



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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Stephanie Dunbar-Co
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P. Ka'anohi Kaleikini
I. Robin Kaye
Theresita Kinnaman
Robert Parsons
Charles Prentiss
Ron Terry
Michael Tulang
N. Mahina Tuteur

Environmental Council

Meeting Minutes

Tuesday, February 20, 2018, 1:00 PM - 3:30 PM

Leiopapa A Kamehameha Bldg.

Room 405, 235 S. Beretania St, Honolulu, Hawai'i 96813

Members Present:

Roy Abe, Mary Beiger, Scott Glenn, Maka'ala Ka'auomoana, Robin Kaye, Theresita Kinnaman, Robert Parsons, Charles Prentiss, Joseph Shacat, Ronald Terry, Michael Tulang, Mahina Tuteur

Members Absent:

Stephanie Dunbar-Co, P. Ka'anohi Kaleikini, Puananionaona Thoene

EC Counsel:

Edward Bohlen, Susan Ireland Hohmann

Office of Environmental Quality Control (OEQC) Staff:

Leslie Segundo

Public:

Laura McIntyre, Environmental Planning Office, Department of Health
Denise Antolini, University of Hawai'i William S. Richardson School of Law
John Robert, Watanabe Ing

Note: **Bolded** items indicate text from the agenda.

1. **Call to order, roll call and quorum, introductions**

- a. Chair Shacat called the meeting to order at 1:00 PM.

2. **Review and approval of prior meeting minutes**

- a. Director Glenn reported that minutes for the meetings of November 7, 2017, December 5, 2017, and January 9, 2018 had yet to be prepared by staff. There were no meeting minutes to approve.

3. **OEQC Director's Report**

- a. Director Glenn reported on the following items.
 - OEQC has a graduate intern from Hawai'i Pacific University to assist in a Geographic Information Systems (GIS) project for improving the bulletin.
 - Ms. Laura McIntyre of the Environmental Planning Office will join the OEQC. The Director noted that he expects full staffing in the next several months (Secretary II and Planner III positions).

4. **Review and discussion of proposed revisions to Hawai'i Administrative Rules, Chapter 11-200, Environmental Impact Statement Rules**

- a. **Introduction of draft Version 0.4 (a copy of Version 0.4 will be posted at <http://health.hawaii.gov/oeqc/rules-update/> by February 20, 2018)**

- b. Review of decision-making process for Version 0.4**
- c. There will be no decision making on Version 0.4 for this meeting.**

Chairperson Shacat opened the discussion by acknowledging the many hours of volunteer work in the production of Version 0.4 of the rules by several members and volunteers (in particular, Onaona Thoene, Christina Lizzi, Denise Antolini, and Natalie Moreland). Chairperson Shacat clarified that no decision on Version 0.4 was being made at the meeting.

Chairperson Shacat asked Director Glenn to discuss the new version of the rules. Director Glenn noted that members have before them three documents: (1) a clean version of Chapter 11-200.1 (PDF 1); a rationale document for Chapter 11-200.1 (PDF 2); and (3) the Ramseyer formatted version of Chapter 11-200.1 (PDF 3). Director Glenn noted that the documents refer to Chapter 11-200.1 as the "Proposed Rules."

Director Glenn noted that the Rationale document combined footnotes from previous drafts as well as narratives on purpose and need. Director Glenn gratefully acknowledged the dedication of long hours of drafting by the volunteers.

Director Glenn explained that members need not worry about commenting on certain formatting (such as the repeal section and the signatory pages at the conclusion of the rules) since these have been prescribed as mandatory in the clean version (PDF 1) by the Legislative Reference Bureau (LRB).

The first major administrative action in Version 0.4 of the Proposed Rules is the repeal of Chapter 11-200, Hawai'i Administrative Rules (1996 amendment and compilation and 2007 amendment). The 1996/2007 versions were rewritten and reorganized in Version 0.4 of the rules as the new Chapter 11-200.1, Hawai'i Administrative Rules.

Chairperson Shacat noted that the clean version as prescribed by the LRB does not contain bolding and capitalization. Director Glenn responded that the formatting requirements of LRB require using two spaces after a letter and a tab after a number.

