With respect to the State, any licenses, permits, or  
33 authorizations required to be obtained from a state  
34 agency before constructing or operating a project in  
35 Waikiki, or any other license, permit, or authorization  
36 which may be designated by the director, under chapters  
37 183C, 205, 205A, 340A, 340B, 340E, 340F, 342B, 342C,  
38 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and  
39 342P, and any other applicable law; or  
40  
41 (2) With respect to the city and county of Honolulu, any  
42 licenses, permits, or authorizations required to be  
43 obtained from a city and county agency before  
44 constructing or operating a project in Waikiki, or any  
45 other license, permit, or authorization which may be  
46

1 designated by the director, under chapter 46 and any  
2 other applicable law.

3  
4 "Processing" and "processing of applications" means the  
5 entire process followed in relation to the making of decisions on  
6 an application for a permit and its review of it as provided in  
7 this chapter.

8  
9 "Project" or "development" means any new use or activity or  
10 expansion of or addition to an existing use or activity in  
11 Waikiki, fixed in location, for which permits are required before  
12 construction or operation.

13  
14 "Waikiki" means the area of Oahu whose boundaries are  
15 delineated in the city and county of Honolulu land use ordinance  
16 establishing the Waikiki Special District.

17  
18 PART II. STATE PERMIT STREAMLINING

19 § -4 Master application. (a) A person proposing a  
20 project in Waikiki that requires the issuance of one or more  
21 permits may submit a master application to the department  
22 requesting the issuance of all permits and documents necessary  
23 before the construction and operation of the project. The master  
24 application shall be on a form established by the department and  
25 contain sufficient information as to the location and the nature  
26 of the project, including discharge of wastes and use of or  
27 interference with natural resources of the State.

28  
29 (b) Upon receipt of a properly completed master  
30 application, the department shall immediately forward a copy of  
31 the application to all heads of executive departments of the  
32 State and the mayor of the city and county, together with the  
33 date by which the agency shall respond to the master application.

34  
35 (c) Each agency notified shall respond in writing to the  
36 department by the specified date, not exceeding fifteen days from  
37 receipt, as determined by the department, advising:

- 38  
39 (1) Whether the agency has an interest in the master  
40 application;  
41  
42 (2) If the response to paragraph (1) is affirmative, the  
43 permit program under the agency's jurisdiction to which  
44 the project described in the master application is  
45 pertinent; and  
46  
47

1 (3) Whether, in relation to the master application, a  
2 public hearing as provided in sections -6 and -7  
3 would be in the public interest.  
4

5 (d) Each notified agency that responds within the specified  
6 date that it does not have an interest in the master application;  
7 or does not respond as required within the specified date, may  
8 not subsequently require a permit of the applicant for the  
9 project described in the master application unless the master  
10 application contained false, misleading, or deceptive  
11 information, or other information or lack of information that  
12 would reasonably lead an agency to misjudge its interest in the  
13 master application.  
14

15 (e) The department shall submit application forms relating  
16 to permit programs identified in affirmative responses under  
17 subsection (c) to the applicant with a direction to complete and  
18 return them to the department within a reasonable time as  
19 specified by the department.  
20

21 (f) When the applications, properly completed, have been  
22 returned to the department, each of the applications shall be  
23 transmitted to the appropriate state agency for the performance  
24 of its responsibilities of decision making in accordance with the  
25 procedures of this chapter.  
26

27 § -5 Withholding final permit. When it appears that the  
28 applicant does not own or control the land or water necessary for  
29 the siting of the project in the master application, the  
30 department shall continue the proceedings under this chapter but  
31 may withhold the final permit until the applicant has obtained  
32 ownership or control of the land or water necessary for the site  
33 of the project. If the applicant has applied for land or water  
34 necessary for the siting of the project from the State or the  
35 city and county, the state agency or the city and county shall  
36 promptly adjudicate the application for the land or water filed  
37 by the applicant.  
38

39 § -6 Notice of proposed project. (a) The department,  
40 within thirty days after transmittal under section -4(f),  
41 shall cause a notice to be published at the applicant's expense  
42 once each week for three consecutive weeks in a newspaper of  
43 general circulation within the city and county. The notice shall  
44 describe the nature of the master application, including, with  
45 reasonable specificity, the project proposed, its location, the  
46



1 various permits or documents applied for, and the state agency  
2 having jurisdiction over each permit or document. Except as  
3 provided in subsection (c), the notice shall also state the time  
4 and place of the public hearing, which shall be scheduled not  
5 less than twenty or more than thirty days after the date of last  
6 publication of the notice. The notice shall further state that a  
7 copy of the master application and a copy of all applications for  
8 the project are available for public inspection in the department  
9 office in the capital and any other locations the department may  
10 designate in the notice.

11  
12 (b) If the responses received by the department from state  
13 agencies under section -4(f) unanimously state the position  
14 that a public hearing concerning a master application is not  
15 necessary in the public interest, and the department, after a  
16 careful evaluation, taking into consideration all interests  
17 involved, including the opportunity for members of the public to  
18 present views, agrees, the provisions of subsection (a)  
19 pertaining to the time and place of a public hearing need not be  
20 included in the notice. In that case the notice shall state that  
21 members of the public may present their views and supporting  
22 materials in writing to the department regarding any of the  
23 permits applied for within thirty days after the last date of  
24 publication of the notice in a newspaper.

25  
26 § -7 Public hearing. (a) Except as provided in section  
27 -6(b), before a final decision is made on a permit application  
28 relating to a project subject to the procedures of this chapter,  
29 a public hearing shall be held in Waikiki or at another located  
30 reasonably convenient to the site of the proposed project. The  
31 hearing shall be held in accordance with the notice given under  
32 section -6(a). At the hearing, the applicant may submit any  
33 relevant information and material in support of the applications,  
34 and members of the public may present relevant views and  
35 supporting materials relating to any or all of the applications  
36 being considered.

37  
38 (b) Each state agency having an application for a permit  
39 before it under section -6(a) shall be represented at the  
40 public hearing by its director or a designee of the director.  
41 The director of the department, a designee of the director, or a  
42 hearing officer appointed by the governor, shall chair the  
43 hearing; however, the representative of any state agency other  
44 than the department within whose jurisdiction a specific  
45 application lies shall conduct the portion of the hearing  
46

1 pertaining to submission of information, views, and supporting  
2 materials that concern that application. The chairperson may  
3 continue a hearing from time to time and place to place.  
4

5 (c) The hearing shall be conducted for the purpose of  
6 obtaining information for the assistance of state agencies and  
7 not as a trial or adversary proceeding.  
8

9 (d) Federal and city and county government agencies may be  
10 represented at the hearings, at their option, by their chief  
11 executive officer or the officer's designee.  
12

13 § -7 Final decision. (a) Upon completion of the public  
14 hearing, the chairperson, after consultation with the state  
15 agency representatives, shall establish the date by which all  
16 state agencies shall forward their final decisions on  
17 applications before them to the department. The date established  
18 shall be within the following ninety-day period after the public  
19 hearing.  
20

21 (b) In a situation where a notice is provided under section  
22 -6((b), the department, thirty days after the last notice  
23 publication in the newspaper, shall submit a copy of all views  
24 and supporting material received by it to each agency as  
25 described in the notice as having an application before it. At  
26 the same time, the department shall notify each state agency, in  
27 writing, of the date by which final decisions on applications  
28 shall be forwarded to the department. That date shall be no  
29 later than ninety days after the date of last publication of the  
30 notice, but may be extended by the department for reasonable  
31 cause.  
32

33 (c) Each final decision shall state the basis for the  
34 conclusion together with a final order denying the application  
35 for a permit or granting it, subject to a condition of approval  
36 as the deciding agency may have the power to impose. An agency  
37 that denies an application, with its final decision denying the  
38 application, shall provide a written summary suggesting alternate  
39 means of completing the project, or, if no alternative is  
40 feasible, the agency shall provide a written summary of its  
41 reasons for that conclusion.  
42

43 (d) As soon as all final decisions are received by the  
44 department under subsections (b) and (c), the department shall  
45 incorporate them, without modification, into one document and  
46

1 transmit it to the applicant either personally or by registered  
2 mail.

