STATE ENVIRONMENTAL COUNCIL

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Puananionaona Thoene
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N. Mahina Tuteur

Environmental Council Meeting
April 11, 2017, 1:00-3:30 PM
Leiopapa A Kamehameha Building, 15th Floor Conference Room

'17 APR -5 A11:06
LIEUTENANT GOVERNOR'S OFFICE

Agenda

1. Call to Order, Roll Call, Introductions, Quorum
2. Review and approval of prior meeting minutes
   a. Meeting held on March 14, 2017
3. Director's Report on OEQC Activities
   a. Status of revisions to Hawaii Environmental Policy Act Guidance Document
   b. Status of OEQC Sharepoint website update and rollout
   c. Scanning project status
   d. Update regarding International Association of Impact Assessment conference held in Montreal, Canada, with particular focus on climate change and environmental impact assessments
4. Consideration and possible action regarding testimony on legislation that may impact the mission of the Environmental Council (see Exhibit A for list of bills)
5. Progress on Senate confirmations of recently appointed Environmental Council members
   a. Mary Begier (GM 614)
   b. Michael Tulang (GM 615)
   c. Puananionaona Thoene (GM 616)
   d. Robin Kaye (GM 617)
   e. Stephanie Dunbar-Co (GM 618)
   f. Theresita Kinnaman (GM 619)
6. Status of revisions to Hawaii Administrative Rules (HAR) Chapter 11-200
   a. Proposed language amending HAR Chapter 11-200 regarding Act 172, Session Laws of Hawaii 2012, allowing a proponent to proceed directly to preparing an environmental impact statement (EIS) instead of an environmental assessment (EA) (see attached language (Exhibit B) and Act 172 (Exhibit B.1))
   b. Clarify direction from the Environmental Council to the Permitted Interaction Group regarding language amending Subchapter 10 of HAR Chapter 11-200 in consideration of requiring new information to Supplemental EISs, adding new definitions, a revaluation period for when a Supplemental EIS should be considered, and adding Supplemental Environmental Assessments to the process

c. Clarify direction from the Environmental Council to the Permitted Interaction Group regarding EAs and EISs for programs versus projects, and their interrelationship

7. Annual Report for 2017
   a. Continued discussion and possible action regarding general direction and topics to include in the 2017 Annual Report
8. Information & Outreach Committee Report
   a. Hawaii Department of Health's policy on posting of warning signs for high bacteria levels
   b. Potential initiatives on stormwater pollution control, including public-private partnership with the hotel industry
9. Discussion and possible action regarding the internal process for posting material on the Environmental Council's Facebook page
10. Review of Committee Assignments

Note: Public comments will be accepted on each agenda item prior to voting or completion of the agenda item.

Note: The Council may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a), Hawaii Revised Statues ("HRS"), without noticing the executive session on the agenda where the executive session was not anticipated in advance. The executive session may only be held, however, upon an affirmative vote of two-thirds of the members preset, which must also be the majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded and entered into the minutes of the meeting. HRS Sections 92-4, 92-5(a) and 92-7(a).

