

July 27, 2021

Aloha EAC members. We will be having a preliminary strategic planning discussion during the upcoming Environmental Advisory Council's August 3rd meeting. The basis of this discussion will come from the attached "EC Role Survey Analysis."

According to HB1318 (which is now Act 152), this is the "official" role of the Environmental Advisory Council (formerly, the Environmental Council):

*The Environmental Advisory Council shall serve as a liaison between the Office of Planning and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the Director pursuant to section 341- 4 (b) (3) .*

*The Environmental Advisory Council may make recommendations concerning ecology and environmental quality to the Office of Planning and shall meet at the call of the Council Chairperson or the Director of the Office of Planning upon notifying the council chairperson. The Environmental Advisory Council shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and shall submit its report and recommendations for improvements concerning ecology and environmental quality to the Office of Planning, which shall include the report and recommendations in its annual report to the legislature. All state and county agencies shall cooperate with the Council and assist in the preparation of such a report by responding to its requests for information.*

With this legislatively-mandated role (above) in mind, the Strategic Planning PIG suggests you read the attached Survey Analysis with these key questions as your guide; they will form the basis for our discussion:

- Given the EAC's current capacities and capabilities, what are our priorities; what can we reasonably do?
- In light of the Survey's many suggestions for a (greatly) expanded role, what might a future EAC look like?
- If the EAC were to expand its role, what capacities and capabilities would be needed?

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# EC Role Survey Analysis

By Max Becker

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# Methodology



- This analysis reports findings from a survey of 38 EC respondents.
  - This one-question, open-ended survey was in the field from April 12 – June 7 2021.
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# Main Takeaways

- Many respondents expressed a desire for more attention to be paid to climate change, sea level rise and better managing of growth and development. They are top of mind to respondents and areas for improvement.
- Some respondents feel as if they are being used as a “rubber stamp” for FONSI (Finding of No Significant Impact) and EAs (Environmental Assessments).
- Some also complain that EIS (Environmental Impact Statement) has “no teeth” with little-to-no enforcement power.
- Some respondents desire greater involvement in activism and legislation to also address these issues and make the role of the EC more impactful.
- They also call for better communication and outreach among all of the players to ensure more accountability, consistency, and compliance.

# Climate change and sea level rise adaptation, environmental protection more broadly were top of mind concerns to some respondents and areas for needed improvement

- “Provide clear statewide action-oriented directives (not goals) on climate change adaption”
- “It should uphold environmental protection on behalf of the people of Hawaii, even if that is at the cost of economic development, especially tourism and construction, because as climate change intensifies, we will need the ecosystem services that the environment provides more than ever. The EC should also follow HRS § 341-6 which outlines EC’s statutory responsibilities. Lastly, it should consider impacts at a landscape level rather than a project, initiative or development level.”
- “If it hasn't already, the role should incorporate a focus on climate change and sea level rising.”
- “The EC needs to be dealing with all the aspects of the long term impacts of Sea Level Rise and increasingly severe storm damages.”
- “EC should help us transition from fossil fuels over reliance, conserve important habitats and species and make progress in keeping the country country. The furthest point from housing and jobs is the least sustainable course of action. Mahalo”

There was a  
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- “The EIS has no teeth. The military writes their own in house and claims no environmental issues with regard to radar, sonar and helicopter noise in Hawaii’s oceans, mountains and skies. Start by enforcing established laws such as ESA and habitat protection such as the daily infractions at Laniakea against sea turtles by tourists, tour companies, non profits and commercial activity. Thank you.”

# It was suggested that the EC could be a better conduit for community concern

“The EC could act as a conduit for voicing community concerns regarding any legislation and/or internal State policies with regard to environmental and ecological issues. Sometimes, constituents in the many small pockets of the State have the best insight regarding environmental impacts. These same constituents often times are not involved in the legislative process, which may lead to misguided legislation. While elected officials serve this purpose as well, the EC could possibly be a necessary redundancy to assist in community involvement”

# There is also a desire for more bigger-picture actions from EC

- “Maybe the EC should try to figure out which environmental concerns would be better addressed by systematic planning and regulation rather than by ad hoc / piece-meal project-specific EAs and EISs.”
- “The EC should be more proactive, and actually opine on EIS and EA documents as to their sufficiency. This would be in advance of any agency deciding to accept the review. A first step may be to provide this review when requested by the public or presented with a petition to do so. AND the EC should actively offer testimony in support of environmental protection to the legislature and to various state and county agencies. The EC should be THE group that represents the protection of the environment.”
- “The EC should provide the guidance for balancing the issues regarding protection and enhancement of Hawaii's environment”
- Be able to show measurable results + be effective = improved environment ... not just status quo. Nothing stays the same, and there is lots of room for improvement across the board. EC should play an important role in a check and balance system. The trick is how to stay on a high road out of the political fray/morass when it is a political process that you are involved in. Go with science , truth, and justice.

# One respondent detailed the need for more disclosure of impacts in EAs and EISs:

“The EC needs to take a bigger role in advising agencies to stop accepting EAs and EISs that do not disclose impacts and educate the public on how to use HRS chapter 343 processes to protect public trust resources. Agencies are being led by applicants and their attorneys into dangerous interpretations of HRS chapter 343 such that no environmental impacts are ever found b/c the land is already allegedly "messed up" so the project won't have an impact OR they recite unproven, unenforceable mitigations that supposedly reduce the impact to insignificant. HRS 341-6 empowers the EC to do this: The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director pursuant to section 341-4(b)(3). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies.”