3  
4 (e) Each state agency having jurisdiction to approve or  
5 deny an application for a permit shall have the power vested in  
6 it by law to make such determinations. Nothing in this chapter  
7 shall be deemed to lessen or reduce these powers, and this  
8 chapter modifies only the procedures to be followed in the  
9 carrying out of these powers.

10  
11 (f) A state agency, in the performance of its  
12 responsibilities of decision making under this chapter, may  
13 request or receive additional information from an applicant and  
14 others before or after the public hearing.

15  
16 § -8 Withdrawal of agency from participation. (a) A  
17 state agency responding affirmatively under section -4(c) may  
18 withdraw from participation in the processing provided in this  
19 chapter at any time, by written notification to the department,  
20 if it subsequently appears to the state agency that it has no  
21 permit programs under this jurisdiction applicable to the  
22 project.

23  
24 (b) A decision by a state agency to withdraw from the  
25 proceeding is irreversible, and the state agency may not  
26 subsequently require a permit of the applicant for the project  
27 described in the master application unless the master application  
28 contained false, misleading, or deceptive information, or other  
29 information or lack of information which would reasonably lead an  
30 agency to misjudge its interest in the master application.

31  
32 § -9 Administrative and judicial review. A person  
33 aggrieved by a final decision issued under section -7(d) shall  
34 be entitled to administrative and judicial review in accordance  
35 with chapter 91.

36  
37 § -10 Time; extensions. It is the sense of the  
38 legislature that time is of the essence in the processing of  
39 applications under this chapter. Whenever this chapter states a  
40 time within which an act or a review is to be completed, the  
41 legislature has determined that the time allotted is adequate for  
42 a responsive state agency or city and county to complete the act  
43 or review. If unusual conditions prevent this from happening, it  
44 is the sense of the legislature that minimum extensions of the  
45 period established in this chapter may be granted upon a  
46

1 determination that the delay occurred beyond the control of the  
2 reviewing agency or city and county.

3  
4 § -11 Application. Notwithstanding any law to the  
5 contrary relating to the processing of application for permits,  
6 the procedures set out in this chapter for proposed projects in  
7 Waikiki are exclusive for applications filed under section -4.  
8 The procedures of this chapter are in lieu of any procedures  
9 otherwise provided by law or rule, and are to be followed by a  
10 state agency in ruling upon those applications.

11  
12 § -12 Fee schedules. Fee schedules previously  
13 established or authorized by law for an application for a permit  
14 shall continue to apply. The department shall collect the fees  
15 and forward them to the appropriate state agency.

16  
17 § -13 Permit requirement information centers. (a) The  
18 department shall establish permit requirement information centers  
19 at the director's office and in Waikiki to provide information to  
20 the public, in readily understandable form, regarding the  
21 requirements of federal, state, and the city and county  
22 governments for permits which must be acquired before initiating  
23 projects in Waikiki and to provide assistance in the completion  
24 of permit applications.

25  
26 (b) The department shall provide a master application to  
27 any person requesting it. The department shall provide  
28 information, forms, instructions, and assistance in the  
29 completion of a master application under this chapter to a person  
30 requesting assistance.

31  
32 § -14 Compliance with city and county land use ordinances  
33 and plans. (a) A permit for a project filed under section -4  
34 may not be issued unless the application has provided a  
35 certification from the city and county department of planning and  
36 permitting that the project is in compliance with the land use  
37 ordinances and associated plans administered by the city and  
38 county regarding the project. The city and county may accept  
39 applications for certification under this section and shall rule  
40 upon them within thirty days. The city and county may impose  
41 stipulations of performance in its approval, but, upon  
42 certification, the city and county may not change the land use  
43 ordinances as to the proposed project until the procedures of  
44 this chapter, including an appeal, are completed.

45  
46

1 (b) Approval of an application for certification as  
2 provided in this section does not eliminate any requirements of  
3 ordinances administered by the city and county. A ruling by the  
4 city and county denying an application for certification is not  
5 appealable under this chapter, except that the denial of an  
6 application for certification under subsection (a) does not  
7 preclude the applicant from filing an application under a  
8 different statute or procedure.  
9

10 § -15 Applicability of other laws. This chapter does not  
11 modify in any manner the applicability of a land use law or rule  
12 or city and county land use ordinances to land of a state agency.  
13

14 § -16 Rules. The department may adopt rules pursuant to  
15 chapter 91 as it deems necessary to implement this chapter."  
16

17 SECTION 2. The department of business, economic  
18 development, and tourism shall study the effectiveness of the  
19 pilot program established by this Act and report its findings and  
20 recommendations, including any proposed legislation, to the  
21 governor and legislature no later than twenty days before the  
22 convening of the regular sessions of 2001, 2002, 2003, and 2004.  
23 The department's final report shall include a recommendation as  
24 to whether or not the pilot program should be extended to other  
25 areas of the state or to the entire state.  
26

27 SECTION 3. It is the intent of this Act not to jeopardize  
28 the receipt of any federal aid nor to impair the obligation of  
29 the State or any agency thereof to the holders of any bond issued  
30 by the State or by any such agency, and to the extent, and only  
31 to the extent, necessary to effectuate this intent, the governor  
32 may modify the strict provisions of this Act, but shall promptly  
33 report any such modification with reasons therefor to the  
34 legislature at its next session thereafter for review by the  
35 legislature.  
36

37 SECTION 4. There is appropriated out of the general  
38 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_, or so  
39 much thereof as may be necessary for fiscal year 1999-2000, to  
40 implement the pilot program established by this Act. The sum  
41 appropriated shall be expended by the department of business,  
42 economic development, and tourism for the purposes of this Act.  
43

44 SECTION 5. This Act shall take effect on July 1, 1999, and  
45 shall be repealed on July 1, 2004.  
46

47 INTRODUCED BY: \_\_\_\_\_

Appendix Q

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REPORT TITLE:  
Environmental Impact; Waikiki

DESCRIPTION:  
Amends the "Waikiki trigger" in the environmental impact statement law to require environmental assessments for only "major uses" in Waikiki for which the city and county requires a major permit. Provides for concurrent processing, joint public hearings, and reduced duplication to streamline processing.

.B. NO.

