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February 2, 2010

Comments and Opposition to SB 2818 Relating to Environmental Protection (UH EIS Report recommendations and revisions to Chapter 343)

Honorable Senator Mike Gabbard, Chair, and
Members of the Committee on Energy and Environment
Honorable Senator Clayton Hee, Chair, and
Members of the Committee on Water, Land, Agriculture and Hawaiian Affairs,

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 this Committee to **hold and defer this bill, to allow the UH study team and land use experts and professionals the opportunity to work on revisions to this bill or possibly other bills, including SB 2830, relating to revisions to Chapter 343, Hawaii Revised Statutes.**

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 though the State and County permitting process.

SB 2818. This proposed bill includes substantial changes to Chapter 343, including, but not limited to: the transfer of the Office of Environmental Quality Control (OEQC) and

the Environmental Council (Council) from the State Department of Health (DOH) to the Department of Land and Natural Resources (DLNR); reduces the membership of the Council from 15 to 7; strips many of powers and duties of the OEQC director and places those powers in the Council, establishes the Environmental Review Special Fund; proposes major changes in the Environmental Assessment (EA) and Environmental Impact Statement (EIS) process. The bill will also call for more government processes, expenses and personnel.

LURF'S OBJECTIONS. LURF objects to the SB **2818, 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 would 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 **hundreds of additional and new requirements in Bill 2818, the number of potential plaintiffs and questionable lawsuits would escalate**.
- **The recommendations in theUH 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.

MAJOR CONCERN: 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.

THE UH RECOMMENDATIONS AND BILL 2818 ATTEMPT TO CHANGE THE EIS FROM A "DISCLOSURE DOCUMENT" TO ANOTHER GOVERNMENT PERMIT OR APPROVAL. Attempts to change the EAs and EIS' from a disclosure document to another government permit include, but are not limited to proposed requirements to include EIS mitigation measures as conditions in grants, permits or other approvals, requiring a record of decision to enforce the mitigations measures disclosed in the EIS and continued government monitoring of EIS compliance and shelf-life.

BIAS OF THE UH 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 in the ongoing Supreme Court Appeal of the Kuilima EIS.

LURF's RECOMMENDATION. 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;

- Legislation could be adopted this session regarding issues where there is general agreement; and the study team and land use professionals can work together to provide proposed revisions to bills;
- The parties can work together to identify issues that require further study and input; volunteer to continue work on those issues in Working Groups that involve all stakeholders, perhaps request an independent, objective umbrella organization to facilitate the discussions and prepare a report to the legislation for next year (under legislative auditor or LRB) ; and

GENERAL AGREEMENT ON SOME ISSUES. We believe that "general agreement" can be reached on some issues, including, but not limited to the following:

- Exemptions for the use of land for utilities or rights of way
- Procedures to respond to "comment bombing"
- Allowing project to proceed directly with an EIS, without doing an EA first
- Requiring all environmental assessments and impact statements to be posted on the OEQC website

ISSUES SUBJECT TO MISINTERPRETATION, CONFUSION AND DELAYS WHICH REQUIRE MORE WORK AND CLARIFICATION. There are some issues that may have some merit, but would require more professional input, discussion and clarification with stakeholders before adopted as law.

- Definition of "Discretionary" vs. "Ministerial" permit triggers
- Definitions of permit, project, action, phasing, primary and secondary and cumulative impacts
- Definition of "Significant Effects"
- Expansion of "energy consumption" effect to include "substantial quantities of greenhouse gases"
- Expansion of "hazard" effects to include erosion caused by climate change during the lifetime of the project (should government be doing this too?)
- Standards and procedures for the requirement of a Supplemental EIS

DISAGREEMENT ON OTHER ISSUES. There are some issues that may remain irresolvable, including, but not limited to the following:

- 7-Year Shelf Life of EA or EIS - Most major private and public projects cannot be finished in 7 years. What will happen in 7 years? Will the project be required to change? This will cause havoc with project financing!
- Allows the Council to adopt "Interim Rules "(until 2014) without Chapter 91 public review
- Expanding judicial appeal rights to include the lack of a supplemental EA or EIS
- Granting "Aggrieved Party" status (to allow lawsuits) to any party who provides a written comment to the EIS or EA.
- Reducing the authority of OEQC and its Executive Director
- Increasing the Authority of the Environmental Council
- Establishment of a new Environmental Review Special Fund
- New fees for filing, publication and other administrative services
- Use of Record of Decisions, similar to the Federal agencies
- Reclassification of IAL as a trigger
- Requires agencies to "monitor" to ensure that their "decisions" with respect to the EIS are carried-out and implemented by the lead agency (EIS' are disclosure documents, not permit approvals with conditions).
- Requirement to include mitigation measures (as identified in EIS) on grants, permits or other approvals (EIS' are disclosure documents, not permit approvals with conditions).

