

6/8/09

## **Talking Points Regarding the State of the Environmental Council**

June 2009

Drafted by: Gail Grabowsky

[We did not have quorum on the day we developed this document so it could not be passed as a motion]

### **THE SITUATION THE COUNCIL FINDS ITSELF IN:**

Over the past two years the State of Hawaii's Environmental Council has endured a number of hardships that show no sign of abating in spite of our many efforts to bring attention to them and remedy them. As a citizen council of volunteers appointed by the Governor, Environmental Council members are tasked by the State of Hawaii with:

- (1) Adopting, amending, or repealing the environmental impact statement rules;
- (2) Reviewing agency exemptions lists;
- (3) Adding, deleting or amending existing exemption lists at the request of an agency;
- (4) Making an annual report with recommendations to the governor, legislature and the public no later than January 31<sup>st</sup> of each year, and finally;
- (5) Soliciting information, opinions, complaints, recommendations and advice concerning ecology and environmental quality and publicizing such matters.

The hardships that the Council has been enduring have resulted in the resignation of three members (thus far) and have stifled our ability to perform all of the duties listed above. As such, we wish to clarify these difficulties here, with the aim of making them public and ending them so that we may get on with the valuable business we were appointed to do and wish to accomplish.

### **The hardships the Council faces have been the following:**

- Difficulties Maintaining Quorum:
  - Lack of new appointees in spite of many nominations from Council members
  - Council membership dropped to nine (out of 15 possible) for almost a year
  - New appointees were gained only after we had to "bargain" with the Attorney General who was requesting a new Exemption Class for the Kukui Gardens purchase
  - We decided roughly a year ago to employ video conferencing, rather than inter-island travel. However, after several meetings it became apparent that this was untenable. Equipment-use training was not provided, the equipment malfunctioned so that neighbor island

Council members couldn't hear or couldn't see us, and in one instance members were kicked out of their room early.

- Poor/Inadequate Meeting Places:
  - A willingness on our part to not use the allotted travel funds for neighbor island members in order to save money was followed-up by five consecutive meetings with non-working/partially working video conferencing technology.
  - Many of the rooms used for make-shift video conferencing were not conference rooms, so that council members couldn't see each other because we were scattered at different computer terminals or at tables facing different directions.
  - Many of the meeting rooms were too small to allow members of the public.
  - Many of the meeting rooms had no adequate place for the public to address us even if they managed to squeeze into the room.
  
- Proposed Rules Changes
  - New rules were painstakingly drafted after many meetings with the public and very careful, time-consuming rewrites that were years in the making; these proposed changes were submitted over two years ago and have not been moved along, adopted or even commented upon by the Governor's office.
  - The Attorney General committed to moving the proposed rule changes through the system at the Kukui Gardens meeting but never followed through
  - At our last meeting we learned that the rules will not move forward; no reason was given
  
- Annual Report Ignored
  - The 2007 Annual Report was researched, written and completed by the Council and submitted to the Governor's office on time, however, no word was ever given about its status and the Governor's office did not provide any information in spite of many requests to learn of its status.
  - As a result, the 2007 Annual Report "died" in the Governor's office and was never released to the legislature or the public.
  - No funding was allotted for the 2008 Annual Report.
  - Efforts by the Council members and the Director of OEQC to find outside funding created an extreme hardship and frustration for the Annual Report Committee and OEQC who ended up relying on students and the private sector to have this publically mandated document completed.
  - There is no sign of any financial support for the 2009 Annual Report which should be in process now.

- Lack of Meeting Minutes and Staff Support
  - Although the current employees of OEQC try very hard to meet the needs of the Council, we went without official minutes for many months.
  - In her reports to the Council the Director of OEQC has reported many times of her extremely heavy workload; no one in the office has the time to tend to the Council's needs so that it seems there needs to be an increase in the number of staff at OEQC in order to ensure that all required tasks can be accomplished by the Council.