RELATING TO THE ENVIRONMENTAL IMPACT STATEMENTS LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act, which is repealed in five years, is to streamline the environmental review process in chapter 343, Hawaii Revised Statutes, with respect to proposed Waikiki developments, by amending that law to:

- (1) Require the concurrent processing of environmental assessments and impact statements with permits to the extent practicable for Waikiki projects, including joint hearings, coordinated deadlines, and the incorporation of documents by reference, to streamline the regulatory process, as long as sufficient time is allotted for the review of environmental assessments or impact statements to ensure that environmental concerns are given appropriate consideration by the public and in decisionmaking along with related considerations;
- (2) Require the preparation of master and focused environmental impact statements for Waikiki. Master impact statements may provide baseline environmental data for that district, which may produce cost savings and prevent duplication of paperwork. Focused impact statements concentrate on a site-specific project, incorporating the master statement by reference without repeating the broad environmental and other considerations already addressed in the master statement;
- (3) Establish a regional environmental impact database for Waikiki, in which data from previously prepared environmental impact statements and information from new statements are used to continuously update environmental and land use information about that district. This database may assist in integrating the environmental review process into the local land use process and help policy analysts and decision makers in determining cumulative impacts within Waikiki for future policy and planning directions for that district;

- 1 (4) Provide for the use of standardized or joint  
2 environmental impact statements for the State and city  
3 and county, in order increase efficiency and reduce  
4 delay regarding Waikiki projects, similar to existing  
5 provisions for the use of one environmental impact  
6 statement, where feasible, in actions that are subject  
7 to both the National Environmental Policy Act and the  
8 state environmental impact statements law;  
9
- 10 (5) Provide for the use of functional equivalents with  
11 respect to Waikiki to avoid duplicative review and  
12 reduce time in the permitting process. This issue  
13 arises when a project subject to an environmental  
14 impact statement is also subject to review under  
15 equivalent environmental criteria contained in a  
16 development permit statute, in which environmental  
17 review under the permit statute may substitute as the  
18 functional equivalent of environmental review under the  
19 environmental impact statement process if certain  
20 criteria are established; and  
21
- 22 (6) Amend the "Waikiki trigger" in section 343-5(a)(5),  
23 Hawaii Revised Statutes, by limiting its applicability  
24 to only proposed "major" uses in Waikiki, as defined by  
25 the City and County of Honolulu. The legislature finds  
26 that this amendment appropriately balances the need for  
27 the continued review of major projects that will  
28 potentially have greater impact on Waikiki's  
29 environment and require more substantial levels of  
30 review, with the need to streamline the regulatory  
31 process affecting proposed Waikiki developments by  
32 eliminating the environmental impact statement process  
33 for minor Waikiki projects that are essentially  
34 ministerial in nature and can be processed with minimal  
35 levels of review.  
36

37 In addition, this Act requires the office of environmental  
38 quality control to review the effectiveness of these streamlining  
39 measures and the need for the continuation of the Waikiki  
40 trigger, and to report back to the legislature.  
41

42 SECTION 2. Chapter 343, Hawaii Revised Statutes, is amended  
43 by adding six new sections to be appropriately designated and to  
44 read as follows:  
45  
46



1           "§343-     Waikiki projects; concurrent processing; joint  
2 public hearings; streamlining duplicative applications. (a)  
3 This section shall apply only to Waikiki projects. Except as  
4 otherwise prohibited by law, nothing in this chapter shall  
5 prohibit:

- 6
- 7           (1) The submission of an environmental assessment or an  
8 environmental impact statement concurrently with the  
9 filing and processing of one or more permit  
10 applications with one or more state or city and county  
11 agencies, or both, with respect to a use within  
12 Waikiki;
- 13
- 14           (2) The holding of joint public hearings, or the holding of  
15 consecutive public hearings within a short time period,  
16 before one or more state or city and county agencies,  
17 or both, regarding the subject matter of a draft  
18 environmental assessment or a draft environmental  
19 impact statement and one or more permit applications  
20 with respect to a use within Waikiki; or
- 21
- 22           (3) Where applicable, using an environmental assessment or  
23 an environmental impact statement required by this  
24 chapter as a permit application or as the basis for a  
25 permit application before one or more state or city and  
26 county agencies, or both;

27

28 provided that a finding of no significant impact or acceptance of  
29 a required final statement under this chapter shall be a  
30 condition precedent to the approval of a permit and commencement  
31 of a proposed action within Waikiki.

32

33           (b) The use of concurrent processing, joint or consecutive  
34 public hearings, and other streamlining measures as provided in  
35 this section are encouraged for uses within Waikiki that require  
36 multiple permits in order to streamline the processing of  
37 duplicative documents and reduce permit processing time.

38

39           (c) All state and city and county permitting agencies, to  
40 the maximum extent feasible, shall:

- 41
- 42           (1) Seek to integrate the requirements of this chapter with  
43 planning and environmental review procedures otherwise  
44 required by law or local practice, so that the
- 45

1 streamlining measures specified in this section run  
2 concurrently, rather than consecutively; and

- 3  
4 (2) Devise methods by which the permitting process may be  
5 further streamlined and simplified so as to avoid  
6 duplication with the requirements of this chapter;

7  
8 provided that state and city and county agencies shall allot  
9 sufficient time for the review of environmental assessments and  
10 environmental impact statements for Waikiki projects to ensure  
11 that decision makers and members of the public have the  
12 opportunity for the meaningful review of and input into those  
13 projects, including their environmental, economic, social, and  
14 other impacts as required by this chapter, and for ways to  
15 mitigate those impacts.

16  
17 (d) It is the intent of the legislature that all persons  
18 and state and city and county agencies involved in the  
19 environmental review process relating to Waikiki shall be  
20 responsible for carrying out the process in the most efficient  
21 and expeditious manner possible in order to conserve available  
22 financial, governmental, physical, and social resources with the  
23 objective that those resources may be better applied toward the  
24 mitigation of the actual significant effects on the environment  
25 in Waikiki.

26  
27 §343- Waikiki projects; state-county cooperation.  
28 Whenever an Waikiki project is subject to both the requirements  
29 of this chapter and ordinances adopted by the city and county of  
30 Honolulu applicable to Waikiki that require an environmental  
31 assessment or environmental impact statement, city and county  
32 agencies are requested to cooperate with the office and state  
33 agencies to the fullest extent possible to reduce duplication  
34 between state and city and county requirements. Such  
35 cooperation, to the fullest extent possible, is requested to  
36 include joint environmental assessments or environmental impact  
37 statements, as appropriate, with concurrent public review and  
38 processing at both levels of government. Where this chapter has  
39 environmental assessment or environmental impact statement  
40 requirements in addition to but not in conflict with ordinances  
41 adopted by the city and county of Honolulu applicable to Waikiki  
42 having similar requirements, city and county agencies are  
43 requested to cooperate in fulfilling these requirements so that  
44 one document shall comply with all applicable laws.  
45  
46

1           §343-     Waikiki projects; functional equivalents;  
2 submission in lieu of environmental assessment or impact  
3 statement. (a) This section shall apply only to Waikiki  
4 projects. Except as otherwise provided in this section or any  
5 other law, when the regulatory program of a state or city and  
6 county agency requires a plan or other written documentation,  
7 containing environmental information and complying with  
8 subsection (d)(3), to be submitted in support of any activity  
9 listed in subsection (b), the plan or other written documentation  
10 may be submitted in lieu of the environmental assessment or  
11 environmental impact statement required by this chapter if the  
12 director has certified the regulatory program pursuant to this  
13 section.

