



STATE ENVIRONMENTAL ADVISORY COUNCIL

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM,
OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT, STATE OF HAWAII
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State of Hawai'i Environmental Advisory Council (EAC)

Minutes for Meeting of

Tuesday, April 4, 2023

1:00 PM - 3:30 PM

Via Zoom and in person at

Leiopapa A Kamehameha, Room 405

235 S. Beretania St., Honolulu, HI 96813

Josh Green, M.D.
Governor

Chairperson
Puananionaona Thoene

Vice Chair
Mary Begier

Members
Roy Abe
Stephanie Dunbar-Co
Dawn Hegger-Nordblom
Makaala Kaaumoana
Ian Robin Kaye
Theresita Kinnaman
Michele Lefebvre
Gordon Scruton, Jr.
Rachel Sprague
Ron Terry
Michael Tulang
N. Mahina Tuteur

MEMBERS PRESENT: Puananionaona Thoene (Chairperson); Mary Begier (Vice-Chairperson); Roy Abe; Stephanie Dunbar-Co; Dawn Hegger-Nordblom; Makaala Kaaumoana; Tessie Kinnaman; Michele Lefebvre; Gordon Scruton, Jr.; Rachel Sprague; Ronald Terry; and Mahina Tuteur

MEMBERS ABSENT: Robin Kaye; Michael Tulang

STAFF PRESENT: Scott Glenn (Director, Office of Planning and Sustainable Development); Alison Kato (Deputy Attorney General); Leslie Segundo (Environmental Health Specialist)

PUBLIC PRESENT: Mikayla Barnwell (University of Hawai'i at Hilo)

Materials for this agenda and minutes of this meeting will be available at specific links indicated below or at:

<https://planning.hawaii.gov/erp/ec-meetings/>

1. Call to order, Roll Call, Introductions, Quorum

With a roll-call and quorum present (Thoene, Kaaumoana, Terry, Dunbar-Co, Sprague, Kinnaman, Hegger-Nordblom, Tuteur, Scruton and Begier) Chairperson Thoene called the meeting to order at 1:03 PM. Also present were Deputy Attorney General Kato, Environmental Health Specialist Segundo and Mikayla Barnwell (of the University of Hawaii at Hilo).

2. Review and adoption of meeting minutes

- January - December 2020 meeting minutes

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-01-07-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-02-04-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-03-03-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-04-14-Environmental-Council-Minutes.pdf

No May 2020 meeting minutes

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-06-02-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-07-07-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-08-04-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-09-01-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-10-06-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-11-10-Environmental-Council-Minutes.pdf

https://files.hawaii.gov/dbedt/erp/EC_Meetings/2020-12-01-Environmental-Council-Minutes.pdf

- December 2021 meeting minutes https://files.hawaii.gov/dbedt/erp/EC_Meetings/2021-12-07-Environmental-Council-Minutes.pdf
- January 2022 meeting minutes https://files.hawaii.gov/dbedt/erp/EC_Meetings/2022-01-04-Environmental-Council-Minutes.pdf
- March 2023 meeting minutes https://files.hawaii.gov/dbedt/erp/EC_Meetings/2023-03-07-Environmental-Advisory-Council-Minutes.pdf

MOTION: Member Terry moved, and Member Begier seconded that the EAC approve the above minutes. Member Begier noted that when she tried to access the minutes of December 7, 2021, and January 4, 2022, the links were dead. The Environmental Health Specialist informed Member Begier that the links have since been fixed by staff. Both Member Terry and Member Begier agreed to amend the motion to include the above minutes except for those of December 7, 2021, and January 4, 2022. These would be addressed at the May 2023 meeting. Member Terry said that there is no need to correct the grammar or punctuation for the minutes; however, it is important to ensure that the names cited therein were accurate. Member Begier stated that the use of her title is inconsistent in the minutes and that there is no need to use her title in future minutes.

Member Terry had the following specific edits.

March 2020: Globally correct the spelling of “de minimus” to read “de minimis.”

June 2020: Under “Public present”, “Brain” should be spelled “Brian.” “Billingslee” should be spelled “Billingsley”. OEQC Director report - correct “Agricultural Environment” to read “Agriculture and Environment”. Globally correct “OAQC” to read “OEQC.”

