



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2818, S.D. 2, H.D. 2, RELATING TO ENVIRONMENTAL PROTECTION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 25, 2010 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Edward G. Bohlen, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill as amended.

This bill has attempted to implement changes to the environmental review processes. The Attorney General appreciates that this version of the bill excludes the sweeping proposed changes to chapter 343, Hawaii Revised Statutes (HRS), that the Attorney General has opposed.

The bill as amended, however, still has some legal problems. It would amend section 341-4(b), HRS, to require that the Director of the Office of Environmental Quality Control (OEQC) perform various functions through the Environmental Council. The bill describes the Director's functions in language that is both vague and very broad, e.g., the Director is required to "direct the attention" of State agencies to "environmental problems," and obtain advice from the Environmental Council on "any matters concerning environmental quality." These broad and vague terms will generate confusion and are likely to interfere with the operations of the OEQC.

The bill also would require the OEQC Director to organize workshops and prepare an annual guidebook, in the amendment to section 341-4(b), HRS, and in the new section 341-A. The bill

Testimony of the Department of the Attorney General
Twenty-Fifth Legislature, 2010
Page 2 of 2

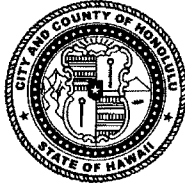
also requires the Environmental Council to continue preparing an annual report in section 341-6(b). Now is not the time to spend limited State funds continuing and adding to requirements for reports that few read and that are of questionable value to the public.

As the three House Committees noted in Standing Committee Report No. 713-10, a working group has been assembled to address concerns regarding changes to Hawaii's environmental review policy. That working group has not yet finished its work. It would be unwise to pass revisions of law before the working group has had an opportunity to complete its work, and without extensive input from, and discussion among, various interested parties.

We respectfully ask the Committee to hold this bill.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

DAVID K. TANOUÉ
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

(EK)

March 25, 2010

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

**Subject: Senate Bill No. SB2818, SD2, HD2
Relating to Environmental Protection**

The Department of Planning and Permitting (DPP) has **no objections** to Senate Bill No. 2818, SD2, HD2. The current bill is limited to issues related to the Environmental Council, and does not include amendments to the Environmental Impact Statement (EIS) regulations of Hawaii Revised Statutes (HRS) Chapter 343, which we had previously opposed with earlier versions of this legislative measure. We will continue to support the measure in its current form, provided it is limited to similar amendments to the organization and role of the Environmental Council and the Director of the Office of Environmental Quality Control; and, as long as the previous amendments to HRS Chapter 343 are not reintroduced.

Finally, we wish to express our appreciation to the House Committees for their continued support and recognition of our concerns regarding proposed dramatic changes to the EIS system. Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf
sb2818sd2hd2-ek.doc



Via: <http://www.capitol.hawaii.gov/emailtestimony>

March 25, 2010

**Comments and Opposition to SB 2818, SD2, HD2
Relating to Environmental Protection
(Major Changes to Chapter 341)**

House Committee on Finance

Hearing Date: Tuesday, March 25, 2010 at 10:00 a.m. in CR 325

Honorable Chair Marcus Oshiro, Vice Chair Marilyn Lee and Members of the House Committee on Finance,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF respectfully requests that your House Committees **hold and defer SB 2818, SD2, HD2** to allow the UH Study Team (who drafted a Report for the legislation and the initial legislation), land use experts and professionals, environmental groups, the Senates EIS Working Group and government agencies the opportunity to work on revisions to this bill, relating to revisions to Chapter 341, Hawaii Revised Statutes.

LURF'S SPECIFIC OBJECTIONS. The changes proposed to Chapter 341 in this bill represent an unprecedented "power grab" and the prospect of increased funding for the Environmental Council (Council) and Environmental Center (Center). LURF objects to some of the specific changes made in SB 2818, SD2, HD2, especially those which increase the power of the Council and Center, and decrease the powers and duties of the Office of Environmental Quality Control (OEQC) and its Director, as follows:

- **§341-3(a) Oppose stripping the OEQC of its current duties to "serve the governor in an advisory capacity on all matters relating to environmental quality control" and relegating OEQC's duties to those "prescribed to it."** OEQC has operated to the best of its ability in this position, and in the past two years has a number of successful accomplishments – including hosting a major workshop on Chapter 343 and passing two major pieces of legislation which resolved major problems relating to the government

agency processing of environmental review documents and the operations of OEQC. On the other hand, there has been prior testimony at the legislature that the Council has not been effective, and the record will show that the Council did not support the recent legislation to improve the operations of OEQC.