14  
15           (b) This section applies only to regulatory programs or  
16 portions thereof with respect to Waikiki projects that involve  
17 either of the following:

18           (1) The issuance to a person of a lease, permit, license,  
19 certificate, or other entitlement for use; or

20  
21           (2) The adoption or approval of standards, rules, or plans  
22 for use in the regulatory program.  
23  
24

25           (c) A regulatory program certified pursuant to this section  
26 is exempt from preparing an environmental assessment or  
27 environmental impact statement, other than master environmental  
28 impact statements as provided in section 343- .  
29

30           (d) To qualify for certification pursuant to this section,  
31 a regulatory program shall require the utilization of an  
32 interdisciplinary approach that will ensure the integrated use of  
33 the natural and social sciences in decisionmaking and which shall  
34 meet all of the following criteria:

35  
36           (1) The enabling legislation of the regulatory program does  
37 both of the following:

38           (A) Includes protection of the environment among its  
39 principal purposes; and

40  
41           (B) Contains authority for the administering agency to  
42 adopt rules for the protection of the environment,  
43 guided by standards set forth in the enabling  
44 legislation;  
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- (2) The rules adopted by the administering agency for the regulatory program do all of the following:
  - (A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment;
  - (B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program;
  - (C) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity;
  - (D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process;
  - (E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the director. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office. Each list shall remain posted for a period of thirty days; and
  - (F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing; and
- (3) The plan or other written documentation required by the regulatory program does both of the following:

- 1 (A) Includes a description of the proposed activity  
2 with alternatives to the activity, and mitigation  
3 measures to minimize any significant adverse  
4 effect on the environment of the activity; and  
5
- 6 (B) Is available for a reasonable time for review and  
7 comment by other public agencies and the general  
8 public.  
9
- 10 (e) (1) The director shall certify a regulatory program  
11 which the director determines meets all the  
12 qualifications for certification set forth in this  
13 section, and withdraw certification on determination  
14 that the regulatory program has been altered so that it  
15 no longer meets those qualifications.  
16
- 17 (2) In determining whether or not a regulatory program  
18 meets the qualifications for certification set forth in  
19 this section, the inquiry of the director shall extend  
20 only to the the question of whether the regulatory program  
21 meets the generic requirements of subsection (d). The  
22 inquiry shall not extend to individual decisions to be  
23 reached under the regulatory program, including the  
24 nature of specific alternatives or mitigation measures  
25 which might be proposed to lessen any significant  
26 adverse effect on the environment of the activity.  
27
- 28 (3) If the director determines that the regulatory program  
29 submitted for certification does not meet the  
30 qualifications for certification set forth in this  
31 section, the director shall adopt findings setting  
32 forth the reasons for the determination.  
33
- 34 (f) After a regulatory program has been certified pursuant  
35 to this section, any proposed change in the program which could  
36 affect compliance with the qualifications for certification  
37 specified in subsection (d) may be submitted to the director for  
38 review and comment. The scope of the director's review shall  
39 extend only to the question of whether the regulatory program  
40 meets the generic requirements of subsection (d). The review  
41 shall not extend to individual decisions to be reached under the  
42 regulatory program, including specific alternatives or mitigation  
43 measures which might be proposed to lessen any significant  
44 adverse effect on the environment of the activity. The director  
45 shall have thirty days from the date of receipt of the proposed  
46

1 change to notify the state or city and county agency whether the  
2 proposed change will alter the regulatory program so that it no  
3 longer meets the qualification for certification established in  
4 this section and will result in a withdrawal of certification as  
5 provided in this section.

6  
7 (g) Any action or proceeding to attack, review, set aside,  
8 void, or annul a determination or decision of a state or city and  
9 county agency approving or adopting a proposed activity under a  
10 regulatory program which has been certified pursuant to this  
11 section on the basis that the plan or other written documentation  
12 prepared pursuant to subsection (d)(3) does not comply with this  
13 section shall be commenced not later than thirty days from the  
14 date of the filing of notice of the approval or adoption of the  
15 activity.

16  
17 (h) (1) Any action or proceeding to attack, review, set  
18 aside, void, or annual determination of the director to  
19 certify a regulatory program pursuant to this section  
20 on the basis that the regulatory program does not  
21 comply with this section shall be commenced within  
22 thirty days from the date of certification by the  
23 secretary.

24  
25 (2) In any action brought pursuant to paragraph (1), the  
26 inquiry shall extend only to whether there was a  
27 prejudicial abuse of discretion by the director. Abuse  
28 of discretion is established if the director has not  
29 proceeded in a manner required by law or if the  
30 determination is not supported by substantial evidence.

31  
32 §343- Waikiki master environmental impact statement. (a)  
33 A Waikiki master environmental impact statement may be prepared  
34 for any one of the following projects:

- 35  
36 (1) In conjunction with a development plan for Oahu's  
37 primary urban center, an amendment to that plan  
38 relating to Waikiki, or another specific master or  
39 regional plan relating to Waikiki;
- 40  
41 (2) A project that consists of smaller individual projects  
42 in Waikiki which will be carried out in phases;
- 43  
44 (3) A rule which will be implemented by subsequent projects  
45 in Waikiki;
- 46  
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- (4) Waikiki projects which will be carried out or approved pursuant to a development agreement;
- (5) Public or private Waikiki projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan for Waikiki;
- (6) A mass transit project for Waikiki which will be subject to multiple stages of review or approval;
- (7) A regional transportation plan or congestion management plan that includes Waikiki; or
- (8) Any other plan or project relating to Waikiki that the office finds appropriate.

(b) When a state or city and county agency prepares a Waikiki master environmental impact statement, the document shall include all of the following:

- (1) A detailed statement as required by this chapter and rules adopted pursuant to this chapter;
- (2) A description of anticipated subsequent Waikiki projects that would be within the scope of the Waikiki master environmental impact statement, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:
  - (A) The specific type of project anticipated to be undertaken;
  - (B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area;
  - (C) The anticipated location and alternative locations for any development projects; and
  - (D) A capital outlay or capital improvement program, or other scheduling or implementing device that

1 governs the submission and approval of subsequent  
2 projects; and  
3

- 4 (3) A description of potential impacts of anticipated  
5 subsequent projects for which there is not sufficient  
6 information reasonably available to support a full  
7 assessment of potential impacts in the Waikiki master  
8 environmental impact statement. This description shall  
9 not be construed as a limitation on the impacts which  
10 may be considered in a Waikiki focused environmental  
11 impact statement.  
12

13 (c) State and city and county agencies may develop and  
14 implement a fee program in accordance with applicable provisions  
15 of law to generate the revenue necessary to prepare a Waikiki  
16 master environmental impact statement.  
17

18 (d) The preparation and certification of a Waikiki master  
19 environmental impact statement, if prepared and certified  
20 consistent with this section, may allow for the limited review of  
21 subsequent projects that were described in the Waikiki master  
22 environmental impact statement as being within the scope of the  
23 statement, in accordance with the following requirements:  
24

- 25 (1) The lead agency for a subsequent project shall be the  
26 lead agency or any responsible agency identified in the  
27 Waikiki master environmental impact statement;  
28
- 29 (2) The lead agency shall prepare an initial study on any  
30 proposed subsequent project. This initial study shall  
31 analyze whether the subsequent project may cause any  
32 significant effect on the environment that was not  
33 examined in the Waikiki master environmental impact  
34 statement and whether the subsequent project was  
35 described in the Waikiki master environmental impact  
36 statement as being within the scope of the statement;  
37
- 38 (3) If the lead agency, based on the initial study,  
39 determines that a proposed subsequent project will have  
40 no additional significant effect on the environment  
41 that was not identified in the Waikiki master  
42 environmental impact statement and that no new or  
43 additional mitigation measures or alternatives may be  
44 required, the lead agency shall make a written finding  
45 based upon the information contained in the initial  
46