All of these hardships have lead to a high turnover on the Council. In the past six months we have lost our Chair, the Chair of the Annual Report Standing Committee and a new member who was very enthusiastic about being appointed to the Council, but after 18 months had had enough. The State of Hawaii is wasting and demoralizing its volunteer-citizen talent via the actions listed above.

### **CONSEQUENCES OF AN IMPAIRED ENVIRONMENTAL COUNCIL**

- Lost opportunities for environmental review streamlining due to un-amended exemption lists
- No Annual Environmental Report to be shared with the legislature and public
- No new rules or rule changes
- No venue for public comment on environmental issues in our State

### **CHANGES THE ENVIRONEMNTAL COUNCIL MEMBERS WANT TO SEE**

1. **15 appointees serving on the Council**
2. **Travel money for neighbor island Council members reinstated or use of permanent, truly functional, videoconferencing facilities that permit public input at all locations**
3. **OEQC personnel such that the Council has: reliable minutes, help with data collection for the Annual Report, help with rule making procedures, help with general integration of Council duties with OEQC and the State**
4. **A budget for the Annual Report**
5. **Open, transparent communication and discussion with the Governor's office when they are needed/requested in as timely a manner as is possible**

## **Recommendations of the *ad hoc* Investigatory Committee on the Future of the Environmental Council**

July 2009

Recommendations summarized by: Gail Grabowsky

[This document was passed by a motion on at the July 23<sup>rd</sup> Environmental Council Meeting]

On June 22<sup>nd</sup>, 2009, the Environmental Council's *ad hoc* Investigatory Committee on the Council's situation and future, met to develop recommendations pertaining to the Council's near and long term goals. For the near-term goals we assumed that the council continues to operate under the existing agency regime and the Council's existing legal mandate; for the long term goals we made no assumptions about the Council's agency affiliation(s) not its legal mandate. In short, for this latter set of recommendations we allowed ourselves to think "out of the box" and come up with a set of ideals for the Council's position in government and its legal mandate.

### **Environmental Council SHORT TERM GOALS:**

1. Maintain the full council maximum of 15 commissioned appointees
  - 1.1. When the Council is not fully commissioned approvals need to be expedited
  - 1.2. Once appointed, the confirmation process also needs to be expedited
2. Maintain open, transparent, supportive communication and discussion with the Department of Health and the Governor's Office
3. The Council needs sufficient resources and support so that it:
  - 3.1. May conduct effective meetings
  - 3.2. May provide for public attendance and participation
  - 3.3. May receive meeting minutes in a timely fashion
  - 3.4. May produce the Annual Report

### **Environmental Council LONG TERM GOALS:**

#### **Council Positioning and OEQC's Role:**

1. The Council would like to see OEQC become a more independent agency with much more support/staff (15+) and the power to review EA's and EIS's.
2. The Council believes that agencies should draft EA's and EIS's and OEQC should confer/review them.
3. The Council, under this kind of scenario, would remain connected to OEQC.

#### **Exemptions:**

1. The Council would like to be able to initiate/order exemption list updates.
2. The Council would like exemption lists to be published in the Environmental Notice.
3. The Council would like to be granted the authority to request that agencies provide information pertaining to and/or list what projects they have declared and/or are planning to declare to be exempt.
4. The Council would like to look into a possible public comment process for projects proposed for exemption.

**Annual Report:**

1. The Council supports the existing legal description of the Annual Report and needs the resources to produce such a report.
2. The Council believes the Annual Report should not be stifled; it should be a quality report as mandated.
3. The Council would like to see efforts made to publicize the Annual Report better once it is produced.

**Rules:**

1. The Council is satisfied with the rulemaking authority it has been given, but very unsatisfied with the process of rules revision which has resulted in years of hard work leading to no rule changes.

**Public Liaison:**

1. The Council would like to continue to act as an ombudsman for environmental information exchange, public input and public inquiry.