- If these advisory powers are stripped from OEQC, who will assume those duties to advise the Governor? Would those duties be transferred to a Council that has been described as dysfunctional, and who did not actively support the legislation to resolve major issues relating to Chapter 343 reviews?
 - As of this date, the Council does not have a track record of successful accomplishments. The OEQC Director does!
- **§341-3(c) Oppose the reduction of the number of Council members from fifteen (15) to nine (9).** There has been no convincing or overriding justification for this proposal to limit public participation by reducing the number of Council members. The Council operated effectively for many years with fifteen (15) members. Why the change now? Could a new state administration and new appointments make the Council more effective?
 - **§341-3(c) Support the provision requiring at least one Council member from each county.** This would assure the Council of state-wide representation, which is very important, as each island may have unique environmental circumstances.
 - **§341-3(c) Oppose the removal of the OEQC Director as an ex-officio voting member of the Council.** There has been no convincing or overriding justification for this proposal to remove the OEQC Director from the Council. In fact, the current OEQC Director has been the most effective member of the Council!
 - **§341-3(c) Oppose the deletion of list of broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions.** There has been no convincing or overriding justification for this proposal to remove the provision that the Council members may include, but not be limited to “professions such as natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups.”
 - **§341-4(b)(1) Oppose limiting the powers and duties of the OEQC Director to act only “through the Council.”** There has been no convincing or overriding justification for this proposal to limit the operation of the OEQC Director to “through the Council.”
 - **This provision is inconsistent with the provision which allows the Governor to delegate duties to the OEQC Director or to direct state government agencies.** If the Governor delegates duties to the OEQC Director, or directs him/her to direct state governmental agencies in matters concerning environmental quality - - the proposed requirement that the Director work “through the Council,” could give the

- Council the authority to stop, or derail such duties designated by the Governor!
- **A case in point** – as noted above, for the past two years, the OEQC Director has been successful with the legislative process and was instrumental in passing two major laws which resolved critical problems in the environmental review process. The Council did not actively support either legislation. **If the OEQC Director was required to work “through the Council” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!**
 - **If anything, this bill should be revised to require that the Council should be required to work through the OEQC Executive Director!**
- **§341-4(b)(1) Oppose the proposed requirement for OEQC Director to work “in cooperation with” the Center. Again, this requirement would be inconsistent with and frustrate the purposes of the Governor delegating duties to the OEQC Director.**
 - **A case in point** – as noted above, for the past two years, the OEQC Director has been successful with the legislative process and was instrumental in passing two major laws which resolved critical problems in the environmental review process. The Center, on the other hand, actually opposed such legislation! **If the OEQC Director was required to work “in cooperation with the Center” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!**
 - **If the OEQC Director is required to work in cooperation with the Center, would that mean that the Center would require more staff and funding? Yes or no?**
 - **If anything, this bill should be revised to require that the Center is required to work in cooperation with the OEQC Executive Director!**
 - **§341-4(b)(3) Oppose the proposed requirement that the OEQC Director is limited to “through the Council” for any actions encouraging the public acceptance of proposed legislative and administrative actions concerning environmental quality...** As noted above, If the OEQC Executive Director was required to work “through the Council” for the past two years, those major pieces of legislation would not be passed, and the critical problems with the environmental review process would not be resolved!
 - **§341-4(b)(4) Oppose the proposed requirement that the OEQC Director must recommend to the Council programs for long-range implementation of environmental quality control.** The recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful.