1 study that the subsequent project is within the scope  
2 of the project covered by the Waikiki master  
3 environmental impact statement. No new environmental  
4 document nor findings shall be required. Prior to  
5 approving or carrying out the proposed subsequent  
6 project, the lead agency shall provide notice of this  
7 fact and incorporate all feasible mitigation measures  
8 or feasible alternatives set forth in the Waikiki  
9 master environmental impact statement which are  
10 appropriate to the project. Whenever a lead agency  
11 approves or determines to carry out any subsequent  
12 project pursuant to this section, it shall file a  
13 notice pursuant to section 343-3; and  
14

- 15 (4) Where a lead agency cannot make the findings required  
16 in paragraph (3), the lead agency shall prepare either  
17 a mitigated finding of no significant impact or  
18 environmental impact statement pursuant to subsection  
19 (e).  
20

21 (e) A proposed mitigated finding of no significant impact  
22 shall be prepared for any proposed subsequent project if both of  
23 the following occur:  
24

- 25 (1) An initial study has identified potentially new or  
26 additional significant effects on the environment that  
27 were not analyzed in the Waikiki master environmental  
28 impact statement; and  
29
- 30 (2) Feasible mitigation measures or alternatives will be  
31 incorporated to revise the proposed subsequent project,  
32 before the finding of no significant impact is released  
33 for public review, in order to avoid the effects or  
34 mitigate the effects to a point where clearly no  
35 significant effect on the environment will occur.  
36

37 If there is substantial evidence in light of the whole record  
38 before the lead agency that the proposed subsequent project may  
39 have a significant effect on the environment and a mitigated  
40 finding of no significant impact is not prepared, the lead agency  
41 shall prepare an environmental impact statement or a Waikiki  
42 focused environmental impact statement pursuant to section  
43 343- .  
44  
45

1 (f) The Waikiki master environmental impact statement shall  
2 not be used for the purposes of this chapter if the certification  
3 of the report occurred more than five years prior to the filing  
4 of an application for the subsequent project, or if the approval  
5 of a project that was not described in the report may affect the  
6 adequacy of the environmental review in the report for any  
7 subsequent project, unless the lead agency reviews the adequacy  
8 of the Waikiki master environmental impact statement and does  
9 either of the following:

- 10
- 11 (1) Finds that no substantial changes have occurred with  
12 respect to the circumstances under which the Waikiki  
13 master environmental impact statement was certified or  
14 that no new information, which was not known and could  
15 not have been known at the time that the Waikiki master  
16 environmental impact statement was certified as  
17 complete, has become available; or  
18
  - 19 (2) Certifies a subsequent or supplemental environmental  
20 impact statement which has been either incorporated  
21 into the previously certified Waikiki master  
22 environmental impact statement or references any  
23 deletions, additions, or any other modifications to the  
24 previously certified Waikiki master environmental  
25 impact statement.  
26

27 §343- Waikiki focused environmental impact statement.

28 (a) A Waikiki focused environmental impact statement is an  
29 environmental impact statement on a subsequent project identified  
30 in the Waikiki master environmental impact statement. A focused  
31 environmental impact statement may be utilized only if the lead  
32 agency finds that the analysis in the master environmental impact  
33 statement of cumulative impacts, growth inducing impacts, and  
34 irreversible significant effects on the environment is adequate  
35 for the subsequent project. The Waikiki focused environmental  
36 impact statement shall incorporate, by reference, the Waikiki  
37 master environmental impact statement and analyze only the  
38 subsequent project's additional significant effects on the  
39 environment, as defined in subdivision (d), and any new or  
40 additional mitigation measures or alternatives that were not  
41 identified and analyzed by the Waikiki master environmental  
42 impact statement.  
43  
44

1 (b) The Waikiki focused environmental impact statement need  
2 not examine those effects which the lead agency finds were one of  
3 the following:

- 4
- 5 (1) Mitigated or avoided as a result of mitigation measures  
6 identified in the Waikiki master environmental impact  
7 statement which will be required as part of the  
8 approval of the subsequent project; or  
9
  - 10 (2) Examined at a sufficient level of detail in the Waikiki  
11 master environmental impact statement to enable those  
12 significant environmental effects to be mitigated or  
13 avoided by specific revisions to the project, the  
14 imposition of conditions, or by other means in  
15 connection with the approval of the subsequent project.  
16

17 (c) A Waikiki focused environmental impact statement on any  
18 subsequent project shall analyze any significant effects on the  
19 environment where substantial new or additional information shows  
20 that the adverse environmental impact may be more significant  
21 than was described in the Waikiki master environmental impact  
22 statement. The substantial new or additional information may  
23 also show that mitigation measures or alternatives identified in  
24 the Waikiki master environmental impact statement, which were  
25 previously determined to be infeasible, are feasible and will  
26 avoid or reduce the significant effects on the environment of the  
27 subsequent project to a level of insignificance.  
28

29 (d) Nothing in this chapter is intended to limit or abridge  
30 the ability of a lead agency to focus upon the issues that are  
31 ripe for decision at each level of environmental review, or to  
32 exclude duplicative analysis of environmental effects examined in  
33 previous environmental impact statements.  
34

35 §343- Waikiki environmental impact database. The office,  
36 in cooperation with the city and county department of planning  
37 and permitting, shall establish and continuously update a  
38 database for Waikiki projects that incorporates all relevant  
39 environmental and land use information relating to Waikiki  
40 derived from both new and previously prepared environmental  
41 impact statements and findings of no significant impact relating  
42 to Waikiki projects in order to:  
43  
44

- 1 (1) Reduce delay and duplication in the preparation of  
2 subsequent environmental impact statements relating to  
3 Waikiki; or  
4  
5 (2) Make subsequent or supplemental environmental  
6 determinations regarding Waikiki."  
7

8 SECTION 3. Section 343-2, Hawaii Revised Statutes, is  
9 amended by adding six new definitions to be appropriately  
10 inserted and to read as follows:  
11

12 "Additional significant effects on the environment" means  
13 those project specific effects on the environment which were not  
14 addressed as significant effects on the environment in the  
15 Waikiki master environmental impact statement.  
16

17 "City and county" means the city and county of Honolulu.  
18

19 "Director" means the director of environmental quality  
20 control.  
21

22 "Major use" means any use in Waikiki for which the city and  
23 county of Honolulu requires a major permit as provided by  
24 ordinance.  
25

26 "Waikiki" means the area of Oahu whose boundaries are  
27 delineated in the city and county of Honolulu land use ordinance  
28 establishing the Waikiki Special District.  
29

30 "Waikiki project" means any proposed development, project,  
31 activity, or other use in Waikiki for which one or more permits  
32 may be necessary from the State or city and county."  
33

34 SECTION 4. Section 343-5, Hawaii Revised Statutes, is  
35 amended by amending subsection (a) to read as follows:  
36

37 "(a) Except as otherwise provided, an environmental  
38 assessment shall be required for actions which:  
39

- 40 (1) Propose the use of state or county lands or the use of  
41 state or county funds, other than funds to be used for  
42 feasibility or planning studies for possible future  
43 programs or projects which the agency has not approved,  
44 adopted, or funded, or funds to be used for the  
45 acquisition of unimproved real property; provided that  
46

1 the agency shall consider environmental factors and  
2 available alternatives in its feasibility or planning  
3 studies;