July 2020: On bottom of 1st page; correct “Jenny” to read “Genevieve.”

September 2020: Under “Public Present” correct “Billingslee” to read “Billingsley”, and “Sandy Fund” to read “Sandy Pfund.”

October 6, 2020: On the 2nd page, 1st line correct “Emily Yuen” to read “Emma Yuen”.

November 2020: Under “Public Present” correct “Fund” to read “Pfund.” On page 2, under the discussion of potential exempt list of judiciary projects correct spelling of JoAnne Krippahne.

December 2020: Under “Public Present” correct “Fukisaki” to read “Fujisaki.”

Members Roy Abe and Michele Lefebvre arrived at 13:12 PM.

Hearing no further discussion on the motion, Chairperson Thoene called for the question. The EAC unanimously approved the motion (12-0-0).

3. Office of Planning and Sustainable Development (OPSD) Director's Update

- Discussion of 2023 legislation being tracked by OPSD

Defer until Director arrives. See item 8, below.

4. Exemption Committee Update

- Discussion revised Exemption committee procedures for EAC review of agency exemption lists

Committee Chair Terry reported that the Exemption Committee is revising its procedures and policies. He expects these to be finalized at the May 2023, meeting. He also reported that the Committee is working with the Hawaii School Facilities Authority (HSFA) on a new exemption list. Finally, he reported that the Committee elected a new Chair, Michele Lefebvre.

5. Information & Outreach (I&O) Committee Update

- Discussion of and planning for future forums
- Discussion of revised I&O Committee forums checklist

Committee Chair Begier asked the EAC to review the checklist attached to the agenda. Chairperson Thoene noted that there was no checklist attached to agenda. Committee Chair Begier said that it was necessary for the EAC to review the checklist since she needed feedback. Committee Chairs, were reminded by Chairperson Thoene to please inform the Chairperson on what needs to be on the full EAC agenda as an action item. Member Hegger-Nordlom informed the EAC that the checklist that Mary planned to discuss was all encompassing and could be dealt with in May 2023. Member Hegger-Nordblom reported that she is currently working with the U. S. Fish and Wildlife Service. Ms. Begier reported that she sent email to Representative Lowen to check on her availability for a June 2023 EIS with Member Terry.

6. Legislative Committee Update

- Discussion of legislation related to Hawai'i Revised Statutes, Chapter 341 and Chapter 343 and other legislation tracked by the EAC, including recommendations for submitting testimony on specific bills https://files.hawaii.gov/dbedt/erp/EC_Meetings/2023-03-07-EAC-Leg-bills-re-environment-VR5-copy.pdf

Committee Chair Kaye was absent, but he had asked Member Begier to report on Legislation. She noted that SB 304, HD 2 dealing with visitor impact fees made the front page of the Hawaii Tribune Herald with its constitutionality being questioned. She also noted that SB 1535 that allows the Department of Transportation director to exempt ground transportation projects from historic preservation review is moving forward. She also noted that HB 654, that mandates new appliances meet new energy star standards is also moving forward; everything else is dead. Chairperson Thoene noted that SB 422, SD1 (the bill that the EAC asked Senator Gabbard and Representative Lower to introduce) is moving forward.

7. Discussion of Legislative Resolutions

- House Concurrent Resolution (HCR) 70 and House Resolution 71
https://www.capitol.hawaii.gov/sessions/session2023/bills/HCR70_.PDF
https://www.capitol.hawaii.gov/sessions/session2023/bills/HR71_.PDF
https://files.hawaii.gov/dbedt/erp/EC_Meetings/2023-03-27-EAC-Testimony-HCR-70-HR-71.pdf

Chairperson Thoene reported that this was heard last Tuesday on March 28, 2023. She reported that the EAC submitted testimony.