**Synergizing with the State into the Future:**

1. The Council recognizes that the current EIS Study will result in many good ideas that will pertain to OEQC and the Environmental Council and we would like our ideas and recommendations to synergize with the ideas that come out of the EIS study.

LINDA LINGLE  
GOVERNOR OF HAWAII



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STATE OF HAWAII  
ENVIRONMENTAL COUNCIL  
235 SOUTH BERETANIA STREET, SUITE 702  
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PETE COOPER  
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SUSAN MATSUSHIMA  
JOHN RICHARDS  
CHRISTOPHER STEELE  
MARY STEINER  
JAMES SULLIVAN

August 17, 2009

Laurence Lau  
Deputy Director  
Hawaii State Department of Health  
1250 Punchbowl Street  
Honolulu, HI 96813

Dear Mr. Lau,

At its July 23<sup>rd</sup>, 2009, meeting, the Environmental Council (the Council) unanimously passed a motion directing the Council Chair to send a letter explaining to our point of contact in the Hawaii State Department of Health that all further meetings of the full Council and its standing committees will be postponed until such time that, at the Council Chair's discretion, the conditions to conduct a successful Council meeting have been met.

Environmental Council meetings have been held in recent years in rooms within the DOH building in which effective participation by neighbor island members through videoconferencing did not occur. The Council supports all efforts to substitute videoconferencing for travel, however, if functional videoconferencing cannot be arranged, travel becomes necessary. Meeting rooms were also often inadequate for public participation and comment. Sufficient staff support to generate meeting minutes was so lacking that the Council went without consecutive meeting minutes for months at a time. It has been difficult for the Council to sustain quorum, not only because neighbor island members have not been able to participate effectively in meetings, but also because appointments to the Council have, for long periods of time, been extremely slow, even when Council membership had dropped to nearly half its mandated membership. Finally, there appears to be no support or commitment to assisting the Council in discharging its legislative mandate to produce an annual report.

In order to conduct successful meetings the Council requires the following:

1. Adequate funding to fly in all neighbor island members for a minimum of 6 in-person meetings a year, or, adequate public-friendly meeting facilities for video conferencing, and real-time, on-site staff support for the VC sites
2. Staff support equivalent to a 1/2 time position to (i) take minutes, (ii) conduct basic research, (iii) carry out communications, and (iv) assist with rules revisions, exemptions, and the annual report
3. Financial support for the production of the annual report

4. Prompt approval (within 2 months) from the Governor's office of appointments sufficient to bring the council up to the full membership, and prompt action (within 2 months) when there are any vacancies

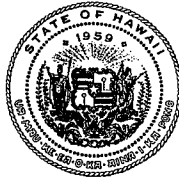
The members of the Environmental Council appreciate all efforts on your part to facilitate the above changes and in so doing make it possible for us to successfully conduct our required activities, since we can no longer conduct business under the present circumstances.

Sincerely,

Gail Grabowsky, Chair  
Environmental Council

cc: Governor Linda Lingle  
Sen. Colleen Hanabusa  
Rep. Calvin Say  
Sen. Mike Gabbard  
Rep. Hermina Morita  
Ms. Katherine Kealoha  
KGMB Television  
KHNL Television  
KHON Television  
KITV Television  
*The Honolulu Advertiser*  
*The Honolulu Star Bulletin*  
*The Associated Press*  
*Environment Hawaii*

LINDA LINGLE  
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JAMES SULLIVAN

April 7, 2009

Governor Linda Lingle  
State of Hawaii

Governor Lingle,

This letter serves as my resignation from the Environmental Council effective April 8, 2009.

While I am honored to have been appointed to this Council, and humbled to have been elected by my fellow members as Chair for the second year, I find I cannot perform my duties due to a lack of support by the Administration. During the last two years the Environmental Council has been marginalized to the point of irrelevance. While I have received promises for proper assistance from the Department of Health and the Governor's office, the reality is that the situation continues to degrade.

