



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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State of Hawai'i Environmental Council  
Tuesday, August 8, 2017, 12:00 PM - 3:00 PM  
Leiopapa A Kamehameha Bldg.  
Room 1500, 235 S. Beretania St, Honolulu, Hawaii 96813

17 AUG -2 P 1:31  
LIEUTENANT GOVERNOR'S  
OFFICE

1. Call to order, roll call and quorum, introductions
2. Review and approval of prior meeting minutes
  - a. Meeting held on July 11, 2017
  - b. Meeting held on July 27, 2017
3. Discussion and decision making regarding Kaua'i Community Radio (KKCR) Makai Watch Radio Show interview between Council Member Maka'ala Ka'aumoana and Council Chair Joseph Shacat, scheduled for August 14, 2017 at 12:00 noon.
4. Review and decision making on the report from the Permitted Interaction Group (PIG) established on February 23, 2016 relating to revisions to Hawai'i Administrative Rules (HAR) Chapter 11-200, Version 0.1 – Suggested revisions to HAR Chapter 11-200 addressing comments received on the previous 2012 working draft language.
  - a. Correspondence received regarding the Permitted Interaction Group report and revisions to HAR Chapter 11-200, Version 0.1. See Attachment A for correspondence received as of August 1, 2017. Additional correspondence received, if any, will be distributed at the meeting.
5. Review and discussion of proposed revisions to HAR Chapter 11-200, Environmental Impact Statement Rules, Version 0.2 (to be distributed at the meeting).
6. Adjournment

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 Statutes ("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).

**Comments on the  
Report of the Environment Council Permitted Interaction Group  
Preliminary Draft of Proposed Revisions to Hawai'i  
Administrative Rules Title 11 Department of Health  
Chapter 200 Environmental Impact Statement Rules**

August 1, 2017

Aloha,

The Good Shepherd Foundation is happy to see that the OEQC is addressing the updating of HAR 11-200. We hope the following comments help improve this important document.

**1. Publication of Exemption Notices should be mandatory in the Periodic Bulletin.**

Section (g) on page 11-200-8(g) on page 25 it states:

Each agency shall maintain records of such<sup>128</sup> actions, called exemption notices,<sup>129</sup> which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency may request the office to publish the exemption notice in the periodic bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the agency's means or publication in the bulletin, whichever of the two is earliest.

I applaud the Council addressing the need for clear dates for legal challenges. However, I do suggest that publication in the Periodic Bulletin become mandatory for these exemption notices, and that the date of publication in the Periodic Bulletin be used as the sole standard for legal review.

The public should not be expected to regularly check government agency websites or look at the minutes of agency meetings to know that an exemption was issued for a project that the public may not have known was exempted, or that it was even planned. The advantage of having the Periodic Bulletin is that it is the one-stop shop for Hawaii's environmental notices. The public should be able to rely on the Periodic Bulletin to have information about all HRS 343 environmental documents, whether these are an EA, EIS, or a notice of exemption.

There should also be one, clear way to get this information announced to the public for legal review purposes. The current wording of this section would allow agencies to either publish exemption notices themselves with or without the OEQC, or not publish the exemption notice themselves and instead ask the OEQC to do it. This will create confusion if we cannot trust that

information about exempted projects will be in the Periodic Bulletin. "Sometimes it is, sometimes it isn't," will weaken the value of, and trust in, the Periodic Bulletin.

There will also be questions as to the criteria used by an agency in how to announce an exemption notice. Which exempted actions will they announce in the minutes of a meeting versus in the Periodic Bulletin? I can hear people already arguing that agencies tried to hide the exemption in the meeting minutes, which virtually nobody in the public knows about, rather than making it public with a notice in the Periodic Bulletin.

There needs to be a clear date for legal actions to begin, which is why there needs to be one, unambiguous, reliable source of information — the Periodic Bulletin.

You are already saying that "An agency may request the office to publish the exemption notice in the periodic bulletin." Since you are accepting the burden of these publication requests, hopefully having all exemption notices published in the Periodic Bulletin is not overly burdensome. A separate section dedicated to exemption notices would be very helpful to the public.

Therefore, I suggest you change the wording of this section to:

Each agency shall maintain records of such<sup>128</sup> actions, called exemption notices,<sup>129</sup> which it has found to be exempt from the requirements for preparation of an environmental assessment EA in chapter 343, HRS, and each agency shall produce the records for review upon request. The agency shall provide a means to notify and accept input from the public in a timely manner after the exemption declaration is made. An agency ~~may~~ shall submit to the office the exemption notice for publication in the Periodic Bulletin. The public's right to judicial proceeding on the lack of an assessment under chapter 343, HRS shall commence from the date the public is notified of the exemption through the ~~agency's means or publication in the bulletin, whichever of the two is earliest.~~

## **2. What are "cultural practices of the State"?**

In the definition of "significant effect" on page 12, the proposed addition — "cultural practices of the community and State" — is being added to comply with Act 50. However Act 50 does not make clear what it meant by the term "State".

Act 50 states,

### **DESCRIPTION:**

Amends the environmental impact statement law by amending the definition of "environmental impact statement" or "statement" to include effects on the cultural practices of the community and State. Also amends the definition of "significant effect" to include adverse effects on cultural practices. (HB2895 HD1)

It's clear what the cultural practices of a community may involve. What are the cultural practices of the "State"?

If by "State" it is meant a political entity, then are we supposed to consider the government's "culture"? How is that defined?

If by "State" it is meant the Hawaiian Islands, which are populated by multiple cultures and communities, what would the culture of the "State" be?

I realize that this is an issue to be addressed with Act 50. However, by incorporating that language into 11-200, you take the ambiguity of that language into this administrative rule.

Perhaps to mitigate this, you can simply change the term "cultural practices of the community and State" to "cultural practices in compliance with Act 50." This would bring the issue back to Act 50, instead of leaving it to you to define the culture of the "State" for 11-200.

This term is also used in 11-200-12(b)(4) on page 42.

### **3. PIG? OMG!**

I don't know what a Permitted Interaction Group means, and can probably come up with some amusing guesses. But the acronym of PIG beats it all. "The PIG drafted language...Following the Council's establishment of the PIG, the PIG set a meeting...The PIG reviewed the 2012 draft...the Council agreed that the PIG could present its report..."

Was this a deliberate attempt at a joke? It certainly doesn't help this report seem serious, coming, as it is, from a PIG. As an anthropologist I study language, among other things, and the use of the term PIG does not help promote the recommendations that this PIG is suggesting. As soon as the Council suggested calling the group PIG someone involved should have squealed.

I hope these comments helps you improve this important administrative rule.

Sincerely,

Sydney Ross Singer  
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