The resolutions ask that the EAC (1) update Hawai'i Revised Statutes (HRS) Chapter 343 to reflect all factors that shall be considered for the environmental impact statement process; (2) Collaborate with the University of Hawai'i (UH), including all applicable departments, such as Hawai'inuiākea School of Hawaiian Knowledge, College of Engineering, College of Tropical Agriculture and Human Resources, Department of Natural Resources and Environmental Management, and School of Architecture; (3) include in proposed legislation, provisions authorizing OPSD or the Department of Land and Natural Resources (DLNR) to, when necessary, appoint an independent contractor or another neutral party to prepare the environmental assessment (EA) and, if necessary, the (EIS); (4) submit a draft report of the findings made, recommendations, and proposed legislation to the Legislature not later than twenty (20) days prior to the convening of the 2024 Regular Session; (5) with DLNR, gather public comments on the report and proposed amendments to HRS Chapter 343 by (i) posting the report and proposed amendments to DLNR's website and accepting written comments by email or other electric means; and (ii) holding at least one public forum in each of the counties; (6) by 2025, with DLNR, hold public forums in communities near state lands that are currently leased to the military to solicit community input on the future use of those lands; and (7) consider the public comments regarding the report and proposed amendments and future use of the state lands that are leased to the military, and submit a final report of the findings and recommendations and proposed legislation to the Legislature no later than twenty (20) days prior to the convening of the 2025 Regular Session.

Director Glenn arrived at 13:31 PM.

Chairperson Thoene noted that the testimony submitted on the resolution mentioned that the EAC no budget (including travel budget) and no dedicated staff; any funds required by the EAC to complete its statutory functions would be taken from OPSD's budget. She noted that EAC members are volunteers, with most holding full time jobs outside of their EAC work. She noted that these points were raised to emphasize that the undertaking proposed by HCR 70 and HR 71 would be difficult and would require dedicated staff and funding.

Chairperson Thoene noted that during the hearing the EAC testified on its comprehensive overhaul of the EIS rules. She noted that the use of an independent contractor or other neutral party would have financial implications. Chairperson Thoene asked legal counsel what the legal requirements were for responding to legislative resolutions. Deputy Attorney General Kato responded that although she cannot speak to the consequences of ignoring a resolution, she noted that although one is not required to meet the requirements of a resolution, especially in unreasonable cases where there is a lack of resources, one would at least try to respond to it.

Member Begier commented that she appreciated the testimony's strong language supporting the consulting process for EAs and EISs under Chapter 343, HRS. She noted that the testimony counters the notion that if someone makes money providing a service they are perceived as being bad. Member Terry commented on the benefit of EA-EIS consultants. Citing the Saddle Road project as an example, he noted that environmental professionals need to be integrated into the design of projects. Member Abe also provided comments on working as a consultant in both the planning and engineering design phases of a project. Member Kaumoana inquired about the genesis of the two resolutions. Chairperson Thoene responded that Representative Ganaden appeared to be the lead on both.

Chairperson Thoene testified that the overhaul of the rules historically took two to three years. In testimony she also noted that she deferred to the Department of Land and Natural Resources since they are the landlord of military lands. Member Lefebvre noted one key difference between the National Environmental Policy Act (NEPA) and HEPA (Chapter 343, HRS): the former has subject matter experts while the latter does not, often relying on public comments to drive the environmental review process.

Member Dunbar-Co commented on the environmental importance of military leases coming to an end of their term. She expressed her concern that the legislature is expecting that OPSD and the EAC fully comply with the resolution.

Chairperson Thoene summarized the tasks before the EAC: coordination with DLNR on the military leases portion of the resolution before 2026; revisiting the rules since their promulgation in 2019; and trying to keep the statute thin without rules. She expressed her belief that the EAC can get something to the Legislature twenty days before the 2024 session. As she plans to agendize these resolutions again for May 2023, she informed the EAC that there is no need to make decisions today.

Director Glenn commented that for a single chamber resolution, the executive branch would acknowledge the resolution but not execute it; for a concurrent resolution, the executive branch would find a way to execute the resolution. Since this is a concurrent resolution, it would under hearings in parallel committees in the other chamber, and possibly go on to conference committees if changes are made in the other chamber. Director Glenn raised this to illustrate that the resolution still needs to be processed before a final version is obtained. He noted that there were several bills asking OPSD and/or DLNR to work on military leases that did not pass. He suggested doing a post-mortem on the testimonies to see what different issues raised on military leases.

8. Annual Report Committee Update

- Continued discussion of content for the 2023 Annual Report and committee recommendation to full EAC

Committee Chair Dunbar-Co had no update.

Chairperson Thoene asked Director Glenn to present his report in item 3 of the agenda.