- **§341-4(b)(5) Oppose the proposed requirement that the OEQC Director must submit to the Council for its review and recommendation to the Governor legislative bills and administrative policies, objectives and actions, as are necessary to preserve and enhance the environmental quality of the State.** As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful.
- **§341-4(b)(8) Oppose the proposed requirement that the OEQC Director must “obtain advice from the Council on any matters concerning environmental quality.”**
 - As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives concerning environmental quality. On the other hand, the OEQC Director has been successful.
 - If the OEQC and its Director were required to follow the advice from the Council – there would have been no environmental legislation for the past two years, and the environmental review problems facing the State would not have been resolved.
 - The council is made up on citizen volunteers. The OEQC staff and its Director are trained and qualified to perform their work concerning environmental quality.
- **§341-4(b)(9) Oppose the proposed requirement that the OEQC Director must “perform budgeting and hiring in a manner that ensures adequate funding and staff support for the Council to carry out its duties under this chapter and Chapter 343.”**
 - How much will all of this cost? Is there a report by the Council or Center regarding how much additional staff and additional funding it will need “to carry out its new duties under Chapter 341 and Chapter 343?” Will there be further requirements this session to amend Chapter 343? This number needs to be determined before the legislation can move forward, as it could have a major financial impact.
 - Is this bill just a means of increasing the staffing a budget for the Council and Center?
 - What if the Department of Health (DOH), legislature or Governor limits the funding or disbursements to the Council? The OEQC could be found to violate this law, and could be terminated, through no fault of his/her own.
 - Does any other department or office in the State of Hawaii include similar statutory requirements?
 - As noted above, the recent past has shown that the Council has been unable to follow through on major decisions or initiatives. On the other hand, the OEQC Director has been successful. This bill should be revised to provide that the Council is required to support the funding and adequate staff support for OEQC to carry out its duties!

- **§341-A and §341-6(b) Support the proposed requirement for an Annual Report. Oppose the new power of the Council to request state and county agencies to provide information.** The OEQC and its Director have the authority and relationships to make such information requests. There is no justification to award such powers to the Council.
- **§341-6(1) and (2) Oppose increase in powers and duties of the Council. These sections represent a “blatant power grab” by the Council.** For the reasons stated above, we oppose the unjustified new and increased powers and duties of the Council. While the Council has been effective in prior years, the most recent Councils have not shown that they can responsibly complete tasks and despite numerous opportunities, have not supported major legislation, policies or procedures to improve the environmental review process.
- **SECTION 2. Oppose the extension of terms of all members of the Council through June 2012. The new governor should have the right to appoint new members of the Council as their terms expire.** There has been no convincing or overriding justification for this proposal.

LURF’S GENERAL OBJECTIONS. LURF also generally objects to the **SB 2818, SD2 HD2 and recommends deferral**, based on, among other things, the following:

- **“Don’t need to fix’ something that ain’t broken.”** Although the UH Study Team was tasked with ‘modernizing’ Chapter 343, it remains to be proven that something is wrong with the existing system which justifies the wholesale overhaul that is now being recommended. Chapter 343 has been in effect over 30 years, and there has been no major environmental disaster relating to the requirements regarding EIS’ and EAs.
- **Another new layer of government approvals with new redundant and excessive laws, rules, regulations, policies and procedures would be created.**
- **Implementation of Bill 2818, SD2, HD2 could increase government costs and personnel.** The proposed changes would increase the number of government employees, and result in additional and unnecessary costs for government and businesses.
- As a result of the **additional and new requirements in Bill 2818, SD2, HD2 the number of potential plaintiffs and questionable lawsuits could escalate.**
- **The recommendations in the UH Report are inconsistent with the purpose of SCR 132 (2009), which established the Construction Industry Task Force**, which has made its recommendations and proposed legislation to enable the state to stimulate the economy and achieve effective economic recovery.
- **The UH Report is “not pau yet” – if it is:”not pau yet,” the Legislature should defer adopting any laws which call for a major overhaul of**

Chapter 343. The report provides that “The study will continue through the summer of 2010, when the study team will prepare a final report to the Legislature discussing the results of the 2010 session regarding the statutory recommendations in this report, outlining additional proposed changes to the statutes, specifying further recommended changes to the administrative rules, suggesting agency guidance documents, and reviewing in more detail changes to Chapter 344.” This statement on page 3 of the Report, sounds like the UH Report is not pau yet.

BACKGROUND. The proposed legislation is a result of the Report to the Legislature on Hawaii’s Environmental Review System and a proposed “omnibus” bill, which was prepared pursuant to Act 1, Session Laws of Hawaii 2008 for the Legislative Reference Bureau, by a team of professors, researchers and students, from the University of Hawaii’s Department of Urban and Regional Planning (DURP), the Environmental Center and the Environmental Law Program of the William S. Richardson School of Law. We understand that while the team members should be commended for their hard work, this UH process lacked any expertise and or substantive experience in preparing Environmental Assessments (EA) or Environmental Impact Statements (EIS) and also lacked any expertise and responsibility for major land utilization activities and planning and permitting a major development or project through the State and County permitting process.