- 4
- 5 (2) Propose any use within any land classified as  
6 conservation district by the state land use commission  
7 under chapter 205;  
8
- 9 (3) Propose any use within the shoreline area as defined in  
10 section 205A-41;  
11
- 12 (4) Propose any use within any historic site as designated  
13 in the National Register or Hawaii Register as provided  
14 for in the Historic Preservation Act of 1966, Public  
15 Law 89-665, or chapter 6E;  
16
- 17 (5) Propose any major use within [the] Waikiki [area of  
18 Oahu, the boundaries of which are delineated in the  
19 land use ordinance as amended, establishing the  
20 "Waikiki Special District"];
- 21
- 22 (6) Propose any amendments to existing county general plans  
23 where such amendment would result in designations other  
24 than agriculture, conservation, or preservation, except  
25 actions proposing any new county general plan or  
26 amendments to any existing county general plan  
27 initiated by a county;  
28
- 29 (7) Propose any reclassification of any land classified as  
30 conservation district by the state land use commission  
31 under chapter 205; and

32

33 [[] (8) []] Propose the construction of new, or the expansion or  
34 modification of existing helicopter facilities within  
35 the State which by way of their activities may affect  
36 any land classified as conservation district by the  
37 state land use commission under chapter 205; the  
38 shoreline area as defined in section 205A-41; or, any  
39 historic site as designated in the National Register or  
40 Hawaii Register as provided for in the Historic  
41 Preservation Act of 1966, Public Law 89-665, or chapter  
42 6E; or, until the statewide historic places inventory  
43 is completed, any historic site found by a field  
44 reconnaissance of the area affected by the helicopter  
45 facility and which is under consideration for placement  
46

1                   on the National Register or the Hawaii Register of  
2                   Historic Places."

3  
4                   SECTION 5. The office of environmental quality control  
5 shall study the changes made by this Act to the environmental  
6 impact statement law as it applies to proposed developments in  
7 Waikiki, including recommendations regarding whether to retain  
8 the "Waikiki trigger" in section 343-5(a)(5), Hawaii Revised  
9 Statutes, and report its findings and recommendations, including  
10 any proposed implementing legislation, to the Legislature no  
11 later than twenty days before the convening of the regular  
12 session of 2004.

13  
14                   SECTION 6. Statutory material to be repealed is bracketed.  
15 New statutory material is underscored.

16  
17                   SECTION 7. This Act shall take effect on July 1, 1999;  
18 provided that on July 1, 2004, this Act shall be repealed, and  
19 section 343-5(a), Hawaii Revised Statutes, is reenacted in the  
20 form in which it read on June 30, 1999.

21  
22                   SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

Appendix R

REPORT TITLE:

Coastal Zone Mgmt; Waikiki

DESCRIPTION:

Amends Hawaii's coastal zone management law to expedite and streamline the process of issuing special management area use and minor permits and of obtaining all other concurrently required permits or approvals from other state and city and county agencies for proposed developments in Waikiki.



.B. NO.

RELATING TO COASTAL ZONE MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to amend Hawaii's  
2 coastal zone management law to expedite and streamline the  
3 process of issuing special management area use and minor permits  
4 and of obtaining all other concurrently required permits or  
5 approvals from other state and city and county agencies for  
6 proposed developments in Waikiki. This Act seeks to achieve  
7 these objectives by establishing a coordinated coastal permitting  
8 process for Waikiki, similar to that established in Louisiana's  
9 coastal zone management law, and by eliminating the statutory  
10 dollar threshold of \$125,000 for special management area permits  
11 for Waikiki.

12  
13 The legislature finds that while this dollar threshold  
14 provides a degree of certainty regarding which projects are  
15 covered under the coastal zone management law, it is nevertheless  
16 a relatively arbitrary figure that is set too low for Waikiki  
17 projects. This Act therefore eliminates the statutory dollar  
18 threshold for Waikiki projects, but allows for the setting of a  
19 dollar figure and other relevant criteria for Waikiki  
20 developments, including a list of permissible activities,  
21 pursuant to administrative rules, which will provide a greater  
22 degree of flexibility in granting permits and give greater  
23 discretion to the city and county of Honolulu in dealing with  
24 projects to approve or deny.

25  
26 SECTION 2. Chapter 205A, Hawaii Revised Statutes, is  
27 amended by adding a new section to be appropriately designated  
28 and to read as follows:

29  
30 "§205A- Coordinated coastal permitting process; Waikiki.  
31 (a) This section is intended to expedite and streamline the  
32 process of:

- 33  
34 (1) Issuing special management area use and minor permits  
35 for proposed developments in Waikiki; and  
36  
37 (2) Obtaining all other concurrently required permits or  
38 approvals from other state and city and county agencies  
39

1           having separate regulatory jurisdiction over uses of  
2           the special management area in Waikiki without  
3           impinging on the regulatory jurisdiction or authority  
4           of those other governmental bodies.  
5

6           (b) In order to implement the intent specified in  
7           subsection (a), by July 1, 2000, the lead agency and all other  
8           state and city and county agencies having regulatory jurisdiction  
9           or other authority over uses of the special management area in  
10          Waikiki, in cooperation with one another and under the direction  
11          of the lead agency, shall establish a coordinated coastal  
12          permitting process by means of binding interagency agreements in  
13          which:  
14

- 15           (1) One application form serves as the master application  
16           form for all required permits or approvals from all  
17           state and city and county agencies taking part in the  
18           coordinated coastal permitting process;  
19
- 20           (2) The master application contains sufficient information  
21           so that all necessary reviews by all affected state and  
22           city and county agencies can be expeditiously carried  
23           out;  
24
- 25           (3) A "one window" system for master applications is  
26           established, with copies of the master application  
27           being transmitted to all state and city and county  
28           agencies taking part in the coordinated coastal  
29           permitting process;  
30
- 31           (4) Only one public hearing, if any, need be held on the  
32           master application. Any public hearing held shall be  
33           deemed to serve for all state and city and county  
34           agencies taking part in the coordinated coastal  
35           permitting process; and  
36
- 37           (5) The shortest practicable period for review of master  
38           applications by all state and city and county agencies  
39           taking part in the coordinated coastal permitting  
40           process.  
41

42          (c) Except as otherwise provided in this section, the  
43          coordinated coastal permitting process shall not affect the  
44          powers, duties, or functions of any state or city and county  
45          agency.  
46  
47

1 (d) The lead agency and other affected state and city and  
2 county agencies shall work in cooperation with federal agencies  
3 to the fullest extent possible to include federal agencies in the  
4 coordinated coastal permitting process as may be practicable,  
5 including the use of a master application to reduce duplication  
6 between federal, state, and city and county requirements, and  
7 concurrent public review and processing at each level of  
8 government.  
9

10 (e) After the coordinated coastal permitting process is  
11 established as provided in this section, the lead agency shall  
12 administer and implement and may modify that process in  
13 accordance with this section.  
14

15 (f) The lead agency shall submit an annual report to the  
16 governor and legislature regarding the coordinated coastal  
17 permitting process, including recommendations for the need for  
18 any additional legislation to improve or further streamline the  
19 process, while ensuring the opportunity for meaningful public  
20 input and that the objectives, policies, and guidelines of the  
21 coastal zone management are maintained."  
22

23 SECTION 3. Section 205A-1, Hawaii Revised Statutes, is  
24 amended by adding three new definitions to be appropriately  
25 inserted and to read as follows:  
26

27 "City and county" means the city and county of Honolulu.  
28

29 "Coordinated coastal permitting process" means the  
30 streamlining process for proposed developments in the special  
31 management area in Waikiki as provided in section 205A- .  
32

33 "Waikiki" means the area of Oahu whose boundaries are  
34 delineated in the city and county of Honolulu land use ordinance  
35 establishing the Waikiki Special District."  
36

37 SECTION 4. Section 205A-22, Hawaii Revised Statutes, is  
38 amended by amending the definition of "" to read as follows:  
39

40 "Special management area minor permit", with respect to  
41 development in areas outside of the special management area of  
42 Waikiki, means an action by the authority authorizing development  
43 the valuation of which is not in excess of \$125,000 and which has  
44 no substantial adverse environmental or ecological effect, taking  
45 into account potential cumulative effects. For developments  
46

1 within the special management area of Waikiki, "special  
2 management area minor permit" means an action by the authority  
3 authorizing development which has no substantial adverse  
4 environmental or ecological effect, taking into account potential  
5 cumulative effects, and will not exceed criteria established in  
6 rules adopted by the lead agency pursuant to chapter 91. These  
7 criteria may include a dollar threshold for Waikiki developments,  
8 a list of permissible activities in Waikiki, and other areas  
9 deemed appropriate by the lead agency.