CONCLUSION. Based n the above, we respectfully request that your committees defer this bill and allow the various stakeholders to work together on legislation, perhaps similar to SB 2830. Thank you for the opportunity to express our **opposition to SB 2818.**

Water Resources Research Center
Environmental Center

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RL: 2258

SB 2818
RELATING TO ENVIRONMENTAL PROTECTION

Senate Committee on Energy and Environment
Public Hearing – February 2, 2010
2:45 p.m., State Capitol, Conference Room 225

By
Karl Kim, Professor, Department of Urban and Regional Planning
Denise Antolini, Professor, William S. Richardson School of Law
Peter Rappa, Environmental Center and Sea Grant Extension Agent

SB 2818 makes changes to chapter 341 and 343 HRS that would transfers the Office of Environmental Quality control and the Environmental Council from the Department of Health to the Department of Land and Natural Resources; reduces the membership of the environmental council from 15 to 7; establishes the environmental review special fund; and revises the environmental assessment and environmental impact statement process to create a more streamlined, transparent, and consistent process. Our statement on this measure does not represent an institutional position of the University of Hawaii.

The University of Hawaii's Environmental Review System study was submitted to the Hawaii State Legislature on January 1, 2010, pursuant to Act 1, 2008. A copy of the report was distributed to all legislators and is available to the public on the study blog at:

http://hawaiieisstudy.blogspot.com/

Based on an extensive stakeholder process, the study assesses the system's effectiveness and proposes a comprehensive set of specific recommendations for statutory amendments to H.R.S. Chapters 341 and 343. SB 2818 is based on the recommendations of the study team and the proposed bill included in the study's report. The study team looks forward to discussion of these proposals and of SB 2818 during this legislative session and will be preparing a post-session report with further recommendations, including a more in-depth discussion of the administrative rules and relevant guidance.

An informational briefing was held before a joint Senate-House EEP-ENE Committee on January 15, 2010, at which time the study team detailed the key findings of the study. Because not all members were present, we would like to take this opportunity to introduce the study before we discuss the recommendations

that are reflected in this bill. Our statement on this measure does not represent an institutional position of the University of Hawaii.

I. Research Methods

The research design of the study included five methods to examine Hawaii's system and compare Hawaii's practices to others in the U.S. These included: 1) stakeholder interviews/workshop; 2) literature review; 3) legal analysis of cases in Hawaii that affect the review system; 4) international survey of best practices; and 5) comparative review of other states. The most important of the five was the stakeholder interviews and workshops. The team spent over 2400 hours interviewing over 170 people during approximately 100 interview sessions, transcribing and summarizing each session, arranging the information into a database, and compiling the results into categories of responses. The compiled responses were used in a one-day workshop held at the Law School in early June at which all the stakeholders who had participated in the interviews were invited. Nearly 100 stakeholders including some from the legislature participated in the workshop and were presented with the results of all the interviews and given a chance to combine and rank choices. The results of the workshop were further compiled into a preliminary set of recommendations for changes to the environmental review system. These results were sent back to the stakeholders for further comments. We received approximately 50 email or written responses to our preliminary recommendations which were used to craft the recommendations to the Legislature. All of this information has been disseminated through a website. Though the method was time intensive, it allowed for a great deal of give and take while making our deliberative process open and transparent.

The review of legal opinions and the comparative look at other states' systems also yielded important information and key ideas for reform. The legal analysis examined all Hawaii Supreme Court and Intermediate Court of Appeals cases, 19 in all, tried since the state EIS law was passed. We looked at environmental review laws from 16 states and territories plus the review process under the National Environmental Policy Act (NEPA). We focused our review on laws from New York, California, Massachusetts, Washington and NEPA.

The study team identified 16 issues and based the interview questions on those concerns. In analyzing the issues we realized there was much overlap among them. As a result, we collapsed the issues into five areas of concern. These include: Applicability, Governance, Participation, Content and Process. For each of these areas, we developed a problem statement and recommendations to solve the problems. In our development of recommendations we were guided by five principles that each potential solution was measured by:

- Protect the environment
- Improve information quality and decision making
- Enhance public participation
- Integrate with planning
- Increase efficiency, clarity, and predictability of the process

A brief summary of our findings and recommendations is presented below. A more robust discussion can be found in our report to the Legislature.