MAJOR CONCERNS

- **EIS Study process lacked the benefit of professional qualifications, experience and expertise.** The UH EIS Study Team did not include anyone who had the qualifications or experience to prepare an EA or EIS for a major project, or anyone who has taken a project or development through the State and county land use entitlement process. Based on the information provided in their Report, it appears that substantive input was also lacking from major stakeholder groups, including large property owners, the counties, the military (a major player in land use), the EPA, Hawaii land use attorneys and entitlement specialists, various professionals at the UH Schools of Engineering, Architecture, Tropical Agriculture, etc. and all of the counties. The apparent lack of input from these expert groups, combined with the inexperience of the UH EIS Study Team renders the Report deficient. We would recommend that the Legislature authorize a further study prepared by and including major input from qualified and experienced stakeholders.
- **Bias of the UH EIS Report.** The UH Report appears favorable to the arguments and issues raised by the opponents of development, while disparaging, demeaning and deriding the comments and suggestions made by professionals who prepare EAs and EIS and are subject to ethical standards. The land use professionals and those who prepare EAs and EIS’ have noted that the UH EIS Report includes a general distrust for the work of State and county departments and permitting agencies to protect the environment. The UH Study Team also took sides with the Sierra Club and other plaintiffs in the ongoing Supreme Court Appeal of the Kuilima EIS.

LURF's RECOMMENDATIONS. We commend the hard work of the UH team, however, based on the fact that the UH EIS Study process lacked the benefit of professional qualifications, experience and expertise in land use planning and permitting and expertise in the preparation of EAs and EIS', the bias of the Report, the admission that it is incomplete, and the need for a further study by experienced professionals, we would respectfully recommend that;

- **That the provisions which LURF has opposed above, be deleted from SB 2818, SD1, HD2.**
- Legislation could be adopted this session regarding issues where there is general agreement; and the study team, land use professionals, the Senate EIS Working Group and the government agencies can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input. LURF volunteers to continue work on such issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the further discussions and prepare a report to the legislation for next year (under legislative auditor or LRB)

CONCLUSION. Based on the above, we respectfully request that your Committee defer this bill and allow the various stakeholders and the Senate EIS Working Group to work together on legislation. Thank you for the opportunity to express our **opposition to SB 2818, SD2, HD2.**

Testimony of The Nature Conservancy of Hawai'i
Supporting the Intent of S.B. 2818, HD2 Relating to Environmental Protection
House Committee on Finance
Thursday, March 25, 2010, 10:00AM, Room 308

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports the intent of S.B. 2818 HD2, particularly the original effort to streamline the environmental review process and including a discretionary approval screen. We have been participating in the working group established to review S.B. 2818 and support keeping the bill alive in the House to promote further discussion and hopeful passage of legislation this year.

We also share the following particular comments regarding the effect of the State environmental review process on certain conservation projects that we believe should be addressed via statutory or regulatory exemption.

Conservation work that protects, preserves, or enhances the environment, land, and natural resources is often caught up in the same time consuming and expensive environmental review process as development projects that have negative impacts on the environment. While it is appropriate that higher protection is afforded to lands with conservation value, e.g., lands in the State conservation district, it often comes at a stroke too broad that does not distinguish between building a home in the conservation district versus engaging in conservation work to care for native forests and control invasive species. Conservation actions have to go through the same expensive level of review for environmental impacts as development.

Environmental review for the TNC's conservation work has been a significant burden:

- Each EA takes 6-12 months;
- Each EA takes ~1 FTE (part of 2-4 people's time);
- Each EA costs \$100,000-\$200,000;
- TNC has done 15 EAs in last 15 years;
- Five of our preserves have had two EAs each;
- One preserve is getting its third EA for conservation work.

BOARD OF TRUSTEES

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**Testimony of
Bob Loy
Director of Environmental Programs
The Outdoor Circle
Committee on Finance
March 25, 2010
Rm. 325 10:00 AM**

Testimony in Opposition to SB 2818 SD2 HD 2

I am Bob Loy testifying on behalf of The Outdoor Circle. We support the original intent of SB2818 but no longer support the legislation before us today.

Our original support of the measure was based upon SB2818's intent to amend Chapter 341 to fix the myriad of problems that currently plague the Environmental Council (EC) and the Office of Environmental Quality Control (OEQC) and to streamline and make more efficient and effective, Chapter 343.

