

Report to the Environmental Advisory Council (EAC)
on the April 5, 2022 Strategic Planning Forum

The EAC's Strategic Planning Forum was held on April 5, 2022 by Zoom. The primary purpose for this session was to begin the Strategic Planning process for the EAC. The information gathered in the forum will be used by the Strategic Planning Committee to make recommendations to the EAC on a plan.

The Forum began with introductions from EAC Chair Onaona Thoene. She followed that with a statement of the Forum's purpose, and provided a 5-year "look-back" summary of selected EAC's accomplishments and successes, including:

- Revising the rules governing the HRS Chapter 343 process, including exemptions, EAs, and EISs, for the first time in over 20 years
- Working with agencies to update their exemption lists pursuant to HAR Title 11, Chapter 200.1
- Hearing the first appeal in EAC history
- Working with the Legislature to change a) the appeals process, b) the requirements for an Annual Report, and c) the definition of "quorum" for the EAC.
- Two planning surveys, both leading to this planning forum
- Restructuring the OEQC; moving the EAC from the Department of Health to the Office of Planning and Sustainable Development (OPSD)
- Information & Outreach (I&O) Committee forums on various topics

EAC member Roy Abe then provided an overview of past Annual Reports.

Forum facilitator (and EAC member) Robin Kaye began the forum by posing this question to all participants:

"It's 3 years from now. You're still on the EAC. Someone asks you "what's the Environmental Advisory Council?" Participants were asked to write down their response but not to share it; it would be useful as the Strategic Planning Committee begins its work.

Kaye then outlined the agenda for the discussion:

- Results of our recent survey
- Review of our statute (§341-6)
- Discussion of what we're charged to do and how do we do it?
- Communicating our role
- Short-term Future
- Long term possibilities

Results of the recent survey

In the summer of 2021, the then-Environmental Council circulated a one-question survey to a targeted list of ~50 “constituents.” It asked one question: “What should be the role of the Environmental Council?”

Kaye then reviewed a sample of responses to that question:

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?

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 examine EA/EISs to determine whether promises made in an EA/EIS have been kept; assess the quality off work of the various environmental consultants who prepare EA/EISs and grapple with the issue of appropriate alternative analysis.

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 Environmental Council should evaluate every EA and EIS and FONSI and not just rubber stamp everything and publish their findings in the Environmental Notice.

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.

Develop water use standards and planting recommendations for areas by climate zone.

The EC should be THE group that represents the protection of the environment. The environmental council should exercise more oversight to make sure that categorical exemptions are not being improperly applied (particularly by the counties) and to more proactively assist agencies in meeting their duties under HRS Chapter 343.

Improve the quality of Rivers and near shore waters

Address the inefficiencies and delays in implementing state and county policies and plans due to challenges and litigation by community groups and activists.

The council should help ensure rules affecting our environment are enforced and that the agency overseeing that environmental feature or rule, follows through on enforcement.

The Environmental Council should assist the Counties by providing necessary real time information for Counties to make educated decisions regarding growth and projects within their respective areas.

Review of the EAC's governing statute (§ 341-6)

“§341-6 Functions of the environmental advisory council. The environmental advisory council shall serve as a liaison between the office of planning and sustainable development 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 sustainable development and shall meet at the call of the council chairperson or the director of the office of planning and sustainable development 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 and sustainable development, which shall include the report and recommendations in its annual report to the legislature. All state and county agencies shall cooperate with the council by responding to its requests for information.”