Specifically, the situation is described below:

- We are unable to update the Administrative Rules
  - The EC is required to update the Administrative Rules for HRS 343-200 and -201 by Statute
  - Several years and hundreds of hours of time were spent by the EC and OEQC staff to complete an update of the rules
  - The changes were sent to the Governor's office in 2007. We never received a response of any kind.
  - A liaison from the Governor's office to the Rules Committee has been requested but the position not staffed.
  - Under the current system the EC cannot send Rules changes to public hearing directly, therefore without support we cannot update the Administrative Rules.
- Funding
  - We have been told that travel would not be funded for neighbor island members and that meetings would be conducted using Video Conference Centers.
  - We were excited to use the VCC system to save travel time and money.
  - With limited or no technical support available, the system has not worked correctly for a single meeting
- Inadequate meeting locations
  - We conducted meetings for years at the OEQC office and the conference room at Leiopapa A Kamehameha



- We were recently moved to a very small room in the basement at Kinau Hale, where half the people present had to stand, causing some people to leave before the meeting starting.
- Next we moved to the VCC center, referred to as the Basement Training Room at Kinau Hale, which is even smaller.
- The current meeting options are extremely discouraging to any public involvement whatsoever.

As Chair, it is my fiduciary responsibility to see that the Environmental Council functions as required by law. Although I have met with management at the DOH and with staff at your office, the situation continues to deteriorate. I do not believe the Council is viable at this level of support. Frustration has led me to resign my position.

Aloha,

Bob King

47-742 Hui Kelu Street #3  
Kaneohe, HI 96744  
4 May 2009

The Honorable Linda Lingle  
Governor, State of Hawai'i  
Executive Chambers  
State Capitol  
Honolulu, Hawai'i 96813

Re: My resignation from the Environmental Council

Aloha Governor Lingle,

This letter serves as my resignation from the Environmental Council effective 4 May 2009.

It has been an honor to have served on the Environmental Council for the last six years. During the last three years, I have served as the Chair of the Annual Report Committee. This has been a rare opportunity to work with and get to know concerned, informed and energetic Hawaii citizens from a wide range of backgrounds and perspectives.

A central reason that I applied to join the Environmental Council and that I have devoted considerable time and energy to its programs is the conviction that we citizens can make positive real contributions to important issues in our state. Balancing economic sustainability with environmental sustainability is a very important issue for Hawaii.

However, a collection of experiences in the last two years leads me to conclude that participating in good faith on the Environmental Council has become too politicized, undermined, and ineffective.

One of the explicit responsibilities of the Environmental Council is to prepare an annual report that makes "recommendations for improvement to the governor, the legislature, and the public."

I served as the Committee Chair for the 2007 Annual Report, the theme of which was Environmental Justice. We selected this theme because of the work that the Legislature had mandated that the Environmental Council undertake that year. I was dismayed and upset to discover that your office did not release the Annual Report because you did not agree with some of its contents. Your office did not inform the Council of your decision not to distribute the report.

For the 2008 Annual Report, we selected the theme of Food Security and Self-Sufficiency. I appreciate the supportive emails that Linda Smith sent us when we informed your office of our intentions and when we offered a draft for review. However, for the preparation and distribution of the Annual Report, the staff support in the Office of Environmental Quality Control had disappeared. This situation required our committee and OEQC Director, Kathy Kealoha, to try to take over their tasks. One of the requirements for the Environmental Council is to "monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies." We were unable to gather agency information because of the lack of staff support.

For the 2009 Annual Report, it is clear that there continues to be no staff support and there are no funds for the production of the report.

For the first few years of my tenure on the Council, it was a pleasure to work with the OEQC staff during our meetings and while preparing the Annual Report. They were well-informed, thoughtful in their institutional knowledge, and completed supportive tasks well. In the last two years, this support has disappeared. The only conclusion I can reach is that the DOH and your office find no value in the Environmental Council.

In response to all our concerns about expenses, the Council was happy to embrace video conferencing for our monthly meetings. However, the result is our being relegated to inadequate basement training rooms, too small for our Council meetings, much less to welcome public participation. In addition, there has been no technical support in Oahu and on the neighbor islands.