The proposal before FIN today attempts to accomplish the Chapter 341-related tasks and we generally support the changes in HD 2 relating to the composition of the EC and how its members are selected. However, we do not support a continuation of allowing the OEQC to be under the purview of the Department of Health (DOH) where it and the EC have languished without proper financial and administrative support for several years. These conditions have led to numerous resignations from the EC, which has not met since last summer. How can they do their job if the positions are unfilled and the meetings are cancelled month after month? We are greatly concerned that keeping these entities under administrative control of the DOH will condemn the OEQC and the EC to more of the same.

We also generally support the proposed creation of an Environmental Review Special Fund to help provide funding to the OEQC's and EC's activities as well as enabling the EC and the director of OEQC to adopt rules under Chapter 91 to establish reasonable fees for services. However, we note that there has been no public information about the anticipated annual revenue from such fees. It will take time for this to come to fruition and even then it is unknown whether the fees will be sufficient to fund OEQC and EC operations. Both of these entities have struggled mightily and continue to do so from a distinct lack of financial support. It is incumbent that they receive proper funding to do the job expected of them. Nothing in this legislation ensures adequate funding.

SB 2818 also was originally drafted to revise and improve the environmental review processes under Section 343. But instead of publicly confronting and dealing with these difficult issues in meaningful legislative hearings, a legislatively appointed "working group" is privately trying to resolve 343's problems behind closed doors. As of March 24 at 3:00 PM, no public information about the Group's work or recommendations has been made available. We are concerned about the "working group's" complete lack of transparency in their deliberations and are incredulous at the prospect that their work will not be made public until this committee's hearing on March 25—if then.

Even if the group's recommendations are presented at the FIN hearing on March 25, there will be no time to review or analyze them. That means that the only acceptable alternative for this committee is to defer SB2818 SD2 HD2 or flatly reject it.



House Committee on Finance
Thursday, March 25, 2010
10:00 a.m.
Conference Room 308
State Capitol
Agenda #1

Subject: SB 2818, SD2, HD2 Relating to Environmental Protection

Dear Chair Marcus Oshiro, Vice Chair Marilyn Lee, and members of the House Committee on Finance:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber strongly opposes Senate Bill 2818 SD2, HD2 relating to Environmental Protection, as presently drafted.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber appreciates that the House Committees on Energy and Environmental Protection; Water, Land, and Ocean Resources; and Economic Revitalization, Business and Military Affairs have, in response to very broad opposition by most stakeholders, deleted the most dramatically detrimental sections of SB 2818, SD 2.

The Chamber requests that the House Committee on Finance **hold and defer SB 2818 SD2, HD2**. This measure is more appropriate for a future legislative session. A broadened Working Group could be convened in the interim to more carefully examine and determine what specific changes are actually needed to achieve the stated purposes for amending HRS 341 and 343. In addition, the Hawaii Supreme Court decision in the Turtle Bay/Kuilima EIS case may be rendered soon and could be taken into consideration.

At this particular time it is very important to not create uncertainty that very well could jeopardize much needed capital investment in our State, exacerbate the shortage of work force housing, and derail the Legislature's other efforts to stimulate economic revitalization and job creation.

This bill continues to propose a complete reorganization of the composition, authority and duties of the Environmental Council and the Office of Environmental Quality

Control (including the Director). These proposed changes are unsupported and it is totally unclear as to how placing an appointed committee with periodic meetings in charge is going to “improve the environmental review process by making it more streamlined, open and consistent” which is the stated purpose of the measure.

The Chamber was not invited to participate on the Working Group convened by the chair of the Senate Energy and Environment Committee to see what, if any, proposed changes to Chapter 343 should be considered by the legislature this session. We respectfully believe that broader participation by the business community in such processes is valuable and that it is necessary for such groups to be as inclusive and balanced as possible in their composition.

The Chamber believes that this measure is more appropriate for a future legislative session, and that a broadened Working Group should be convened in the interim to more carefully examine and determine what changes are needed to achieve the stated purposes for amending HRS 341 and 343. It is very important that the Study Group include professionals who have actually processed entitlements and developed master-planned communities, major public works, and other substantial projects. Limiting participation to academics, consultants, environmental or other lobbyists without actual experience in land development could result in recommendations that are bias, incomplete, and impractical.