After highlighting the obvious discrepancy between the official charge to the EAC (with no dedicated budget and/or staff) and the expectations of its constituents, Kaye then asked the participants to discuss this gap in four parts:

- 1. Serve as a liaison between the OPSD and the general public by soliciting information, opinions, complaints, recommendations, and advice*
- 2. May make recommendations concerning ecology and environmental quality to OPSD*
- 3. Monitor progress of state, county and federal agencies in achieving State's environmental goals and policies*
- 4. Submit report and recommendations for improvements concerning ecology and environmental quality to OPSD for their annual report.*

There was much discussion regarding “public hearings,” and the difference between a “public hearing” and a “meeting.” “Public hearing ” is a term of art and used in an adjudicatory or quasi-adjudicatory function. Public hearings are also required as part of the process to amend or promulgate administrative rules. The EAC suggested requesting an amendment to change the term “public hearing” to “meeting” or “public meeting” as the EAC no longer has any adjudicatory functions.

Several participants spoke of the need for the EAC to gather information in other ways, such as with surveys and a more interactive web presence.

The I&O sessions were cited as good examples of outreach and community input. Representative Lowen suggested (in an earlier meeting) that one such session focus on Chapter 343.

It was suggested that the EAC identify key issues of importance and then seek input on those specific issues.

The “liaison” component should target the general Hawaii population; not be limited to targeted constituents.

It was pointed out that the rules work is still a bit “unfinished” in terms of drafting guidance documents, with the Environmental Review Program (ERP), and that the EAC needs to complete this as a priority. Some participants expressed a want for further substantive edits to the rules (e.g., to address supplemental EAs, RODs, definition of discretionary approval, clarify other definitions, etc.)

One participant directed the EAC members to HRS § 344-4, documenting 10 areas of environmental focus for the State of Hawaii. The participant further suggested that the EAC, as part of its charter, ask each agency to articulate, in the context of those state goals, their departmental goals and benchmarks.

There was considerable conversation about “credentials;” e.g, the EAC may not be seen as having credentials significant enough to be the state’s leader in environmental issues.

There was much discussion of the annual report, given that it is no longer a specific, extremely challenging, and solitary responsibility of the EAC.

In its earlier form, the annual report didn’t reach a public audience and was read only by a very small portion of Legislators. It was an extraordinary and taxing amount of work for a very small return.

In its new form (as part of OPSD’s Annual Report) the EAC needs to find ways to draw attention to the subjects we wish to report/expose.

Priorities for the next year

- Unfinished rules business; e.g., addressing supplemental EAs, “records of decision”, clarifying definitions, guidance documents, and amending the rules to address Act 152 (2021) (the move to OPSD).
- Determine what’s working/what’s missing; e.g., are scoping meetings working?
- Craft the “elevator speech”— what is the EAC?
- Promote broader public understanding of the EAC
- Seek a higher public profile for EAC; e.g., go on ‘Ōlelo; seek more public input
- Others:
 - Administration of the Rules and exemptions
 - Holistically, how does the EAC achieve actual results

- What can the EAC do that will actually help the environment; prioritize the problems and engage more engineers and scientists.
- Have EAC serve as mediator.
- Dealing with the “carrying capacity” for the state, related to tourism and its burdens on the state, environment, and residents; finding a way to control impacts, for example, through control of the inventory of rental cars, or requiring visitors to use public transit
- Finding our place within OPSD; what the EAC can and cannot do. Revisit cultural impact and environmental justice issues.
- Use public access for getting information out; start conversations regarding environmental justice and equity
- Prioritize top environmental issues (look to state’s goals and scorecards); measure environmental progress
- Improve education re 343; be more transparent with public; help with how to read an EA through education programs
- More information to the public; help educate the tourists; creative outreach, like with Uber, airlines; responsible tourism
- Work on a “positive transfer” so our input is heard at OPSD

PART FOUR : Longer term priorities and goals:

- Increase public participation, improve public's understanding of our work
- Climate change; additional outreach to stakeholders; increase collaboration between state and counties on environmental issues/rules.
- EAs being done well and fairly; key is impact statements. Avoid NIMBY vs social improvements; e.g., energy projects. EAs/EISs: EAC needs to be the “guardian” of the rules process.
- How to insure community input without NIMBY
- Increase construction industry involvement
- Support establishment of a Department of Environment
- Listen to community to find “hot spots” (like MACZAC).