# Some called for following the purpose of HRS 341 and better review of 343 challenges

The EC council should review the challenges to 343 and make recommendations for amending 343.....for example 1. There should be a clear statement that for permit applicant EA/EIS, authorizing agent should have a responsibility of independent and unbiased assessment balancing public interests and benefits against private permit applicant interests and benefits, where private interest permit EA/EIS are bias and represent private interests and benefits only. 2. That permitting agencies need to write a decision document explaining their rationale for accepting EA, and whether or not an EIS should or should not be prepared for a private interest permit action.

EC should follow the purpose described in HRS 341-1 in doing so it should be the policy of the EC to review and evaluate each EA/EIS and FONSI as to how well it conforms to HRS 343 and HAR Chapter 11-200. The EC should submit their written findings to the applicant, accepting authority and publish the findings in the Environmental Notice.

OEQC and the Environmental Council (EC) should follow the purpose described in HRS 341-1 in doing so it should be the policy of the EC to review and evaluate each EA/EIS and FONSI as to how well it conforms to HRS 343 and Hawaii Administrative Rules (HAR Chapter 11-200). The EC should submit their written findings to the applicant, accepting authority and publish the findings in the Environmental Notice. In addition, the EC should examine EA/EISs to determine whether promises made in an EA/EIS have been kept; assess the quality of work of the various environmental consultants who prepare EA/EISs and grapple with the issue of appropriate alternative analysis

They also call for greater “Public trust” and clarification of the EIS/EA process, along with more transparency

- “One of the most powerful tools we have is the public trust, but the process to understand and analyze impacts to the public trust needs clarification and guidance. The EC could come up with the public trust impact analysis standard and guidance.”
- “Provide continual outreach to developers, government, NGOs, public about major changes to HEPA rules (e.g., procedural and content requirements for exemptions) to ensure consistency and compliance. Enhance public understanding of projects underway in their communities by making the whole database of EAs, EISs, federal and state permits, etc., searchable by geographic location on an interactive, online GIS map. Continue to engage in rulemaking, declaratory orders, and other administrative decision-making related to HEPA; open to other expanded roles.”



# EC's role and mission is best summarized by this respondent:

“I believe that the EC should provide a balanced and responsible representation between the states goals for renewable energy and protection of Hawaii's fragile environment. The COVID pandemic has left our island state with a sense of urgency for food security, affordable housing, and need for a regenerative economy which currently seems to mean that the minimal land space we have is threatened by development rather than seeking a balanced approach to diversified agricultural practices, livable wages, and energy being a part of a cohesive plan for the land we have left, which the current work of the EC with EIS and EA's would seem highly pertinent in finding solutions that all needs of the state can be met to include sound environmental protection. I believe that EC can play a lead role in true sustainable living and hope that their recommendation/suggestions are heard by our lawmakers and implemented through legislative processes.”

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# They use active language to describe the role they want the EC to play

- “They should be **extremely active**. If we want Hawaii to be safe we need to protect the Environment.”
  - “**Holding agencies and agency decision-makers accountable**. 2. Working with agency staff and community members to **suggest (demand?) improvements** in agency function. For example, why are streams managed by three different agencies that don't talk to or coordinate with each other? DAR, DOFAW, and DOH?”
  - “A more **active role** in introducing and promoting legislation, as well as opposing anti-environmental protecting bills.”
  - “The EC should **play a role in improving the protection and enhancement of our environment** without duplication of bureaucratic requirements.”
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# Another respondent offered this EC “to-do” list:

1. Follow the HRS341-1 purpose described: Review and evaluate each EA/EIS and FONSI as to how well it conforms to HRS343 and Chapter 11-200. The Environmental Council should submit their written findings to the EA/EIS applicant, the accepting authority, and publish the findings in the Environmental Notice. The EC should be part of the process to control DPP's flagrant exemptions that have caused private citizen's or non-profits to take them to court for not following their own rules even per their retired Acting Director Kathy Dokugawa. Hotei-Ya hotel exemptions for example.
2. The EC needs to be dealing with all the aspects of the long term impacts of Sea Level Rise and increasingly severe storm damages.
3. "Retreat" or what else from the high wave erosion of Kamehameha Highway from Kahalu'u/Kaneohe to Haleiwa? The DOT has not been prioritizing or even making a Plan for this SOLE through road for much of O'ahu. I would like the EC to establish connections with the Department of the Interior's Deb Haaland - as our nation's primary land management agency for all public lands that is responsible for furthering our understanding of natural resources and naturally hazards and CARRYING OUT our nation's Commitment s to its indigenous peoples. Federal help in funding infrastructure Environmentally and economically of the highway Hawai'ians, all residents, and over half of all visitors to O'ahu need. This irreplaceable open space agricultural side's economy depends on beauty as does Hawai'i in general.
4. EC should help us transition from fossil fuels over reliance, conserve important habitats and species and make progress in keeping the country country. The furthest point from housing and jobs is the least sustainable course of action. Mahalo