



# STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII  
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David Y. Ige  
Governor

Chairperson  
Puananionaona Thoene

Vice Chair  
Mary Begier

Members  
Roy Abe  
Stephanie Dunbar-Co  
Scott Glenn (*Ex Officio*)  
Maka'ala Ka'aumoana  
P. Ka'anohi Kaleikini  
I. Robin Kaye  
Theresita Kinnaman  
Robert Parsons  
Charles Prentiss  
Ron Terry  
Michael Tulang  
N. Mahina Tuteur

June 4, 2019, Meeting Minutes  
Approved on July 2, 2019

Meeting held on  
Tuesday, June 4, 2019, 1:00 – 3:30 PM  
No. 1 Capitol Building, Room 410  
Executive Office on Aging  
250 S. Hotel St., Honolulu, Hawai'i 96813

Members Present (12): Puananionaona Thoene (Chairperson); Mary Begier (Vice-Chair); Roy Abe; Stephanie Dunbar-Co; Scott Glenn (Director, *ex officio*, Office of Environmental Quality Control [OEQC]); Maka'ala Ka'aumoana; Theresita Kinnaman; Robert Parsons; Charles Prentiss; Ronald Terry; Michael Tulang; Mahina Tuteur

Members Absent: Robin Kaye, Paulette Ka'anohi Kaleikini

Staff Present: Bill Cooper, Deputy Attorney General (AG); Leslie Segundo, OEQC

Public Present: Emily Gaskin (University of Hawai'i Richardson School of Law), Cindie Ogata (individual)

Note: Text in **bold** indicates original text of agenda.

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

With a quorum of twelve members present, Chairperson Thoene called the meeting to order at 1:05 PM. She also announced that she would schedule review and approval of past meeting minutes to later in the meeting to allow the OEQC to make edits to the minutes for the March, April and May 2019, meetings.

Chair Thoene and Director Glenn recognized Member Prentiss for his 8 years of service to the Environmental Council and his dedication and professionalism in assisting agencies with their exemption lists as the Exemption Committee Chair. The Council congratulated and thanked Member Prentiss.

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

At about 2:37 PM, Chairperson Thoene announced that meeting minutes for March, April and May had been prepared by OEQC. After reviewing the draft minutes, the Council deferred the April and May minutes to the next meeting to allow the OEQC to make revisions to the minutes. The Council discussed the March 2019 minutes and made corrections. Chairperson Thoene said that had marked up her draft and would be amending the minutes for transmittal to OEQC.

**MOTION:** Member Begier moved, and Member Ka'aumoana seconded, that the Council approve the March 12, 2019, meeting minutes as amended by Chairperson Thoene. The Council unanimously approved the motion (8-0-0).

### 3. OEQC Director's Report

Director Glenn reported that as a part of its preparation for outreach on implementation of the new rules, the OEQC is preparing a guidance document. OEQC met with the City and County of Honolulu Department of Planning and Permitting (DPP), the State Department of Education (DOE), and the State Department of Land and Natural Resources (DLNR). In response to numerous requests for training, the OEQC is working on logistics to conduct sessions for state and county agencies, in addition to other stakeholders (public and federal agencies). Member Ka'auomoana inquired whether there is a role for neighbor island members that would like to participate. Director Glenn responded that he endorses Council members participating in what OEQC is doing so long as there are no Sunshine Law issues with too many members.

Member Terry informed the Council that he would like to suggest the Hawai'i Council on Engineering Societies (contact Mr. Ken Kawahara of Akinaka Engineering). Director Glenn also noted that he has yet to hear from the Hawai'i Congress of Planning Officials (HCPO) with respect to his application for two panels.

Director Glenn also reported that with respect to the Hawai'i Conservation Conference. His research indicated that the cost would be \$400.00 per table. Chairperson Thoene agreed to poll the Council and inform the Director of the Council's will with respect to participation.

Director Glenn also reported that OEQC has developed a checklist of tasks to assist facilitating the preparation and conduct of future Council meetings. Each month, on the 23<sup>rd</sup>, he noted that OEQC would send an email reminder to the Council to prepare committee minutes and agendas in preparation for the meeting on the first Tuesday of the month.

### 4. Discussion of the Council's interpretation of the part one exemptions for agency exemption lists

The new rules call for a revision to agency exemption lists structures into two parts. Part 1 (*de minimis*), found in Section 11-200.1-16(a)(1), Hawai'i Administrative Rules (HAR). The Council is unclear on the meaning of the term "*de minimis*" in its application to the rules. Part 2 exemptions, found in Section 11.200.1-16(a)(2), HAR, will require publication of exemption notices on the 8<sup>th</sup> of each month in the periodic bulletin. For some agencies, it will be a simple matter of rearranging lists, but for some it may be more involved. The rules will eventually require an agency to come before the Council for review, public review, and Council concurrence. An outstanding issue is the interpretation of *de minimis* exemptions (Part 1) in relation to the Part 2 exemption notices that would be published on the 8<sup>th</sup>. Do all *de minimis* actions require documentation until a new list is created? How do grandfathered lists comply with the provisions of Part 1 and Part 2?

**MOTION:** Member Terry moved, and Member Parsons seconded, that the Council inform OEQC of its interpretation that agencies can make *de minimis* exemptions prior to their exemption lists being developed and concurred with by the Council to reflect the new Sections 11-200.1-16(a) and 11-200.1-16(b), HAR.