Member Parsons described formatting errors on pp. 4-14, 31. Director Glenn acknowledged these.

Director Glenn explained the Rationale document (PDF 2) provided the basis for changes in the Proposed Rules with respect to repeal, reorganization of sections, general and topical changes (e.g., programmatic documents and affordable housing). The Rationale was organized as a section by section description of the changes. Version 0.3 with its annotations was the basis for the Rationale document. Unlike Version 0.3, which provided little detail in annotations, the Rationale provides more detailed narrative description.

Director Glenn noted that the Ramseyer version of Version 0.4 of the rules indicates changes in magenta from the 1996/2007 version of the rules. Being a guidance document, Director Glenn advised members to devote their review to the clean version of Version 0.4.

Deputy Attorney General Bohlen also noted that the Rationale document was of significant import as future courts may use it as evidence of intent in cases of judicial appeal.

Staff distributed to members and the public the January 9, 2018, document describing the process for how the Council intends to vote on the Proposed Rules. The Council proceeded to a discussion on various issues in the proposed decision document.

Member Ka'aumoana and Member Beiger thanked the volunteers for their efforts in preparing the Version 0.4 package. Member Ka'aumoana suggested that the Environmental Council receive a separate line item in the State Budget. Member Prentiss raised the issue of the process of making amendments to Version 0.4.

Deputy Attorney General Bohlen, in response to a member query noted that the abbreviations "Eff", "Auth" and "Imp" had specific meanings. "Eff" referred to the effective date of the rules, ten days after gubernatorial signature and filing with the Lieutenant Governor. "Auth" referred to the specific section in the Hawaii Revised Statutes that authorized the rule change. "Imp" referred to the section of Federal or State law being implemented by the provision.

After a long and intensive discussion, the Environmental Council agreed to allow Chairperson Shacat, in conjunction with Deputy Attorney General Bohlen and Director Glenn, to distribute the updated approval process document to Council members and the public by February 21, 2018.

The Environmental Council agreed to have Monday, February 26, 2018, as the date to submit comments and their rationale on Version 0.4 of the rules. OEQC would reproduce the rules and rationale for the March 6, 2018, meeting. The Chairperson would have until Wednesday, February 28, 2018, to incorporate member comments/rationale on Version 0.4. Director Glenn asked and legal counsel agreed to be on standby for any questions or issues on February 28, 2018.

Dean Antolini suggested the use of white boards and straw polls at the March 6, 2018 meeting to achieve maximum transparency in the decision-making process.

If the Council cannot conclude its business on March 6, 2018, members agreed that they would support a motion for a continuance of the process on the following day, March 7, 2018.

The Environmental Council agreed on the following procedures. Amendments (to the package of v0.4) would be submitted to Chair by 9:00 AM on March 6, 2018, along with a written rationale. Chairperson Shacat would open the meeting by moving to approve Version 0.4. Chairperson Shacat would read the amendments and rationale he received. A discussion and straw poll on the amendments would follow.

5. Legislative Committee

Committee Chair Kaye reported that the Legislative Committee met to discuss various measures related to the Chapter 343, HRS, EIS Law (see, PDF 4). He also reported that he plans met with Senator Mike Gabbard and Representative Chris Lee on February 21, 2018 to discuss items of interest to the Environmental Council.

6. Information and Outreach Committee

a. Toxoplasmosis public education initiative, including planning for a public information meeting to increase awareness and disseminate information

Committee Chair Abe reported that his committee met earlier to discuss the Toxoplasmosis Seminar on March 31, 2018 at University of Hawaii, Richardson School of Law. Director Glenn agreed to coordinate with the Department of Health on the logistics of Environmental Council participation in this event.

7. Publication of 2017 Annual Report

Director Glenn reported that the 2017 Annual Report has been put in final form for minor editing and submission to the Legislature in about two weeks.

8. Adjournment

Chairperson Shacat remarked that the Committee Chair Prentiss and the Exemption Committee met with Agribusiness Development Corporation to discuss public comments on its proposed exemption list. The agency is now reviewing its list based on feedback by the Exemption Committee.

It was moved and seconded that the Environmental Council adjourn until its next meeting. By unanimous acclamation, the Environmental Council approved the motion and adjourned at 3:37 pm