II. Applicability

A. Issues

Applicability deals with how actions "trigger" the environmental review process and how exemptions are used to screen out those that will have no impact on the environment and thus do not need review. We found that the existing trigger system misses some large projects, captures many small projects, might not include unanticipated future projects even if these have significant impacts, and isn't adaptable. We also found that environmental review often occurs too late in the development process to be useful. Many pointed out during the interviews that rights-of-way and utility connections require projects to undergo environmental review even though the use of state or county lands in many of these cases is only incidental. Another issue is that Environmental Assessments (EAs), a preliminary document meant to determine if an EIS is required, increasingly resemble full EISs. Finally, we found that the exemption lists are outdated and inconsistent and lack transparency.

B. Recommendations

Our major applicability recommendation is to adopt an "earliest discretionary approval" screen. When an action is subject to discretionary approval by an agency -- that is, when an action can be conditioned or denied -- this point of discretionary decision making is the rational point at which the environmental review process should be set in motion. The earlier in the process the review takes place, the more likely that any recommended change can be accommodated. Requiring environmental review as soon as agencies and private sector applicants have to seek discretionary approval will assure that review takes place early. Determining what constitutes a discretionary permit can be done through rule making or the development of guidance documents and would depend on the accumulated experience of the agencies, the Office of Environmental Quality Control (OEQC) and the Environmental Council.

We also encourage the use of environmental review for programs and plans, including county development plans. Many regional and cumulative environmental impacts can be detected at the programmatic level and avoided or mitigated more easily this level than at the site-specific project level. We also recommend that the law be clarified so that environmental review is not required for the use of land solely for connections to utilities and rights-of-way. Finally, we recommend that the exemption process be streamlined to increase transparency, to consolidate exemptions lists, and to allow agencies to cross-reference their lists.

III. Governance

A. Issues

"Governance" refers to how the review system is managed and administered. Generally, authority for managing the flow of information, archiving documents, and facilitating public

participation is the duty of the Office of Environmental Quality Control (OEQC), while rulemaking, approving exemption lists and systemic evaluation is the jurisdiction of the Environmental Council. Both the OEQC and the Council have been placed in the Department of Health (DOH) for administrative purposes. The authority, organizational structure and responsibilities are unclear. The Environmental Council does not seem to be functioning and has currently not met since July 2009. Both the Office and the Council have inadequate staff and funding to carry out all their mandates. Finally, the environmental review system lacks use of modern communication and information technology.

B. Recommendations

We recommend raising the profile of the Environmental Council by making it advisory to the Governor, similar to the CEQ, and by having the OEQC become the staff to the Council. This will make it attractive to serve while supporting the Council to carry out its duties. The suggested legislation would streamline the Council from 15 to 7 members to make it less unwieldy and expensive to hold meetings while still maintaining a diversity of viewpoints. We recommend that the OEQC and Environmental Council be moved to the Department of Land and Natural Resources (DLNR) from the DOH. The DLNR already has a broad environmental protection mandate that dovetails with the overall goal of the environmental review process. To address the lack of funding and inadequate staff we recommend the legislature create a pay-as-you go process to ensure adequate funding for the administration of the environmental review process through reasonable filing fees. These fees can be determined in the rule making process after a full discussion with agencies and developers. We also recommend that the OEQC and the Environmental Council be required to conduct regular outreach and training, annual workshops, publish an annual guidebook, and prepare an annual report on the effectiveness of the environmental review process. Finally, the OEQC should be required to create and maintain an information management and electronic communication system to meet best practices for environmental review.

IV. Participation

A. Issues

Participation refers to issues of public notice, public and agency review, and the comment and response process. Our study identified several issue in this area. First, it is unclear from the law and rules what constitutes adequate public notice, especially in terms of advances in communication technology. As the use of electronic media becomes more routine, the environmental review system should address how to best incorporate this into the process. Another identified issue was that, for complex or controversial projects, comment periods are too short or public participation occurs too late. Another issue is that, in some cases, project opponents use repetitious and voluminous comments to slow down the review process, as each comment has to be individually answered. Finally, a vital part of the process is interagency review of documents. A number of stakeholders told us that interagency review of EIS documents needs improvement. Agencies bring expertise that is essential to determining the magnitude of impacts and the effectiveness of mitigative measures. They can also work as a counter weight to perceived bias for documents prepared by project proponents.