These experiences have left me cynical and sad. How great it was to be invited to work to improve a little part of our state. Volunteering time out of the busy schedule was worth it. Now, after such politicization and disrespect, I cannot continue to find value, or even contribute value, in participating on the Environmental Council.

Regards,

A handwritten signature in black ink, appearing to read "David Bylund", written in a cursive style.

David Bylund

May 11, 2009

The Honorable Linda Lingle  
Governor, State of Hawaii  
Executive Chambers  
State Capitol  
Honolulu, Hawaii 96813

Re: Resignation from the Environmental Council

Dear Governor Lingle,

This letter serves as my resignation from the Environmental Council effective May 12, 2009.

I was honored to have been asked, and to have served on the Environmental Council for the past 18 months. I served on the Legislative Committee with David Atkin. I enjoyed the opportunity to work with and get to know the other members of the Environmental Council. This is a wide ranging, committed group of individuals that are knowledgeable and dedicated community volunteers. Each is a treasured asset to the community and all have my utmost respect.

The primary reason that I accepted the appointment when I was first approached by Laurie Yoshida, your Kauai Liaison, was the belief that I could make a positive impact and real contributions to the many environmental issues facing the State. I felt that I brought a balanced view and an open mind to the committee.

My initial excitement of the efforts of the Committee and the excellent quality of the work product they were creating soon turned to the realization that the efforts of these volunteers was marginalized, either intentionally, possibly unintentionally, to a point of complete ineffectiveness. Now I find myself in this unenviable position.

To briefly recap the circumstances that bring me to this point include the following:

- Years of effort to update the Administrative Rules by many volunteers with suggested changes were completed and sent to you in 2007. Your office never responded and did not provide a liaison to assist in this effort as promised.
- The 2007 annual report, which is a collective effort by many volunteers, lead by David Bylund, was not released by your office, nor did you inform the Council that you decided to withhold the release of the report, or what contents of the report were unacceptable to you.
- No support was provided for the 2008 annual report from the Office of Environmental Quality Control. Because of this lack of support we were unable to gather data in order to report on the progress of state, county, and federal agencies in achieving the State's environmental goals and policies, as required of the Environmental Council.
- Late in 2007, I attended a meeting in which, your Attorney General Mark Bennett, promised to provide adequate support staffing as part of overall discussions relative to the administration's request for an EIS exemption for the Kukui

May 11, 2009  
Resignation from Environmental Council

Gardens transaction. That promise was broken. What nominal staff support that existed when I first joined the Council, is now gone.

- Funding for travel to the meetings for neighbor island members such as myself, was eliminated and replaced with video conferencing. While this seemed like a reasonable alternative, it has been wholly inadequate. The equipment consistently malfunctions and there is no technical support. On one occasion we were kicked out of the video conferencing room. In the several meetings I have attended via video conferencing, we have yet to have a single meeting wherein the equipment worked. Between being limited to hearing every fifth word of discussions and losing the signals every ten minutes, I cannot adequately express my frustration level at being disconnected from the process.

This situation continues to deteriorate. Based on the above, the only conclusion that I can come to is that this is an intentional effort. These board members are good people, donating their valuable time and expertise to help make Hawaii a better place. They do not, and I do not, deserve to be treated this way. Thank you for the opportunity, but I must remove myself from this situation and allocate my charitable efforts elsewhere.

Sincerely,

A handwritten signature in cursive script that reads "Wade Lord".

Wade Lord

c: Laurie Yoshida

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

September 15, 2009  
15

Ms. Gail Grabowsky  
Chair  
Environmental Council  
235 South Beretania Street, Suite 702  
Honolulu, Hawaii 96813

Dear Ms. Grabowsky

Re: Environmental Council issues

This letter follows up on our meeting in July, your letter of August 17, 2009, and our phone calls of August 31 and September 11, 2009, regarding council business.