10  
11 "Special management area use permit", with respect to  
12 development in areas outside of the special management area of  
13 Waikiki, means an action by the authority authorizing development  
14 the valuation of which exceeds \$125,000 or which may have a  
15 substantial adverse environmental or ecological effect, taking  
16 into account potential cumulative effects. For developments  
17 within the special management area of Waikiki, "special  
18 management area use permit" means an action by the authority  
19 authorizing development which may have a substantial adverse  
20 environmental or ecological effect, taking into account potential  
21 cumulative effects, and will exceed criteria established in rules  
22 adopted by the lead agency pursuant to chapter 91. These  
23 criteria may include a dollar threshold for Waikiki developments,  
24 a list of permissible activities in Waikiki, and other areas  
25 deemed appropriate by the lead agency."  
26

27 SECTION 5. Before the implementation of the coordinated  
28 coastal permitting process as provided in this Act, the office of  
29 planning may develop interim interagency agreements with  
30 respective state and city and county agencies to coordinate  
31 permit handling, decision making, and appeals procedures. The  
32 office of planning shall study the effect of the amendments made  
33 in this Act relating to developments in Waikiki's special  
34 management area, and suggest ways to further streamline the  
35 coastal zone management law to assist in Waikiki's economic  
36 revitalization while continuing to protect Waikiki's coastal  
37 natural environment, provided that any such amendments do not  
38 result in decertification from the federal coastal zone  
39 management program. The office shall report its findings and  
40 recommendations, including any proposed implementing legislation,  
41 to the legislature no later than twenty days before the convening  
42 of the regular session of 2000.

43  
44 SECTION 6. It is the intent of this Act not to jeopardize  
45 the receipt of any federal aid nor to impair the obligation of  
46

1 the State or any agency thereof to the holders of any bond issued  
2 by the State or by any such agency, and to the extent, and only  
3 to the extent, necessary to effectuate this intent, the governor  
4 may modify the strict provisions of this Act, but shall promptly  
5 report any such modification with reasons therefor to the  
6 legislature at its next session thereafter for review by the  
7 legislature.

8  
9 SECTION 7. Statutory material to be repealed is bracketed.  
10 New statutory material is underscored.

11  
12 SECTION 8. This Act shall take effect upon its approval.

13  
14 INTRODUCED BY: \_\_\_\_\_

Appendix S

REPORT TITLE:

Regulatory Process; Approval

DESCRIPTION:

Establishes a separate automatic permit approval process for proposed Waikiki development projects. Adds more specific requirements regarding the completeness of applications and additional exemptions to extend time limits, and provides for an expedited appeals process for the timely resolution of disputes.

1  
2  
3 RELATING TO REGULATORY PROCESSES.  
4  
5  
6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:  
8

9 SECTION 1. The legislature finds that there is a need to  
10 amend Act 164, Session Laws of Hawaii 1998, as it applies to  
11 proposed developments in Waikiki for long-term streamlining  
12 purposes.  
13

14 Act 164 was enacted to implement the regulatory process  
15 recommendations of the Economic Revitalization Task Force which  
16 was convened by the governor, the president of the senate, and  
17 the speaker of the house of representatives. That Act required  
18 the establishment of maximum time periods for the review and  
19 approval of all business and development-related permit approvals  
20 and licenses. Issuing agencies would be required to review  
21 applications for completeness in a timely manner and then to act  
22 upon the applications within an established time frame, or  
23 application approval would be automatic.  
24

25 In enacting that Act, the legislature recognized the need to  
26 take constructive steps to improve Hawaii's business climate and  
27 streamline the often lengthy and duplicative nature of the  
28 State's permitting process, and send a strong signal to the  
29 business community of the State's intent to improve the overall  
30 regulatory climate. The intent of that Act, as stated in section  
31 1 of Act 164, was that requiring maximum review and approval time  
32 periods would serve to provide all parties with a greater level  
33 of certainty of the time required for review and final  
34 determination by an agency on any application for a business or  
35 development-related permit, license, or approval.  
36

37 The legislature finds that this Act may lead to unintended  
38 consequences in certain cases. For example, a default judgment  
39 in favor of approval of an application can be forced under Act  
40 164 if a board member comes to a board meeting to establish a  
41 quorum, but later either leaves before the permit is voted on or  
42 declares a conflict of interest. At that point there is no  
43 longer a quorum, and the permit is automatically approved.  
44 Approving controversial projects without adequate review may  
45 leave the community "stuck" with an unwanted development for  
46 years to come.  
47  
48



1 The legislature further finds that while adding certain time  
2 extensions to the automatic approval provisions for Waikiki may  
3 have the overall short-term effect of decreasing streamlining for  
4 Waikiki, the long-term effect will be increased streamlining for  
5 that district. For example, adding an extension for contested  
6 case hearings may delay permit approval until after completion of  
7 the administrative and judicial processes. However, failure to  
8 allow an extension for contested cases may result in the  
9 automatic approval of a permit in violation of an applicant's due  
10 process rights, which may lead to a law suit in addition to a  
11 subsequent contested case hearing. The added time delays,  
12 increased complexity, and substantial costs associated with  
13 additional litigation will substantially decrease streamlining in  
14 the long run.

15  
16 Accordingly, the purpose of this Act is to establish a  
17 modified automatic permit approval provision that is applicable  
18 only to Waikiki. While this Act retains Act 164's automatic  
19 permit approval provisions, it seeks to provide greater  
20 flexibility in the permitting process by adding more specific  
21 requirements regarding the completeness of applications, adding  
22 additional exemptions to extend time limits, and providing for an  
23 expedited appeals process for the timely resolution of disputes  
24 arising out of this Act.

25  
26 SECTION 2. Chapter 91, Hawaii Revised Statutes, is amended  
27 by adding a new section to be appropriately designated and to  
28 read as follows:

29  
30 "§91- Maximum time period for business or development-  
31 related permits, licenses, or approvals for proposed development  
32 projects located in Waikiki; automatic approval; extensions. (a)  
33 As used in this section, unless the context clearly requires  
34 otherwise:

35  
36 "Application for a business or development-related permit,  
37 license, or approval" means any state or county application,  
38 petition, permit, license, certificate, or any other form of a  
39 request for approval required by law to be obtained prior to the  
40 formation, operation, or expansion of a commercial or industrial  
41 enterprise, or for any permit, license, certificate, or any form  
42 of approval required under sections 46-4, 46-4.2, 46-4.5, 46-5,  
43 and chapters 183C, 205, 205A, 340A, 340B, 340E, 340F, 342B, 342C,  
44 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P.

45  
46

1 "City and county" means the city and county of Honolulu.