B. Recommendations

We recommend changes to the law that encourage broad, early, and sufficient public participation in the EIS process. This can be accomplished by adopting rules that offer examples of "reasonable methods" for informing the public. For complex projects, we suggest allowing agencies or applicants to extend the period for public comment one time for no more than 15 days to allow for additional time to review system documents when needed. We recommend that the Environmental Council develop rules, based on NEPA, that address repetitious and voluminous comments. In NEPA documents, preparers are allowed to lump similar comments and develop a single response. We would mandate agency participation by designating in the rules an EIS coordinator within each agency to coordinate and streamline EIS-related responsibilities.

V. Content

A. Issues

These issues refer to what type of information is discussed in an environmental review document. In our study we found that documents are too long, repetitive, and contain too much boilerplate language, none of which add value to documents, while at the same time making these documents cumbersome and more difficult to review for both agencies and the public. This is due in part to the lack of guidance and training on the environmental review process. OEQC used to offer training and guidance documents and workshops in the past, but, because of budget constraints, is no longer able to do this. The Guidebook for the Hawaii State Environmental Review Process prepared by OEQC, for example, is out of date and no longer available. Another content issue deals with mitigation measures. An important part of the review process is to identify and discuss measures that mitigate some of environmental impacts of a project. If mitigation measures discussed in environmental review process aren't implemented, then the impacts they were intended to curb may occur. The current system lacks a link between mitigative measures discussed and their implementation. We found that cumulative impacts assessment is not done well in most cases, and that more recent issues such as the effects of climate change on projects and how proposed projects impact climate change, are not adequately discussed.

B. Recommendations

One of the ways to improve the content of environmental review documents is through education. Our recommendation is to require OEQC to conduct annual workshops and publish annually an updated guidebook or supplement. OEQC staff can design and teach the workshops in house or can work with a consultant or the Environmental Center to develop a course aimed at document preparers. The same may be done for an updated general guidance document and the additional guidance documents that we suggest should be developed. Establishing a maximum page limits for environmental review documents may also help to reduce the size of environmental review documents, helping preparers to focus in on the most important issues. To address the connection between the discussion and implementation of mitigation measures, we recommend that the state environmental review system adopt NEPA's Record of Decision (ROD) process for mitigation measures in EISs. NEPA's ROD is a brief document attached to the final EIS that details identified

impacts,, what mitigation will be implemented and who will be responsible for the implementation. To improve cumulative impact assessment, we would require environmental review at the development plan level for both private and public actions. This is a more appropriate level of review for cumulative impacts analysis than the project level. If this assessment is completed at a higher level, then these studies can be incorporated, through tiering, into site-specific project assessments. In addition, we recommend requiring OEQC to establish a database for cumulative impacts assessment which document preparers can draw upon. Finally, we would amend the significance criteria to address climate change mitigation and adaptation and include it in the law to make it clear that climate change must be covered in environmental review documents.

VI. Process

A. Issues

These issues deal with how the environmental review system is applied. The current process requires that an environmental assessment (EA) be prepared by an agency to make the determination whether an EIS will be required. In some cases agencies already know when an EIS will be required. Preparing an EA for projects likely to require an EIS is time consuming and burdensome. In practice, many agencies do skip the environmental assessment, substituting a Preparation Notice for the EA. A second issue is the requirement for supplemental EISs especially in the case of projects which are completed over a long period of time. The latter issue is referred to as the EIS "shelf life." Finally, there is perception of bias in preparation and acceptance of environmental review documents that undermines public confidence in the system.

B. Recommendations

We recommend that the EIS law be amended to allow project proponents, with agency consultation, to proceed directly to an EIS. This will save time and resources. It will confirm a practice which in some cases already exists. We recommend that the issue of supplemental EISs be addressed in the statute and that the Environmental Council clarify rules regarding supplemental EISs and under what circumstances they will be required. The Environmental Council should also address the long standing issue of EIS "shelf life" We recommend that an EIS for a project that has not been completed within seven years of receiving all its entitlements have its EIS reviewed for adequacy. If substantial change to the project design or surrounding environment has taken place, then a supplemental document should be prepared. The EIS is a disclosure document that allows decision makers to make choices based on information about the consequences. If a project changes or the surrounding environment is no longer as described in the original document, then new information should be gathered to assist decision makers. Finally, we struggled with the question of bias. On one hand, because proponents prepare their own documents and some agencies prepare and accept their own documents, there is a perception that the documents are biased. However, we could find no alternative to the present system that would assure that bias would be eliminated. The solution of third-party preparers, recommended by many stakeholders, is not feasible for Hawaii's situation. A preparation process using third-party preparers requires a large consultancy market that currently does not exist in Hawaii and would involve a complicated administrative mechanism for contracting with independent preparers. We recommend that the present system be retained and that an emphasis

be placed on enhanced public and interagency review through more stringent requirements, guidance, and training, as discussed earlier.

