ENVIRONMENTAL COUNCIL MEETING MINUTES
January 18, 2011, 1400 – 1600 hours
Army Air Force Exchange Services Building
919 Ala Moana Boulevard, Fifth Floor Conference Room
Honolulu, Hawai'i
and by Video Teleconference from the District Health Offices
on Lihu'e, Kaua'i, and Hilo, Hawai'i

Members Present:	David Atkin; Alvin Char; Pete Cooper; Robert Inouye (Lihu'e, Kaua'i); John Richards (Hilo, Hawai'i); Ian Sandison; Mary Steiner (Chairperson); and, James Sullivan.
Members Absent:	Susan Matsushima; Christopher Steele; and Herman Tuiolosega (Acting Administrator);
Public Present:	Scott Glenn; and Genevieve Salmonson
Staff Present:	Edward G. Bohlen, Esq.; Alcelia Domingo; and, Leslie Segundo

1. CALL TO ORDER: With a quorum of eight members present, Chairperson Steiner called the Environmental Council to order at 1412 hours; all present in the room introduced themselves. The chairperson then allowed several minutes for the members to review the minutes of December 15, 2010.

2. APPROVAL OF MINUTES: MOTION: It was moved and seconded that the Environmental Council approve the minutes of December 15, 2010. The Environmental Council unanimously approved the motion (8-0-0).

3. CHAIRPERSON'S REPORT: Chairperson Steiner reported that she worked closely with the Office of Environmental Quality Control (OEQC) in her attempt to secure a regular meeting date, time and location. The chairperson also requested that members respond to her emails in a timely manner.

4. ACTING ADMINISTRATOR'S REPORT: Acting Administrator Tuiolosega was absent and the staff distributed copies of his report to the members. Chairperson Steiner highlighted several items in the report, such as: OEQC preparing a response to the study on Chapter 343, HRS, by the University of Hawaii; OEQC's ongoing work in developing a database; OEQC's ongoing work in revising the suspended 2004 Environmental Guidebook, and education/outreach sessions to the agencies and the public; OEQC's preparation of a spreadsheet of statistics for environmental assessments and impact statements; OEQC's continuing efforts in securing staffing and support for the Environmental Council; and OEQC's response on the fee structure proposed in the University of Hawaii study. A brief discussion ensued on the level of staff support for the Environmental Council. The Acting Administrator noted that the OEQC has always provided support – the issue has always been the degree to which this was provided by OEQC/DOH. A brief discussion also ensued on the proposed revisions to the suspended 2004 EIS Guidebook. The staff responded that a major feature in the revision was articulating the separate procedural tracks mirrored in the bifurcation of Chapter 343, HRS into agency actions (Section 343-5(b), HRS) and applicant actions (Section 343-5(c), HRS). A member requesting clarification on the role of the Environmental Council in reviewing the revised guidance prior to publication. The staff responded that they would refer the matter to the Acting Administrator for a response at the next meeting.

5. STANDING COMMITTEE REPORTS

   A. *Standing Committee on Exemption Lists*: Messrs. Atkin and Cooper met earlier and discussed a new exemption list for the Kauai Transportation Agency (KTA) to be published in the periodic bulletin authorized by Section 343-3, HRS.

   MOTION – Mr. Atkin moved, and Mr. Cooper seconded that the KTA exemption list be published in the next available periodic bulletin to elicit public comments for a period of thirty calendar days. A brief discussion followed after which the chairperson called for the question. The Environmental Council unanimously approved the motion (8-0-0).

   Mr. Atkin then discussed the exemption list for the Agribusiness Development Corporation of the State Department of Agriculture, published in the January 8, 2011, edition of the periodic bulletin. Mr. Atkin noted that the 30-day comment period had yet to expire, with public comments yet to be

distributed to the members at the next meeting. Dr. Atkin noted that the January 8, 2011, periodic bulletin did not specify that a copy of the comments was to be sent to the OEQC and Environmental Council. Mr. Atkin reported that he would work with OEQC staff to secure the proper language ensuring that OEQC and the Environmental Council would receive copies of public comments.

