

OVERVIEW

Performance Audit on the State Administration's Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai'i Environmental Impact Statements Law: Phase II Report No. 08-11, December 2008

Summary

We conducted the second phase of this performance audit in response to Act 2, Second Special Session Laws of Hawai'i 2007. The audit examines the state administration's actions against the requirements of the Hawai'i Environmental Impact Statements (EIS) law, Chapter 343, Hawai'i Revised Statutes. The audit reviewed the State's actions in not considering potential secondary environmental impacts of the harbor improvements prior to granting the exemption from these requirements. The Phase I report, Report No. 08-09, was issued in April 2008.

We found that with the impending arrival of Hawai'i Superferry, Inc., the Department of Transportation (DOT) in 2004 and 2005 reversed a long-standing policy of not providing additional pier-side equipment for harbor users. State officials ignored the recommendations of their technical staff, setting off a chain of events that culminated in the selection of inadequate harbor improvement systems. Moreover, the DOT's passive approach to the issue of addressing secondary or cumulative effects was made possible by a combination of flawed or unclear EIS laws and rules.

Saddled with a deadline imposed by Hawai'i Superferry and supported by administration officials, DOT technical staff implemented the only harbor improvement system that could meet their time horizon, a combination of barges and ramps, which was not their preferred choice. The state-funded \$38.5 million harbor improvement system has proved to be problematic, best exemplified by Kahului Harbor's barge, which is continually battered by high winds and waves. Not only have the barge and pier incurred more than \$3 million in damages (the liability of which has yet to be determined), the barge also requires the services of a tug boat to secure it to the pier during ferry operations. Like the barge and pier damage, responsibility for this significant extra expense has yet to be determined.

But the State has a larger and more expensive challenge over the horizon. Last summer, Hawai'i Superferry officials announced that they will be outfitting their second ship with an onboard ramp, a feature that eliminates the need for the \$10 million barge-and-ramp system at Kawaihae Harbor and the \$2.5 million ramp at Nāwiliwili Harbor, both built to accommodate Hawai'i Superferry and no other users. If company officials choose to retrofit their first ship, the *Alakai*, with a loading ramp, the State's entire \$38.5 million barge-and-ramp system would quickly become unnecessary. Because the barges were designed specifically for Hawai'i Superferry use, they cannot be repurposed in their present configuration by other harbor users. In addition, since they were built in China and are therefore prohibited from transporting cargo within U.S. waters, the barges may have little



use for potential buyers. This situation would have been avoided if state officials had required Hawai'i Superferry to carry an onboard ramp in the first place.

We also found that the legislation on behalf of Hawai'i Superferry compromised the State's environmental laws and set a worrisome precedent for future government accommodation that puts the interests of a single business before the State's environmental, fiduciary, and public safety responsibilities.

Recommendations and Response

Our recommendations are designed to address the flawed or unclear EIS law and rules. The Office of Environmental Quality Control in the Department of Health should establish guidelines, including a checklist for agencies to ensure that all of the steps required by the rules have been properly addressed and documented before according an exemption.

The Environmental Council should establish a process to provide guidance to agencies in determining whether an action is projected to have a significant environmental impact which would make an exemption inapplicable; amend the EIS rules to ensure the OEQC provides training to state and county agencies; clarify the agency consultation process regarding proposed exempted actions; and establish clear definitions of cumulative and secondary impacts in regards to water carrier operations and the scope of their coverage.

Finally, we recommend the DOT Harbors Division investigate options for a new barge mooring and fender system for the Kahului pier, determine responsibility for barge maintenance, and resolve financial liability issues over damage and unplanned expenses such as tug services.

The DOT response sidesteps many of the issues and challenges some wording. But most of the language came from documents from the department.

The department disagreed that on-board loading ramps would render the State's \$38.5 million barge-and-ramp system unnecessary. Yet, the ferries' shipbuilder as well as ferry officials have declared that on-board ramps would avoid the use of the problematic barges.

After a careful review and consideration of the department's comments, we made minor changes and clarifications to our report, none of which affected our findings and conclusions.

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