Hawaii Environmental Council - Legislative Committee

Pending Legislation for Environmental Council Consideration

Version Three : Last Updated 4/4/2017

Bill Number	Companion	Measure Title	Description	Rationale	Current Status	Environmental Council Position
On the table						
~~SB 760~~	~~HB 624~~ ~~HB 1047~~ **HB625**	RELATING TO TELECOMMUNICATIONS	Codifies exemptions to permitting requirements established by Act 151, Session Laws of Hawaii 2011, within the Hawaii Revised Statutes and expands those exemptions to include broadband over wireless or mobile platforms, including small wireless facilities. Establishes a definition of wireless communications antennas that include small wireless facilities. Repeals those sections of Act 151, Session Laws of Hawaii 2011, which have		Deferred (SB760) "Deleted" (HB624) Deferred (HB 1047) Deferred (HB625) 4/4 WAM	SG in discussion
SB 1016/ SD1		RELATING TO TRANSPORTATION	Temporarily exempts the Department of Transportation and its contractors from certain state requirements for certain bridge rehabilitation projects by extending the end date to June 30, 2022. Effective 6/29/17. (SD1)		Passed WAM (SB1016) Passed FIN (SB1016/SD1)	SG in discussion
SB 1088	**HB 795**	RELATING TO CARBON FORESTRY CERTIFICATION.	Appropriates funds for certification of a reforestation carbon project at Haleakala, Maui, operated by DLNR, under an established forest carbon standard certification system. Requires DLNR to submit an annual report on the project certification to the governor and legislature.	Funds DLNR forest carbon project on Maui	Passed FIN 3/3; referred to House WTL, WAM on 3/9	**SUPPORT. Mary/ Onaona to testify in person**
HR 131		RELATING TO OEQC AND CLIMATE CHANGE	Urging the OEQC, in cooperation with the Department of the Attorney General and the Legislative Reference Bureau, to prepare environmental and legal opinions of future state regulations and legislation that might be deemed necessary to combat climate change and prevent the regression of environmental protection		Passed EEP; referred to FIN on 3/29	
SB776/ ~~SB879~~	~~HB1013/~~ ~~HB1339~~	RELATING TO INVASIVE SPECIES PROGRAM ADMINISTRATION.	Restructures the Hawaii invasive species council as the Hawaii invasive species authority, administratively attached to the department of agriculture, to coordinate implementation of the Hawaii interagency biosecurity plan and to improve coordination of the State's invasive species prevention, early detection, rapid response, control, enforcement, and outreach programs. Appropriates funds to implement the authority and relevant interagency invasive species projects.	Establishes Hawaii Invasive Species Authority	Passed WAM (SB776) Passed FIN (SB776 SD2 HD1) Note: Gov's bill	**SUPPORT**
SB559		RELATING TO CLIMATE CHANGE	Enacts relevant provisions of the Paris Agreement as Hawaii state law. Makes an appropriation.	Enacts relevant provisions of Paris Agreement as Hawaii state law	Senator Kalani English Passed FIN 3/31	**SUPPORT; recommend role for OEQC**
HB1570		RELATING TO THE ENVIRONMENT	Requires lessors of rental motor vehicles to include an option for the lessee in the motor vehicle rental agreement to contribute a sum to DLNR for the preservation and protection of the environment, commencing on January 1, 2020. (HB1570 HD1)	Rental vehicle contract option to contribute to DLNR	Passed FIN Rep Chris Lee Referred to TRE/CPH/AEN	**SUPPORT** **Note: 3 referrals in Crossover**
~~HB1247/~~ ~~HB1472~~	**SB1239**	RELATING TO RAPID OHIA DEATH	Appropriates funds for research on prevention and mitigation of Rapid Ohia Death. (HB1247 HD1)	Funding for ROD research	Referred to FIN (HB1247) Passed WAM (SB1239)	**SUPPORT**
~~SB 192~~	**HB 100**	RELATING TO THE STATE BUDGET	"Appropriates funds for the operating and capital improvement budget of the Executive Branch for fiscal years 2017-2018 and 2018-2019."	EC Budget	Reported from WAM 4/4	**SG talked to Rep Luke re replacing budget increase from Gov**
HCR120/ HD1		OFFICE OF ENVIRONMENTAL QUALITY CONTROL	Requesting the OEQC apply consistent standards to all applicants and agencies, follow statutory intent of the legislature, update legislators on guidance documents and interpretations and support the EC's efforts to update Hawaii Administrative Rules Chapter 11-200.	OEQC and EC	"Re-referred to AGR, EEP"	**NEW TO OUR LIST**
NOTE: *EC discussed a letter of general support for DLNR, to be addressed to legislative leadership. We may wish to discuss this at the upcoming LC meeting.*						
Deferred, Did Not Cross, Dead						
SB 570		RELATING TO ENVIRONMENTAL IMPACT STATEMENTS	Requires an environmental assessment for any proposed use or development of property greater than one hundred acres in size. Requires the EA to include the results of a minimum five-day search for endangered or threatened species.	New "trigger" for EA	Deferred **DNC**	Take no position: **DNC (did not crossover)**