With respect to the exemption list for the State Department of Accounting and General Services, Mr. Atkin reported that the Committee had met with the agency and that the Committee was satisfied with the current version of the list. Mr. Atkin recommended that the Environmental Council concur with the current version of the list.

MOTION: Mr. Atkin moved and Mr. Cooper seconded that the Environmental Council concur with the latest version of the exemption list for the Department of Accounting and General Services of the State of Hawaii. The chairperson then opened discussion on the motion by noting that she was the exemption committee chair that had initially reviewed the list and found it to be overreaching and replete with typographical errata. Noting that she intended to vote against the motion, a lively discussion ensued after which the chairperson apologized and the chairperson agreed to attend the next standing committee meeting. The chairperson then noted that there were no public comments received on the list and she called for the question. The motion failed to carry (5-2-1).

B. *Standing Committee on Legislation*: Mr. Sullivan reported that he and his colleague met earlier to discuss SB 2818. He highlighted the following issues in the bill that they discussed: (1) strengthening the role of the OEQC by placement in the Office of the Governor; (2) modernizing the functions of the OEQC; (3) transferring rulemaking authority from the Environmental Council to the OEQC; and (4) streamlining the membership of the Environmental Council from fifteen members to nine members. A lively discussion ensued. With respect to the first item, the chairperson reported that she was informed that placement of OEQC in the Office of the Governor was highly unlikely. With respect to the second, modernizing would require information on basis and implementation of the proposed fee structure in the bill. With respect to the third, the chairperson noted that the Environmental Council had already articulated its opposition to such a transfer at its last meeting. With respect to the fourth, the chairperson noted that the Environmental Council has eleven active members not including the acting administrator (ex-officio, voting). The chairperson noted that one member was a three-month resident of the State and spent the remaining time in the contiguous forty-eight states of the union.

C. *Investigative Committee on the Report of the University of Hawaii on Chapter 343, HRS*: Mr. Sandison reported that he, Ms. Steiner, Mr. Richards, and *ex-officio* member, Mr. Glen, constituted the investigative committee which met by telephone to discussion the study's recommendation and its effects on the Environmental Council. He reported that the investigative committee reached no conclusions and as such, and that the Environmental Council's vote at its last regular meeting affirming its opposition to the recommended transfer of rulemaking authority from the Environmental Council to the OEQC was the sole position to date on the University's study. Mr. Glen noted that in light of the recent appellate decision in the *Unite Here v. Turtle Bay* case, the Environmental Council would do well to discussion the circumstances under which a supplemental statement would be required. Ms. Steiner reported that during her meetings with Mr. Sandison, Representative Hermina Morita, and Senator Michael Gabbard, the representative informed her that Chapter 343, HRS, issues were secondary to Chapter 341, HRS, issues, the first of which would be the selection of a new director for the OEQC. Ms. Steiner reported that the Environmental Council needed to articulate to the administration and to the legislature the qualities it would seek in the new OEQC director. The second issue of import would be the Environmental Council's input on streamlining the body from fifteen members to nine members. Mr. Sandison also noted that the third issue of import discussed was the Environmental Council's concern with the transfer of rulemaking authority to OEQC. Mr. Sandison reported that the remaining important issues were the Environmental Council's position on the use of triggers as opposed to screens, the proposed fee structure, the locus of OEQC and the Environmental Council and the role of the OEQC director. Mr. Sandison recommended that the Environmental Council consult with the Land Use Research Foundation

(LURF) and planning professionals. Ms. Steiner reported that she senses that LURF views the Environmental Council as being dysfunctional and that LURF did not agree with many of the recommendations of the working group. Ms. Steiner noted that she perceives that environmental issues will not be a high priority on the legislature's agenda. She also noted that she believes that the Senate and House will vote to extend the sunset from June 30, 2011, to June 30, 2013, on Act 87, 2009 Session Laws, which narrows the state/county/land/funds trigger to mitigate the backlog of right-of-way approvals still being processed by the State and counties.