We want the Environmental Council (council) to succeed in its duties. Within the constraints of resources, we can accommodate most of your August 17<sup>th</sup> letter's requests.

1. The council may use the Department of Health (DOH) video-conferencing site on the 5<sup>th</sup> floor of 919 Ala Moana Boulevard, Honolulu, 96814.

This building is at the corner of Ward Avenue across from Kewalo Basin. The room is a large conference room that my staff has used for many DOH inter-island video-conferences and video public hearings on rules. Please make arrangements with Ms. Gaelic Teshima, of the DOH Environmental Management Division (EMD), 586-4304. As the site is popular, please make your reservations as early as you can. I have spoken with Ms. Kathy Kealoha, Director of the Office of Environmental Council (OEQC or office), and office staff will learn how to operate the VC equipment, which is what EMD expects of all users. I understand that neighbor island VC sites have not been the problem.

2. The OEQC is providing and will provide staff support.

The OEQC has historically served the council, and both the council and OEQC are covered together by the same state budget. Fortunately, so far, that budget and the OEQC staff have been spared cuts. Given your letter and our phone talks, I encourage you to talk directly with Ms. Kealoha about issues you have with the amount, timeliness, or quality of that support. As to specifics,

- a. Ms. Kealoha is taking minutes for now. I'm informed that the minutes are up to date now. I hear that you are concerned that her busy schedule may make it hard for her to sustain taking minutes. You should discuss alternatives with her.

As a side note, minutes are necessarily summaries and should not be transcripts, which was the style of some council minutes in the past. A summary style should be quicker to produce than transcripts and should help avoid the backlogs that occurred in the past. If councilors wish transcript style records, I suggest that the audio/video recordings of the past meetings be posted or otherwise made available.

- b. Other staff support. Ms. Rebecca Alakai of OEQC is assigned to the council and will help with research, communications, rules revisions, exemptions and the annual report. She does have other duties, to the OEQC, and your request for ½ time help impliedly recognizes that OEQC staff will also work on non-council assignments.
  - c. Your letter implies that the council expects more or better service than it is receiving, particularly regarding production of the annual report. You inform me that the council especially needs help in drafting the annual report, and expects to need help when rules are amended again. Again, I ask that you talk with Ms. Kealoha first and make sure that your expectations, priorities, and schedule are clear to the office. After that, I can meet with you and her, if you desire.
3. Extra funds for the annual report are not available.

The state budget for the office and council has not increased, and funds for the DOH are declining drastically. We expect all reports to the legislature to be internally produced photocopies, given the state's budget problems. My staff already makes photocopies for legislative reports. We can not afford to hire printers. The DOH print shop is shutting down this year when its only employee retires. We should investigate the extent to which we may use electronic reports instead of even photocopies.

4. Filling council vacancies is beyond DOH's power.

We can only ask the governor's staff to expedite the process of filling council vacancies, and I am willing to do so. We expect that the availability and quality of candidates varies, as do the work demands on the governor's staff that must deal with all boards and commissions. These items will affect the timing of her staff's work. I am unclear of your letter's reference to "approval" from the governor's office. The governor may nominate people to the council, and they may serve on an interim bases, but ultimately, the legislature must confirm appointments.

To repeat, the OEQC and DOH will help to the extent we can. As you are aware, the state is facing an extraordinary budget crisis. The Department of Health (DOH) and other departments have reduced expenditures and are working on major staff reductions in force, in case labor negotiations do not result in furloughs sufficient to balance the budget, and the departments expect to have to further tighten our belts.

Ms. Gail Grabowsky  
September 15, 2009  
Page 3

Please feel free to call me at 586-4424.

Yours truly,

  
Laurence K. Lau

c: Susan Jackson, Deputy Director, DOH  
Kathy Kealoha, Director, OEQC  
Thomas Arizumi, P.E., Chief, Environmental Management Division, DOH  
Edward Bohlen, Deputy Attorney General, A.G.