Attachment A

Hawaii Environmental Council - Legislative Committee

Pending Legislation for Environmental Council Consideration

Version Three : Last Updated 4/4/2017

Bill Number	Companion	Measure Title	Description	Rationale	Legislative Committee Position	Environmental Council Position
SB 577	HB 928	RELATING TO AFFORDABLE HOUSING	Exempts the development of affordable housing projects developed in the urban core by the Hawaii housing finance and development corporation from environmental assessment and environmental impact statement requirements	Exemption from EA and EIS	Deferred (SB 577) **DNC** EEP/WAL (HB 928)	Monitor : **DNC**
SB 578		RELATING TO HOUSING	Authorizes the Hawaii community development authority to prepare a programmatic environmental impact statement for housing development projects on all lands within the Kakaako community development district. Allows the programmatic environmental impact statement, once it is accepted by the office of environmental quality control, to satisfy the environmental assessment and impact statement requirements for any housing development project within the Kakaako community development district.	Eliminates need for EA and EIS if PEIS is prepared.	Deferred **DNC**	Monitor : **DNC**
SB 1232	HB 1411	RELATING TO PUBLIC LANDS	Declares the intent of the legislature that a contested case hearing shall not be required for land leases, lease extensions, consents to subleases, or any other dispositions of public land.	Eliminates contested case hearings for some land issues	Deferred (SB 1232) "Deleted" (HB1411) **DNC**	**DNC**
HB 1453		RELATING TO PROTECTION OF NATURAL RESOURCES.	Imposes a $20 per guest tax on users of transient accommodations for the purposes of funding conservation efforts.		Deferred	**DNC**
SB703		RELATING TO VISITOR IMPACTS	Allows use of the special land and development fund for the management, maintenance, and development of state parks, beaches, and other natural resources. Allocates two per cent of the transient accommodations tax to the special land and development fund category for the management, maintenance, and development of trails and trail access, state parks, beaches, and other natural resources. (SD1)	Allocates 2% of TAT to DLNR SLDF	Referred to WAM **DNC** (DID NOT CROSS)	**DNC**
SB1300		RELATING TO CONSERVATION	Increases the amount of transient accommodations tax revenue allocated to the special land and development fund.	Increases DLNR share of TAT	**DNC**	**DNC**
HB1004		RELATING TO RAPID OHIA DEATH	Appropriates moneys for implementation of the Rapid Ohia Death Strategic Response Plan. (HB1004 HD1)	Money for Rapid Ohia Death (ROD) research	Referred to FIN **DNC**	
HB69		RELATING TO TAXATION	Amends the distribution of conveyance tax revenues to better fund programs for environmental protection and affordable housing.	All conveyance tax revenues go to Legacy Land (17%) and Rental Housing Revolving Fund (83%)	Deferred **DNC**	**DNC**
HB221		RELATING TO DISPOSITION OF TAX REVENUES.	Amends the list of non-general funds that receive distributions from the conveyance tax by: (1) increasing the maximum dollar amount of the distribution to the land conservation fund; and (2) restoring and setting a maximum dollar amount for the distribution to the natural area reserve fund.	Conveyance tax cap increase for Legacy Land and restore Natural Area Reserve Fund	Deferred **DNC**	**DNC**

PROPOSED REVISIONS TO ADDRESS ACT 172 (2012)

Proposed revisions to address Act 172 for Rules Committee review and comment.

§11-200-2 Definitions and Terminology

Current Language: "Environmental assessment" means a written evaluation to determine whether an action may have a significant environmental effect.

Proposed Language: "Environmental assessment" means a concise written evaluation that serves to provide sufficient evidence and analysis to determine whether an action may have a significant environmental effect. It, together with a FONSI, satisfies chapter 343, HRS, when no EIS is necessary, and facilitates preparation of an EIS when one is necessary and the proposing agency, based on its judgment and experience, has not previously determined that it would proceed directly with the preparation of an EISPN, or the agency, based on its judgment and experience, has not previously authorized the applicant to choose to proceed directly with the preparation of an EISPN.

Current Language: "Preparation notice" or "EIS preparation notice" means a determination based on an environmental assessment that the subject action may have a significant effect on the environment and, therefore, will require the preparation of an environmental impact statement.