Director Glenn reported on several bills that are moving to conference committee. SB 1296 relating to economic development districts would help nonprofits in the state receive federal funds. He also noted that the movement of SB 1291, dealing with sea level rises in vulnerable areas which if it passes sets up a process for State agencies to decide what to do with facilities in these areas. He also reported that a beach assessment study (not an administrative bill) had been assigned to OPSD but could be assigned to DLNR. SB 1191, dealing with transit-oriented development districts, received two million dollars in Capital Improvement Plan funds but no positions. He would need to read the Senate Ways and Means Committee version of worksheets on the budget for an update.

With respect to operations in the Office of Planning and Sustainable Development, Operations – National Oceanic and Atmospheric Administration (NOAA) and the Coastal Zone Management (CZM) Program, and Transit Oriented Development (TOD). OPSD is looking at filling the vacant Planner III position and the Environmental Health Specialist III position. He noted that May 4, 2023 would be the Director's last day; it is possible that Mary Alice Evans would step in as the interim Director.

Member Dunbar Co asked Director Glenn whether he could stay on with a 12-12 tie vote in the Legislature. Director Glenn responded that it was his understanding that a majority was needed. He noted that a tie is eligible for motion for reconsideration, but it could only be for a senator who voted no. He thanked the Council for their support in his nomination.

Member Begier noted for the record as a individual that with respect to lack of Senate confirmation for Director Glenn, it is a very sad time for our state. She noted that the citizens of Hawaii need to pay attention to what took place.

9. Discussion of EAC Member Terms https://files.hawaii.gov/dbedt/erp/EC_Meetings/2023-04-04-Environmental-Advisory-Council-Terms-2023.pdf

See packet. Some may be able to stay as holdover. Member Hegger-Nordblom's term on June 30, 2023. Member Scruton announced that he is planning on leaving the Council on June 30, 2023, as he will be busy with a large affordable housing project. Chairperson Thoene informed the Council that she had reached out to Boards and Commissions, but have not yet head back from them. Both Members Terry and Begier thanked Member Scruton for his service. Chairperson Thoene noted that four member (Hegger-Nordblom, Kaaumoana, Scruton and Terry) will all term out on June 30, 2023. Appointment starts on appointment date in the Governor's Message to the Senate. Members Hegger-Nordblom and Kaaumoana had put in new applications. She asked members to find the appointment date in their Governor's Message to the Senate so that she can ascertain if they can become holdover members. Member Abe's 2015 appointment need to be rechecked. The Environmental Health Specialist checked the minutes and confirmed that Members Kaaumoana, Terry, Tuteur, attended their first meeting in February 23, 2016. Director Glenn asked about a gap in meeting minutes from November 2015 to February 2016. The Environmental Health Specialist said that he would check with the Secretary about this. The Environmental Health Specialist also confirmed that both Members Begier and Dunbar-Co attended their first meeting on November 9, 2016. Members Dunbar-Co and Thoene confirmed that they were appointed interim members in 2016. For members that are willing to hold over, Chairperson Thoene asked what would be the limit of their holdover period. All agreed that they could serve until the end of the next Legislative session. Chairperson Thoene asked the Council to assist her in filling in the blanks which would be revisited at the May 2, 2023, meeting.

10. Discussion of Committee Member Assignments https://files.hawaii.gov/dbedt/erp/EC_Meetings/2023-04-04-EAC-2022-Environmental-Council-Committees-Assignments-10-6-22.pdf

Chairperson Thoene then discussed Committee assignments. She noted that because Member Terry would be leaving the Council, Member Lefebvre volunteered as Chair of the Exemptions Committee. She also noted that Member Scruton's departure would open up spaces on the Strategic Planning Committee and the Information and Outreach Committee. Director Glenn shared the following URL to a 2016 news release: <https://health.hawaii.gov/news/files/2013/05/20161221-EC-Appointments-NR-FINAL.pdf>.

11. Reminder: Send all ERP correspondence to dbedt.opsd.erp@hawaii.gov

12. Next Meeting: Tuesday, May 2, 2023

Chairperson Thoene reminded Committee Chairs that committee agendas that need to be on full EAC need to be identified and approved by her. The deadline for submittal of materials would be Tuesday, April 25, 2023.

13. Adjournment

Chairperson Thoene adjourned the meeting at 2:27 PM.