Discussion: Council members considered that the seven-year window to update the exemption list started from the effective date of the rules. After asking Deputy AG Cooper to research the limits of Section 11-200.1-32, HAR, Director Glenn noted that updates of most agency lists will result in rearranging the lists, which should not take seven years. Some existing exemption actions on the list are *de minimis* and just need to be moved around.

Member Terry commented that if an agency declares an exemption that is *de minimis*, until it has a Part 1 list, it would need to prepare an exemption notice subject to the Part 2 publication requirements requiring publishing on the 8<sup>th</sup> of each month. Member Terry notes that the Exemption Committee plans to send a letter to every agency on the new rules with the intent of discerning a comprehensive overview of the new process. Director Glenn noted that some agencies are being proactive. The Council should reach out to agencies now to update their lists. Members discussed possible litigation for implementing a *de minimis* action absent an exemption list concurred with by the Council. Director Glenn clarified that exemption lists are only guidance; the basis to sue is not whether something was mischaracterized as *de minimis* or not, but whether it was properly exempted or should have conducted an environmental assessment or impact statement. Member Terry agreed noting that Council concurrence is not an approval. Director Glenn noted that an agency, under Chapter 343, HRS, can still declare an action exempt without a list. Chairperson Thoene noted that she did not believe that the Council intended to create a new litigation point if an item was not listed as *de minimis* on a list. Director Glenn inquired how declaring a *de minimis* exemption absent a Council-concurred list might intersect with the Hawai'i Administrative Procedures Act. Member Terry requested that the Council defer voting on the motion under the July 2, 2019, meeting to allow members to examine this issue beforehand.

**MOTION:** Director Glenn moved, and Member Parsons seconded, that the Council table Member Terry's motion until the July 2, 2019 meeting when it would be added to the agenda. The Council unanimously approved the motion to table (12-0-0).

Director Glenn left at 2:00 pm.

##### **5. Annual Report Committee update**

Committee Chair Parsons reported that the Committee had made good progress on what the content of the Annual Report should be in 2019. The Committee agreed to reach out and engage five state agencies by asking them specific questions. These agencies include the following:

- Department of Land and Natural Resources (DLNR)
- Department of Accounting and General Services (DAGS)
- Department of Transportation (DOT)
- Department of Health (DOH)
- Department of Business, Economic Development and Tourism (DBEDT)
- Hawaii Tourism Authority (HTA)

The Committee noted that rather than submit a request letter on letterhead, the Committee believes that it could elicit a more fruitful response if the agency worked directly with someone on the Committee. The Committee also planned to meet with the Environmental Chairs of the Senate and House, Senator Mike Gabbard and Representative Nicole Lowen, respectively.

Committee Chair Parsons requested Council members to formulate questions for the Committee to ask, and submit the same to OEQC, who would then compile these and transmit the same to him. He noted that there would be no committee meetings on July 30, 2019. He indicated that he hopes to have draft questions for Council to vote on at the July 2<sup>nd</sup> meeting, followed by transmitting the questions to the agencies and reviewing the responses at the September 2019, meeting.

Members suggested topics such as: carrying capacity and tourism, and emergency actions related to climate change; what actions are being undertaken to prepare for climate change; what solutions are being considered; and long-range vision planning. A member noted that the questions should be prefaced by a paragraph explaining the basis of the Council's annual report. A member of the public commented that absent a long-term plan, how could an agency speak on future actions.

#### **6. Information & Outreach**

Committee Chair Abe commented that he understood that participation in the Hawai'i Conservation Conference (HCC) would cost \$400.00 with no discount. He noted HCC did offer the Council an electronic poster as well as a 30-minute presentation; the offer was contingent on conference registration for \$410.00. A brief discussion ensued on possible sponsorship since people would benefit from an outreach session on the new rules. Staffing availability for three days, teaming up with another agency or non-governmental organization, and finding a more relevant venue (such as HCPO) were also discussed.

**MOTION:** Member Ka'aumoana moved, and Member Parsons seconded that the Council participate in the 2019 HCC after consultation with the OEQC director as to propriety of staffing, and after expressing thanks to the sponsor. A brief discussion ensued on logistics and resources. The Council disapproved of the motion (0-11-0).

#### **7. Committee Assignments**

**MOTION:** Member Ka'aumoana moved, and Member Dunbar-Co seconded, that the Council appoint Member Terry as the new Chair of the Exemption Committee. After a brief discussion, the Council unanimously approved the motion (11-0-0).

#### **8. Next Meeting: Tuesday, July 2, 2019, at 1:00 PM**

There was no discussion on this item.

#### **9. Additional Meeting in July: Tuesday, July 30, 2019, at 1:00 PM. No August 2019, meeting.**

There was no discussion on this item.

#### **10. Public Forum**

There was no discussion on this item due to no members of the public being present.

Council members noted that they needed to leave soon to make their return flights. Chairperson Thoene noted that she would contact Director Glenn about possibly not booking flights earlier than 5:30 PM so that Council members could ensure their presence for the duration of the meeting.

Member Ka'aumoana asked Council members about honoring Director Glenn at the July 30, 2019 meeting. Member Dunbar-Co offered to make a lei. Member Ka'aumoana departed at 2:56 PM. Members Terry and Tulang left at 2:40 PM, and Member Dunbar-Co left at 2:55 PM.

#### **11. Adjournment**

Due to losing quorum at 2:56 PM, the meeting ended.