Proposed Language: "EIS preparation notice," or "EISPN" means (1) the document required when an agency determines, based on an environmental assessment, that the proposed action may have a significant effect on the environment and therefore will require the preparation of an EIS, or (2) the document prepared when an agency determines, based on its judgment and experience, that the proposed action may have a significant effect on the environment and therefore authorizes the preparation of an EIS without first requiring an environmental assessment.

No Existing Definition
Public comments indicated desire for clarity on the content and public scoping requirements related to the direct to EISPN process.

Proposed Language to be added to HAR § 11-200-2.

"**EIS Public Scoping Meeting**" means a meeting held by the EIS-preparing party within the thirty-day public review and comment period described in Section 11-200-15(b), inviting the participation of those agencies, citizen groups, and individuals reasonably believed to be potentially affected by the proposed action (including those who might not be in accord with the proposed action on environmental grounds), to assist the preparing party in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS. Suggestions made at the EIS public scoping meeting are considered to be advisory and not mandatory.

NOTE, while the concept of EIS public scoping can be noted via a new definition (as proposed above), the actual steps of a required public scoping cannot be established merely by adding a new definition. Therefore, may wish to consider adding a new subsection to the Rules to address the EIS Public Scoping Meeting process.

HAR § 11-200-11.2

Rules Committee to confirm, but does not appear that revisions are needed to HAR § 11-200-11.2 in in order to address Act 172. This Section deals with what happens after the preparation of an EA, so it necessarily does not address Act 172 EISPNs.

Current Language: **§11-200-14 General Provisions**. Chapter 343, HRS, directs that in both agency and applicant actions where statements are required, the preparing party shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action.

Proposed Language: **§11-200-14 General Provisions**. Chapter 343, HRS, directs that in both agency and applicant actions where statements are required, the preparing party shall prepare the EIS, submit it for review and comments, and revise it, taking into account all critiques and responses. Consequently, the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review. The EIS process shall involve at a minimum: identifying environmental concerns, conducting no fewer than one EIS Public Scoping Meeting, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts. An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. Agencies shall ensure that statements are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action.

Current Language: **§11-200-15 Consultation Prior to Filing a Draft Environmental Impact Statement**

(a) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10) and other citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS prior to the time the EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth the scope of the draft EIS may be held within the thirty-day public review and comment period in subsection (b), provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).

(b) Upon publication of a preparation notice in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty days.

(c) Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.

(d) Any substantive comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the final environmental assessment or final statement.

Proposed Language: HAR §11-200-15 Consultation Prior to Filing a Draft Environmental Impact Statement

(a) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies noted in section 11-200-10(10), ~~and other~~ citizen groups, and concerned individuals as noted in sections 11-200-9 and 11-200-9.1. To this end, agencies and applicants shall endeavor to develop a fully acceptable EIS prior to the time the EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns. An EIS Public Scoping Meeting ~~At the discretion of the proposing agency or an applicant, a public scoping meeting to receive comments on the final environmental assessment (for the EIS preparation notice determination) setting forth~~ addressing the scope of the draft EIS shall ~~may~~ be held within the thirty-day public review and comment period in subsection (b)~~, provided that the proposing agency or applicant shall treat oral and written comments received at such a meeting as indicated in subsection (d).~~

(b) Upon publication of an EISPN ~~a preparation notice~~ in the periodic bulletin, agencies, groups, or individuals shall have a period of thirty days from the initial issue date in which to request to become a consulted party and to make written comments regarding the environmental effects of the proposed action. Upon written request by the consulted party and upon good cause shown, the approving agency or accepting authority may extend the period for comments for a period not to exceed thirty days.

(c) Upon receipt of the request, the proposing agency or applicant shall provide the consulted party with a copy of the environmental assessment or requested portions thereof and the environmental impact statement preparation notice. Additionally, the proposing agency or applicant may provide any other information it deems necessary. The proposing agency or applicant may also contact other agencies, groups, or individuals which it feels may provide pertinent additional information.