Thank you for this opportunity to express our views.



NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

March 23, 2010

The Honorable Marcus Oshiro, Chair, and Members,
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: Testimony In Opposition to S.B. 2818, S.D. 2, H.D. 1, "Relating to Environmental Protection"

Dear Chair Oshiro and Members of the Committee:

I am submitting this testimony on behalf of the Hawaii Chapter of NAIOP. NAIOP Hawaii is an association of property owners, managers, developers, financial institutions and real estate related professionals who are involved in the areas of commercial and industrial real estate in the State of Hawaii. It is the Hawaii chapter of NAIOP, the Commercial Real Estate Development Association, which is the leading national organization for developers, owners and related professionals in office, industrial and mixed-use real estate.

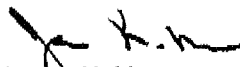
We believe that this whole area of modifying the environmental statutes needs further work. The study which formed the basis of this legislation has yet to be completed. The working group put together by Senator Gabbard and Senator Morita to review these issues, and as far as we know has not issued recommendations yet.

We think there needs to be further public input, discussion and consensus before considering legislation to modify our present environmental laws. S.B. 2818, as presently drafted, contains broad and ambiguous language that confuses the functions of the Environmental Council and the OEQC Director, as well as having the Director undertake additional responsibilities for which it is not clear that there is a need.

We would urge that this bill be held.

Thank you for the opportunity to testify on this measure.

Very truly yours,



James K. Mee
Chair, Legislative Affairs Committee



March 25, 2010

The Honorable Marcus Oshiro, Chair and Member
Committee on Finance
State House of Representatives
State Capitol, Room 308
Honolulu, Hawaii 96813

Dear Chair Oshiro, and Members:

Subject: Senate Bill No. SB 2818, SD2, HD2, Relating to Environmental Protection—Structure and Organization of the Office of Environmental Quality Control {OEQC} and Environmental Council {EC} Proposed Amendments to Chapter 341 HRS

My name is Lance Wilhelm, President of the Hawaii Developers' Council (HDC). We represent over 200 members and associates in development-related industries. The mission of Hawaii Developers' Council (HDC) is to educate developers and the public regarding land, construction and development issues through public forums, seminars and publications.

It is also the goal of HDC to promote high ethics and community responsibility in real estate development and related trades and professions.

The HAWAII DEVELOPERS' COUNCIL opposes S.B. No. 2818 SD 2, HD2 as presently drafted.

We understand that both Senator Gabbard and Representative Morita convened a Working Group to see what, if any, proposed changes to Chapters 341 and 343 could be considered by the legislature this session.

SB 2818 original contained proposed revisions to both Chapters 341 and 343 HRS. We understand however, that proposed revisions to Chapter 341 were retained in SB 2818 and the proposed changes to Chapter 343 were inserted into SB 2957.

With respect to SB 2818, proposed changes to 341 HRS we strongly support the need to reorganize the working relationship between the Environmental Council and the Office of

Environmental Quality Control (OEQC). The roles and responsibilities should be clearly defined in that the policy making should be the responsibility of the Environmental Council and the implementation of these policies, including the day to day operations of the Office should be the sole responsibility of the Executive Director of the OEQC. The intent of the proposed language was to replicate the relationship that currently exists between the Board of Land and Natural Resources and the Department of Land and Natural Resources. The bill currently allows for the Environmental Council and to a certain degree, the Environmental Center to act independently of the OEQC. The Environmental Council should set policy direction for the OEQC; however, it should not be allowed to implement these policies. The bill lacks adequate clarity in defining the specific roles and responsibilities of the Council and OEQC. With respect to the Environmental Center, their role should be limited to providing input, analysis, and provide comments through a consultation process with the OEQC. The Environmental Center should neither be empowered to direct the OEQC nor set the policy for the Office.

We support the overall restructuring of the OEQC with administrative responsibility solely with the Executive Director. We also can support the need to modernize the Office and its processes for managing the public disclosure process. Having a "temporary" fee structure which both public and private parties share equally in the modernization efforts is also critical for the success of the office. Once the Office and procedures are restructured or reengineered, an appropriate sustainable budget will be developed for the maintenance and upkeep of the new office and its procedures.

At this time, based on the lack of adequate clarity in defining the specific roles and responsibilities of the Council and OEQC, we are unable to support the present version of the bill.

Thank you for this opportunity to express our views.