VII. Conclusion

In our research we found that environmental review is broadly supported and has been beneficial to Hawaii. However, the environmental review system has significant problems that need to be addressed. We have attempted to define these problems and determine solutions. The results of our process are distilled in SB 2818. Major reform is challenging because of the complexity of the system, diversity of values held by stakeholders, and vested interests in perpetuating the existing system. There is resistance to change; however, change is needed. In the past, Hawaii had a reputation for being a leader in environmental policy and it is up to the Legislature and others to restore that image.

Thank you for the opportunity to testify

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February 2, 2010

The Honorable Mike Gabbard, Chair
and Members of the Committee on Energy and Environment

The Honorable Clayton Hee, Chair
and Members of the Committee on Water, Land,
Agriculture, and Hawaiian Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Gabbard, Hee and Members:

Subject: Senate Bill 2818
Relating to Environmental Protection

The Department of Design and Construction opposes several of the proposals contained in Senate Bill 2818.

Of particular concern to the City's Department of Design and Construction is the combination of proposals to change the trigger to "earliest practical time," the broad inclusion of programs and programmatic actions as triggers and the concept of tiering. Together, we believe these proposals will vastly expand the resources expended on environmental review of government-financed capital improvement projects in the State.

The proposed legislation seems to broaden the requirements for environmental review from specific project-related actions as is the practice today. SB2818 adds and defines "program" and "programmatic" as actions requiring environmental reviews. The proposed legislation also defines a new concept of "tiering." The combination of the requirements for explicitly including "programs" and "programmatic" actions with the "tiering" concept would have the effect of multiplying the requirement for environmental review for any single action by requiring a separate review process being initiated each time as a project initiative progresses from the earliest conceptual stage as a line item on a County or State capital improvement project (CIP) budget (or in the case of the

City and County of Honolulu, possibly including the Six-year CIP program) through preliminary and schematic planning stages, to the most highly developed final design and construction plans.

If our interpretation of the proposed legislation is accurate, the new requirements would be monumentally burdensome and unworkable. A "logjam" of capital improvement projects would be held up from being implemented in a timely way, adversely impacting the State's economy and our citizens' infrastructure improvement needs. The focus being put on the CIP and individual projects could possibly provoke controversies that would obstruct government action on all capital improvement projects. Major disruptions to the provision of local government services could result.

Agencies or applicants preparing environmental documents may some day be challenged on the interpretation of the new law, and decisions by the Court may have serious adverse impacts not anticipated by anyone currently considering enacting them.

The scope of changes to the environmental review system should be considered within the context of the *whole system* of local government decision making and regulations within our State affecting the environment. Hawai'i's environmental review system is but one venue for the public to review and participate in important decision making regarding changes to the environment that impact us all. Public review and comment is already included in the process for most, if not all, discretionary permits and land use approvals in Hawai'i, *exclusive* of the environmental review system itself. Any proposed changes to the present environmental review system should be made in consideration of avoiding unnecessary duplication of efforts, rather than possibly multiplying them.

Improvements to the existing system might be made, but many of the proposed far-reaching changes contained in SB2818 are inappropriate and prematurely made without adequate study as to the practical consequences on State and county governments. The present legislative changes might better be put aside until their ramifications can be better determined, perhaps in a future legislative session.

The Department of Design and Construction is also in agreement with, and supportive of, the testimony recently provided to your committee by the City's Department of Planning and Permitting (DPP). Many provisions of the proposed legislation effectively render environmental review as yet another discretionary permit,

in violation of the intent of the original State environmental laws. We particularly support their testimony in strong opposition to the proposed seven year "shelf-life" of environmental disclosure documents.

As with the DPP, we strongly recommend that Senate Bill 2818 be amended as suggested or deferred, to address our stated concerns. Thank you for the opportunity to comment.

Very truly yours,

Craig I. Nishimura, P.E.
Director

CIN:ei

The Nature Conservancy
Protecting nature. Preserving life.™

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Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2818 Relating to Environmental Protection
(Testimony provided by Mark Fox, Director of External Affairs)
Committee on Energy and Environment
Committee on Water, Land, Agriculture, and Hawaiian Affairs
Tuesday, February 02, 2010, 2:45PM, Room 225

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii'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, particularly the effort to streamline the environmental review process with a discretionary approval screen, and significance and applicability criteria.

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 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 constructing residential homes versus engaging in conservation work to protect native forests or 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.

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