(d) Any substantive written comments received by the proposing agency or applicant pursuant to this section shall be responded to in writing and as appropriate, incorporated into the draft EIS by the proposing agency or applicant prior to the filing of the draft EIS with the approving agency or accepting authority. Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items must be included in the ~~final environmental assessment or~~ final statement.

Proposed new section HAR § 11-200-15.1 to address the new requirement for EIS Public Scoping Meeting?

Preparation and Processing of EISPN. An EISPN shall very briefly identify the: (a) applicant or proposing agency; (b) accepting authority; (c) approving agency, if applicable; (d) affected environment and include regional, location, and site maps; (e) description of the proposed action and its location; (f) possible alternatives to the proposed action; (g) proposing agency's or the applicant's proposed scoping process, including when and where any EIS Public Scoping Meetings will be held; and (h) name and contact information for the person who can answer questions about the proposed action and the anticipated EIS.

Proposed Language for HAR § 11-200-17 Content Requirements; Draft Environmental Impact Statement[1]

(a) The draft EIS, at a minimum, shall contain the information required in this section.

(b) The draft EIS shall contain a summary sheet which concisely discusses the following:

(1) Brief description of the action;

(2) Significant beneficial and adverse impacts (including cumulative impacts and secondary impacts);

(3) Proposed mitigation measures;

(4) Alternatives considered;

(5) Unresolved issues; and

(6) Compatibility with land use plans and policies, and listing of permits or approvals.

(c) The draft EIS shall contain a table of contents.

(d) The draft EIS shall contain a separate and distinct section that includes a statement of purpose and need for the proposed action.

(e) The draft EIS shall contain a project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(1) A detailed map (preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable) and a related regional map;

(2) Statement of objectives;

(3) General description of the action's technical, economic, social, and environmental characteristics;

(4) Use of public funds or lands for the action;

(5) Phasing and timing of action;

(6) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and

(7) Historic perspective.

(f) The draft EIS shall describe in a separate and distinct section alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks.

Examples of alternatives include:

(1) The alternative of no action;

(2) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;

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[1] Revisions proposed only to (p).

(3) Alternatives related to different designs or details of the proposed actions which would present different environmental impacts;

(4) The alternative of postponing action pending further study; and,

(5) Alternative locations for the proposed project.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(g) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site (including natural or human-made resources of historic, archaeological, or aesthetic significance); specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the proposed action and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all environmental consequences be expressly noted.

(h) The draft EIS shall include a statement of the relationship of the proposed action to land use plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation. The draft EIS shall also contain a list of necessary approvals, required for the action, from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

(i) The draft EIS shall include a statement of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment; direct and indirect effects shall be included. The interrelationships and cumulative environmental impacts of the proposed action and other related projects shall be discussed in the draft EIS. It should be realized that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource projects, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon

the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (j), (k), (l), and (m).

(j) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

(k) The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. Agencies shall avoid construing the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.

(l) The draft EIS shall address all probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, HRS, shall be included, including those effects discussed in other actions of this paragraph which are adverse and unavoidable under the proposed action. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

(m) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provision for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has

been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, should be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken.

(n) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the problems.

(o) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed.

(p) The draft EIS shall include a separate and distinct section that contains reproductions of all substantive written comments made during the thirty day public comment period under HAR § 11-200-15(b), and responses to those comments, ~~made during the consultation process~~ and a summary of the EIS public scoping meeting(s). A list of those persons or agencies who were consulted and had no comment shall be included in the draft EIS.

Current Language: HAR § 11-200-18. Content Requirements; Final Environmental Impact Statement.

The final EIS shall consist of:
(1) The draft EIS revised to incorporate substantive comments received during the consultation and review processes;

(2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;

(3) A list of persons, organizations, and public agencies commenting on the draft EIS;

(4) The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation processes.

(5) The text of the final EIS which shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft EIS.

Proposed Language: HAR § 11-200-18.
The final EIS shall consist of:
(1) The draft EIS revised to incorporate substantive written comments received during the consultation and review processes;

(2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held during the forty-five day public review and comment period on the draft EIS;

(3) A list of persons, organizations, and public agencies commenting on the draft EIS;

(4) The responses of the applicant or proposing agency to each substantive question, comment, or recommendation received in the review and consultation processes.

