



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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Governor

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Joseph Shacat

Vice Chair  
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(Ex Officio)

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Stephanie Dunbar-Co  
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Robert Parsons  
Charles Prentiss  
Ron Terry  
Puananionaona Thoene  
Michael Tulang  
N. Mahina Tuteur

State of Hawai'i Environmental Council  
Tuesday, October 31, 2017, 10:00 AM - 3:00 PM

Hawai'i State Capitol  
Room 325, 415 South Beretania Street, Honolulu, Hawaii 96813

## Members Present:

Roy Abe, Mary Begier, Scott Glenn, Maka'ala Ka'umoana, I. Robin Kaye,  
Theresita Kinnaman, Charles Prentiss, Joseph Shacat, Ronald Terry,  
Puananionaona Thoene, Michael Tulang, Mahina Tuteur

## Members Absent:

Stephanie Dunbar-Co, P. Ka'anohi Kaleikini, Robert Parsons

## EC Counsel:

Diane Agor, Deputy Attorney General  
Edward Bohlen, Deputy Attorney General

## OEQC Staff:

Charlotte Needham, Leslie Segundo  
Christina Lizzi (University of Hawai'i Legal Assistant)

## Public:

Representative Chris Lee  
Robert Miyasaki, Department of Transportation  
John White, Operating Engineers Industry Stabilization Fund  
Annie Macapagal, Watanabe Ing  
Bridget Hammerquist, Friends of Māhā'ulepū  
Eileen Kechloian, Friends of Māhā'ulepū  
Marti Townsend, Sierra Club  
Kimiko LaHaela-Walter, Sierra Club  
Tyler Dos Santos-Tam, Hawai'i Construction Alliance  
Shannon Alivado, General Contractors Association  
Mark Fox, The Nature Conservancy  
Bianca Isaki, KAHEA  
John Williamson, Ulupono Initiative  
Harold Nood, Ulupono Initiative  
Denise Antolini, William S. Richardson School of Law

1. Call to order, roll call and quorum, introductions
  - a. Chair Shacat called the meeting to order at 10:01 AM.
  - b. Chair Shacat thanked Representative Lee for attending, welcomed Deputy Attorney General Edward Bohlen, and bid aloha to Deputy Attorney General Diane Agor.
  - c. Comments on Version 0.2 continued to be submitted after October 20 but they were not ready for distribution today. OEQC will consolidate all received comments on the various versions into a section on its webpage at <http://health.hawaii.gov/oeqc/rules-update>.

2. Review and approval of prior meeting minutes
  - a. Meeting held on October 18, 2017
    - i. Meeting minutes were deferred for not being ready.
3. 2017 Annual Report – Status Update
  - a. Members are continuing to draft their sections.
4. Environmental Council meeting schedule for 2018
  - a. Council members reviewed the proposed timeline for meetings, draft rules, and comments on the drafts. OEQC will update the rules webpage to reflect the updated timeline.
5. Review and discussion of proposed revisions to Hawai'i Administrative Rules Chapter 11-200, Environmental Impact Statement Rules.
  - a. Director Glenn provided an overview to the structure and organization of Version 0.3.
6. Prior to discussion by the Council, the Council accepted public comments on the working draft Version 0.3. Comments by the public focused on the following topics:
  - a. “Batching of comments” – the grouping of identical or very similar comments and provide a response to the grouping may result in abuse. Recommendations included providing clearer guidelines and revisions to the language that distinguish between petition/form letters and comments that are very similar, so that similar comments each still need to be printed for the reader to evaluate for oneself that the response addresses all issues raised in the grouped comments. Substantive comments need to be reproduced and responded to.
  - b. Font size and orientation of pages – preparers turn pages sideways to fit two pages to one side of a sheet of paper and shrink the font size. The changed orientation and smaller font size make it more difficult to read the document, especially for elderly. Documents are supposed to be prepared in a way that make them easy to read. Language on a font size would be helpful.
  - c. Voluntary environmental review – having voluntary documents creates confusion for agencies who are unsure of what is appropriate or legal. Not allowing voluntary environmental review would help clarify the process.
  - d. Concern was expressed that preparers distributed electronic documents on CDs. Most digital devices do not have CD readers anymore, so a letter with a URL link would be sufficient.
  - e. The Council process is working well and the extensive outreach the Council is undertaking is much appreciated.
  - f. Support for mandatory public scoping meetings was expressed.
  - g. Additional conversation on supplemental EISs and how long they are good for is needed.
  - h. The public expressed support and concern about the updates to the exemption process. Support was expressed for the affordable housing exemption, particularly including Waikīkī and the footnote explaining

the caveats. The affordable housing exemption addresses needed housing for the urban core. Concern was expressed that exemptions are generally for very minor things not meant to trigger Chapter 343, HRS. The state should look at other ways to address regulatory difficulties.

- i. Further refinement and justification is needed on the definitions for “project” and “program”. Further explanation on what this would mean for development would help to avoid unintended consequences.
7. Following public comment, Chair Shacat requested Council members to identify the topics of most concern that they wished to discuss during the meeting. These topics were:
- a. Definitions of “project” and “program”
    - i. General distinction is that a “project” is bound in space and time with a specific purpose while a “program” is a group of projects. Consensus was gist of the wording is in the right direction but needs refinement.
    - ii. Concern was raised about how these definitions intersect with the level of detail in an EA or EIS.
  - b. Exemptions
    - i. No consensus was reached on regarding language for an agency to choose to make an exemption list. Concern was expressed that the distinction between the *de minimis* standard and some of the general types of exemptions needed to be further clarified.
    - ii. The Council agreed to have an exemption committee meeting to further explore improvements to language regarding exemptions.
  - c. Batching of comments
    - i. The Council had consensus on refining the language to batch comments so long as each comment and commenter was shown in a grouped response.
  - d. Oral comments
    - i. The Council recognized that there is value to oral comments, even if there is no obligation to transcribe them verbatim or respond to them in writing. The Council considered instead of requiring summarizing oral comments to require recording the oral comments from a portion of the public scoping meeting dedicated to oral comments and making a link to the recording available on the OEQC website. This issue is to be explored further.
  - e. Scoping meeting
    - i. Concern was raised about an EIS occurring on multiple islands while only one scoping meeting is required under the draft Rules. Language on having the scoping meeting in the nearest location to the proposed action was inadvertently omitted from Version 0.2 in Version 0.3. Requiring scoping meetings on each impacted island was discussed but no consensus was reached. The drafting team will explore language on this.

- f. Definition of "Discretionary consent"
    - i. Concern was raised that agencies do not identify which approvals are discretionary. The "discretionary consent" definition and role in the process are set by statute. Version 0.3 revised the requirement to identify the discretionary consent requiring environmental review rather than all discretionary approvals.
  - g. Shelf life
    - i. The proposal in Version 0.2 was based on the federal EIS process of periodic re-evaluations. A period of 5-10 years feels appropriate but 15-20 years felt too long.
    - ii. No support for the substantial commencement language was expressed so it was removed in Version 0.3.
  - h. Miscellaneous
    - i. The Environmental Court has jurisdiction over Chapter 343, HRS. The process the Council is going through will provide guidance in the future for interpreting the proposed rules if enacted.
8. Adjournment
- a. The meeting was adjourned at 3:02 PM.

Note: The Council recessed for lunch from 12:05 – 12:54 pm.