2  
3 "Waikiki" means the area of Oahu whose boundaries are  
4 delineated in the city and county of Honolulu land use ordinance  
5 establishing the Waikiki Special District.

6  
7 (b) This section shall apply only to proposed development  
8 projects located in Waikiki initiated after July 1, 1999.  
9 Section 91-13.5 shall not apply to development projects in  
10 Waikiki initiated after that date.

11  
12 (c) Unless otherwise provided by law, an agency shall adopt  
13 rules that specify:

14  
15 (1) A maximum time period dating from the receipt of a  
16 permit application within which the agency must either  
17 inform the applicant, in writing, that the application  
18 is complete and accepted for filing, or that the  
19 application is deficient and what specific information  
20 is necessary to make the application complete; and

21  
22 (2) A maximum time period dating from the filing of a  
23 completed application within which the agency must  
24 reach a permit decision to grant or deny a business or  
25 development-related permit, license, or approval;

26  
27 provided that the application is not subject to state  
28 administered permit programs delegated, authorized, or approved  
29 under federal law.

30  
31 (d) All issuing agencies shall clearly articulate  
32 informational requirements for applications and review  
33 applications for completeness in a timely manner. An application  
34 is deemed to be complete for purposes of this section:

35  
36 (1) When it meets the procedural submission requirements of  
37 the issuing agency and is sufficient for continued  
38 processing even though additional information may be  
39 required or project modifications may be undertaken  
40 subsequently. The determination of completeness shall  
41 not preclude the issuing agency from requesting  
42 additional information or studies either at the time of  
43 the notice of completeness or subsequently if new  
44 information is required or substantial changes in the  
45 proposed action occur; or  
46  
47

1 (2) If the issuing agency does not provide a written  
2 determination to the applicant that the application is  
3 incomplete within the time period specified in  
4 subsection (c)(1).  
5

6 (d) Except as provided in subsection (e), all issuing  
7 agencies shall take action to grant or deny any application that  
8 has been completed to the satisfaction of the agency for a  
9 business or development-related permit, license, or approval with  
10 respect to a development project located in Waikiki within the  
11 established maximum period of time, or the application shall be  
12 deemed approved.  
13

14 (e) Notwithstanding any law to the contrary, the maximum  
15 period of time established pursuant to this section shall be  
16 extended for a reasonable time period:  
17

18 (1) In the event of a national disaster, state emergency,  
19 or union strike, which would prevent the applicant, the  
20 agency, or the department from fulfilling application  
21 or review requirements;  
22

23 (2) For multiple permits being considered as part of a  
24 state or city and county consolidated permit review  
25 process. Nothing in this section shall prohibit the  
26 state, the city and county, or both, from establishing  
27 by ordinance or rule a consolidated permit review  
28 process that may provide for different procedures and  
29 time limits for different categories of permits;  
30

31 (3) For any period during which the applicant has been  
32 requested by the agency to correct plans, perform  
33 required studies, or provide other additional required  
34 information. If the agency determines that the  
35 information submitted by the applicant is insufficient,  
36 it shall notify the applicant of the deficiencies and  
37 the period shall be further extended until all required  
38 information has been provided by the applicant;  
39

40 (4) For any period during which:

41  
42 (A) An environmental impact statement is being  
43 prepared following a determination that the  
44 proposed action in Waikiki may have a significant  
45

1 effect on the environment pursuant to section  
2 343-5(b) or (c);  
3

4 (B) If the government of the city and county, by  
5 ordinance or resolution, has established time  
6 periods for completion of environmental impact  
7 statements; or  
8

9 (C) If the agency and applicant agree in writing to a  
10 time period for completion of an environmental  
11 impact statement;  
12

13 (5) When a contested case hearing is requested pursuant to  
14 chapter 91, and for any other period for administrative  
15 or judicial appeals and review;  
16

17 (6) For any period of time mutually agreed upon by the  
18 applicant and the issuing agency. Nothing in this  
19 section shall prohibit an applicant and an agency from  
20 mutually agreeing to an extension of any time limit  
21 required by this section or rules adopted pursuant to  
22 this section;  
23

24 (7) For any period of time in which any agency is unable to  
25 maintain a quorum for any reason, if that agency is  
26 required to maintain a quorum before making any  
27 official decisions, including approving or denying a  
28 business or development-related permit, license, or  
29 approval;  
30

31 (8) If the agency has good cause for exceeding the maximum  
32 period of time under either of the following  
33 circumstances:  
34

35 (A) The number of permits to be processed exceeds by  
36 fifteen per cent the number processed in the same  
37 calendar quarter the preceding year; or  
38

39 (B) The permit-issuing agency must rely on another  
40 public or private entity for all or part of the  
41 processing and the delay is caused by that other  
42 entity; or  
43  
44

1 (9) If any other compelling circumstances justify  
2 additional time and the project applicant consents to  
3 that extension.  
4

5 (f) The director or other head of each agency shall adopt  
6 rules pursuant to this chapter to establish an expedited appeal  
7 process by which an applicant may appeal directly to the director  
8 or other agency head for a timely resolution of any dispute  
9 arising from a violation of the time periods required by this  
10 section. The rules shall provide for the full reimbursement of  
11 all filing fees paid by a permit applicant whose application was  
12 not processed within the time limits adopted by an agency  
13 pursuant to this section, and whose appeal was decided in the  
14 applicant's favor. The appeal shall be decided in the  
15 applicant's favor if the agency has exceeded its established time  
16 period for issuance or denial of the permit and the agency has  
17 failed to establish good cause for exceeding the time period  
18 pursuant to subsection (e)(7). Information regarding the appeal  
19 process shall be included in permit application forms issued by  
20 the agency.  
21

22 (g) Each director or other agency head shall submit annual  
23 reports, on or before January 31 of each year, to the governor  
24 and the legislature, which shall include the following:  
25

- 26 (1) The time periods required by this section for each  
27 permit issued by their agency, specifying any  
28 modifications or additions;  
29
- 30 (2) The median, minimum, and maximum times for processing  
31 permits, from receipt of the initial application to the  
32 final permit decision, for each permit issued by their  
33 agency;  
34
- 35 (3) A description of the appeal process required by  
36 subsection (f) and a summary of the number and  
37 disposition of appeals received by the agency during  
38 the preceding calendar year; and  
39
- 40 (4) Any recommendations, including proposed administrative  
41 solutions or legislation, if applicable, to improve the  
42 functioning of this law that would assist in  
43 streamlining the permit application process, including  
44 reducing the time needed to process applications and  
45 removing duplicative paperwork."  
46  
47

1           SECTION 3. It is the intent of this Act not to jeopardize  
2 the receipt of any federal aid nor to impair the obligation of  
3 the State or any agency thereof to the holders of any bond issued  
4 by the State or by any such agency, and to the extent, and only  
5 to the extent, necessary to effectuate this intent, the governor  
6 may modify the strict provisions of this Act, but shall promptly  
7 report any such modification with reasons therefor to the  
8 legislature at its next session thereafter for review by the  
9 legislature.

10  
11           SECTION 4. If any provision of this Act, or the application  
12 thereof to any person or circumstance is held invalid, the  
13 invalidity does not affect other provisions or applications of  
14 the Act which can be given effect without the invalid provision  
15 or application, and to this end the provisions of this Act are  
16 severable.

17  
18           SECTION 5. New statutory material is underscored.

19  
20           SECTION 6. This Act shall take effect on July 1, 1999.

INTRODUCED BY: \_\_\_\_\_