The chairperson initiated discussion on the following five items:

(1) Qualities of OEQC leader. Mr. Cooper noted that the director should be able to straddle the divide between the developmental interests and environmental groups. Mr. Richards noted that the economic situation of the State requires a director that can find a balance between environmental protection and economic development initiatives in the state. Ms. Steiner noted that the ideal director would be familiar with environmental statutes and rules develop good working relationships with the OEQC staff and the current administration and be conversant in issues of the day that may not be articulated in law or rules. Mr. Sullivan stressed that the director should act in a nonpartisan manner, working fairly with all interests.

(2) Size of Council. Mr. Cooper noted that long absences because of a move to the mainland affect quorum and the ability of the Environmental Council to function effectively, since videoconferencing from Hawaii to the mainland is not feasible. At the request of the Environmental Council, the deputy attorney general agreed to research the statute for specific language addressing Mr. Cooper's concern. The chairperson noted that four members of the council have terms expiring on June 30, 2011. In light of the discussion, the chairperson asked the council for a straw poll on whether the Environmental Council remain at its current number, or reduce to nine members. A lively discussion ensued. The results of the informal straw poll were as follows. Fifteen member (4 affirmative votes), Nine members (3 affirmative votes), Twelve members (1 affirmative vote)

(3) Rulemaking on Supplemental Statements. The chairperson noted that supplemental EIS's have the attention of the legislature and the public. One member proposed that the Environmental Council abandon the grammatical correction rules currently sitting in abeyance in the Attorney General's office. A discussion ensued on rulemaking related to supplemental EIS's. The chairperson entertained suggestions to provide direction to the Standing Committee on Administrative Rules. Mr. Cooper inquired as to need to understand the recent appellate decision in the Turtle Bay case and converse on the need for guidelines or rules. Noting that Messrs. Sandison, Richards and Glen (ex-officio) volunteered to participate, the chairperson recommended that the standing committee begin to solicit comments from the public at the start but complying with the requirements of Sunshine Law. In response to a query from the chairperson, Mr. Glen noted that shelf –life issues need to be discussed and laws from other states examined. The chairperson noted that the Standing Committee on Administrative Rules is currently reviewing the report and expects to report at the next meeting on a proposed methodology to address the issue of supplemental statements.

MOTION: Mr. Sandison moved, and Mr. Atkin seconded that the Environmental Council create an investigative committee that will report on the current status of supplemental environmental impact statements and assessments. There was an extensive discussion. Mr. Glen suggested that instead of supplemental environmental assessments, the motion use the more global term "supplemental environmental impact assessments." The staff noted that the current statute makes no mention of such a term and Deputy Attorney General Bohlen recommended the use of existing statutory terms. Staff reported that because supplemental statements are not mentioned in the statute (only in administrative rule), there is no statutory mechanism to keep an accepted final statement on the Chapter 343, HRS, radar screen (i.e., a proviso that the entity/agency processing the acceptance of

a statement will periodically monitor unimplemented actions to ascertain if there are changes in size, scope, location, intensity, etc.). When an action has been fully implemented, it drops off the 343 radar screen. With no further discussion, the chairperson called the question. The Environmental Council unanimously approved the motion (8-0-0). The chairperson appointed the following members to the investigative committee: Messrs. Sandison, Atkin, Richards, and *ex officio* Messrs. Glen and Segundo.

(4) Language to keep rules with EC. *Status quo.*

(5) Fee Structure and Locus of Environmental Council and OEQC. There is no time left. This is to be discussed at the next meeting.

6. PUBLIC TESTIMONY: There was no public testimony.

7. NEW BUSINESS: A member inquired about the chairperson setting up a meeting with Mr. Gary Gill, Deputy Director for the Environment, Department of Health. The Chairperson reported that the Acting Administrator of the Office of Environmental Quality Control recommended following the proper protocol by going through the Director of Health since the Environmental Council is administratively attached to the Office of the Director of Health. A brief discussion ensued and the Chairperson indicated that she informally speak with Mr. Gill later in the week. Also, at the behest of Mr. Inouye, the Office of Environmental Quality Control will verify and ascertain all Internet Protocol (IP) connection in advance of the next video teleconference meeting of the Environmental Council.

8. NEXT MEETING: February 15, 2011 – Tuesday at 1400 hours.

9. ADJOURNMENT: With no further business to discuss, the chairperson adjourned the meeting at 1601 hours.