(5) The text of the final EIS which shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft EIS.

GOV. MSG. NO. 1275

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 27, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2012, the following bill was signed into law:

SB2281 SD1 HD1 — RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.
Act 172 (12)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

EXHIBIT B1

Approved by the Governor
on JUN 27 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 172

S.B. NO. 2281 S.D. 1 H.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that state agencies that have experience with environmental review in Hawaii are able to determine which projects are likely to require full environmental review and should proceed directly to the preparation of an environmental impact statement. While this omits one layer of public participation through the environmental assessment, opportunities for public participation remain in the environmental impact statement process. The legislature further finds that bypassing the environmental assessment in certain situations will improve the efficiency of the environmental review process and speed the progress of completing those proposed actions.

The purpose of this Act is to allow agencies to determine, based on their judgment and experience, that an environmental impact statement is likely to be required for a proposed action, and, therefore, choose not to prepare an environmental assessment or to allow an applicant not to prepare an

environmental assessment, and instead proceed directly to the preparation of an environmental impact statement.

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended to read as follows:

"**§343-5 Applicability and requirements.** (a) Except as otherwise provided, an environmental assessment shall be required for actions that:

(1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to section 205-5(b);

(2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;

(3) Propose any use within a shoreline area as defined in section 205A-41;

(4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;

(5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";

(6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;

(7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;

(8) Propose the construction of new or the expansion or modification of existing helicopter facilities within

the State, that by way of their activities, may affect:

(A) Any land classified as a conservation district by the state land use commission under chapter 205;

(B) A shoreline area as defined in section 205A-41; or

(C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and

(9) Propose any:

(A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery; or

(E) Power-generating facility.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for [~~such~~] the action at the earliest practicable time to determine whether an environmental impact statement shall be required[~~.~~

~~(1)~~]; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may choose not to prepare an environmental assessment and instead shall prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules.

(c) For environmental assessments for which a finding of no significant impact is anticipated:

[~~(A)~~] (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

[~~(B)~~] (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;

[~~(C)~~] (3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;

[~~(D)~~] (4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and

[~~(E)~~] (5) The agency shall file notice of [~~such~~] the determination with the office. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply

with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

[~~(2)~~] (d) The final authority to accept a final statement shall rest with:

[~~(A)~~] (1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or

[~~(B)~~] (2) The mayor, or the mayor's authorized representative, of the respective county

whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

[~~(e)~~] (e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that[~~, for~~] if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the

preparation of an environmental impact statement preparation notice as provided by rules. For an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and

(3) The applicant shall respond in writing to comments received during the review[~~,~~] and [~~the agency~~] the applicant shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the

1 agency's determination with the office, which, in
2 turn, shall publish the agency's determination for the
3 public's information pursuant to section 343-3.
4 The draft and final statements, if required, shall be
5 prepared by the applicant, who shall file these statements with
6 the office.
7 The draft statement shall be made available for public
8 review and comment through the office for a period of forty-five
9 days. The office shall inform the public of the availability of
10 the draft statement for public review and comment pursuant to
11 section 343-3.
12 The applicant shall respond in writing to comments received
13 during the review and prepare a final statement. The office,
14 when requested by the applicant or agency, may make a
15 recommendation as to the acceptability of the final statement.
16 The authority to accept a final statement shall rest with
17 the agency initially receiving and agreeing to process the
18 request for approval. The final decision-making body or
19 approving agency for the request for approval is not required to
20 be the accepting authority. The planning department for the
21 county in which the proposed action will occur shall be a
22 permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of [~~such~~] the determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the

council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.

[~~(d)~~] (f) Whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office, after consultation with and assistance from the affected state or county agencies, shall determine which agency shall prepare the assessment.

[~~(e)~~] (g) In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The council, by rule, shall establish criteria and procedures for the use of previous determinations and statements.

[~~(f)~~] (h) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies

shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

[~~(g)~~] (i) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter, and no other statement for the proposed action shall be required."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

APPROVED this 27 day of JUN, 2012

Neil Abercrombie

GOVERNOR OF THE STATE OF HAWAII