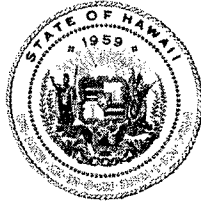
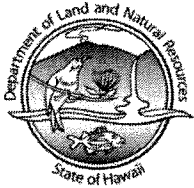


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
ENERGY AND ENVIRONMENTAL PROTECTION**

**Thursday, February 3, 2011
8:30 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 792
RELATING TO THE ENVIRONMENT**

The purpose of House Bill 792 is to require a supplemental environmental assessment (EA) or supplemental environmental impact statement (EIS) if an action by an agency or applicant may have a significant impact on the environment.

The Department of Land and Natural Resources (Department) supports the intent of the bill but recommends: 1) That one sub-issue be addressed through administrative rules by adding an additional exemption to Section 11-200-8, Hawaii Administrative Rules (HAR) not by statutory amendment, and; 2) That no change be made in the process for determining "aggrieved parties" as proposed in SECTION 6.

SECTION 5 of the House Bill 792 proposes to amend to Section 343-5(a)(1)(A), Hawaii Revised Statutes (HRS), to exempt small projects (such as residential homes or small businesses) from the preparation of an EA when the small projects proposed use only government owned rights-of-way solely for utility and access connections. The Department is concerned that this provision not be expanded further to include extensive development and clearing of new accesses across protected or pristine habitats such as Natural Area Reserves, Wildlife Sanctuaries, Forest Reserves or other Department program areas.

The intent to exempt small projects may be better addressed through administrative exemptions pursuant to Section 11-200-8, HAR, rather than an exception under the statute (Section 343-5, HRS) itself. The projects could be exempted by following existing procedures for preparing exemptions. This will allow for greater nuance in actual practice.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

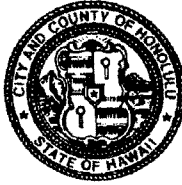
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

SECTION 6 of the House Bill 792 proposes to amend Section 343-7, HRS, to provide the legal status of “aggrieved party” to anyone commenting on an EA. We believe that the current process where the courts determine “aggrieved parties” based on relation to the case is more appropriate. The Department does not support the proposed amendment.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

February 3, 2011

The Honorable Hermina M. Morita, Chair
and Members of the Committee on Energy
and Environmental Protection
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hermina and Members:

**Subject: House Bill No. 792
Relating to the Environment**

The Department of Planning and Permitting (DPP) **supports** House Bill No. 792. The current bill clarifies the regulations of Hawaii Revised Statutes (HRS), Chapter 343, relating to Supplemental Environmental Assessments and Environmental Impact Statements. The proposed revisions are thoughtful and appropriate, and will help clarify lingering issues surrounding the relationship between Chapter 343, HRS and discretionary actions. The proposed bill also specifies that the accepting agency for a project must determine whether a supplemental document is required, report the determination to the Office of Environmental Quality Control, and observe a 30-day public review period when a supplemental document is submitted. These changes will provide an appropriate level of consistency and predictability to the environmental review process.

Thank you for the opportunity to comment.

Very truly yours,

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

David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf

hb792-SuppEA-ek.doc

coffman3 - Sean

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 10:50 PM
To: EEPtestimony
Cc: mjellings@hawaii.rr.com
Subject: Testimony for HB792 on 2/3/2011 8:30:00 AM

Testimony for EEP 2/3/2011 8:30:00 AM HB792

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Carl P Jellings Sr
Organization: Individual
Address:
Phone:
E-mail: mjellings@hawaii.rr.com
Submitted on: 1/31/2011

Comments:

Chair Morita and members

In Support HB 792.

So far since Madame Chair's moratorium on permits for commercial vessels from State Harbors Waianae harbor has had a number of permits change hands or sold. from deep sea fishing and rec tourism diving to nearshore dolphin and swim with dolphin tours 2 are considered high speed. Koolina has also seen an increase in tour vessels since Chair's legislative action's. it is estimated an additional 3000 to 5000 more nearshore transits since 2005. last year we were directly impacted during fishing efforts (akule fishing) of 52 trips 5 by tour vessels from both Koolina and Waianae. and 4 by jet ski's .11 years on this and nothing has changed many Tour Capt's with the exception of one have totally disregarded the gentleman's agreement only during fishing efforts will they abide by the agreement,

The agreement was designed by Hawaiian's around the protection and preservation of fishing "koa" or ground's not fishing effort. . food security, 'sustainability' Not without balance and cooperation.

Mahalo

Carl P Jellings Sr

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

HAWAII CHAPTER

February 1, 2011

The Hon. Mina Morita, Chair, and
Members of the House Committee on
Energy and the Environment

The Hon. Jerry Chang, Chair, and
Members of the House Committee on
Water, Land and Ocean Resources

State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Testimony in Support of House Bill No. 792 Relating to Environmental Impact Statements

Dear Chairs Morita and Chang and Committee Members:

I am submitting this testimony on behalf of NAIOP Hawaii. We are 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. The local chapter comprises 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.

We support this bill. The decision of the Hawaii Supreme Court in the *Turtle Bay* case created substantial uncertainty as to when a supplemental EA/EIS would be required. Because of this, it is now not clear how long an existing EA/EIS can be relied upon. This in turn leads to questions whether permits, already granted, can be overturned if a supplemental EA/EIS will be required. This has had a chilling effect on the ability to finance projects, because a lender wants assurance that the project will be completed. Certainty is also important for government projects, which are often designed to be constructed in phases and completed over a period of years.

This bill would help re-establish certainty in the EIS process. It would also help clarify that the environmental review process applies to discretionary, not ministerial, permit applications. Although this has been the intent of Chapter 343 since its enactment, over time the line has become blurred as to what different agencies believe to be ministerial and discretionary. This measure would clarify that distinction and give guidance to the agencies.

Chairs Morita and Chang &
Committee Members
February 1, 2011
Page 2

Thank you for the opportunity to testify on this measure.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. K. Mee', written over the printed name.

James K. Mee
Chair, Legislative Affairs Committee

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

February 3, 2011

Representative Mina Morita, Chair
Committee on Energy & Environmental Protection
State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Morita and Members of the Committee on Energy and Environmental Protection:

Subject: **House Bill No. HB 792 Relating to the Environmental**

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-HAWAII supports H.B. No. 792, as it proposes to revise Chapter 343 HRS based on past practices and in response to recent court decisions.

The overall intent of the proposed changes to Chapter 343 HRS is to require a supplemental environmental assessment or supplemental environmental impact statement to be provided if an action by an agency or applicant is anticipated to have a significant effect on the environment. H.B. 792 establishes a public disclosure system of environmental review.

Further, the bill intends to:

1. Create certainty and predictability in the environmental review process;
2. Streamline the process based on existing practice;
3. Clarify the intent and process based on recent interpretations and decision.

Clarifying the distinction between discretionary and ministerial approvals required changes throughout the chapter. By reemphasizing the trigger for Chapter 343 HRS at the first discretionary permit and not at subsequent ministerial permits, the process provides for more predictability and certainty. The land use entitlement process in Hawaii is very rigorous and often overlapping among the Federal, State and County approvals. Having one EA or EIS prepared at the earliest practicable time (i.e. first discretionary permit allows for a full vetting of the proposed project at multiple levels prior to governments action to either approve or deny the land use. Once that decision is made, assuming it is approval, each subsequent level of government permitting will require updates or supplemental studies be done as the various components of the project are developed. For example, Traffic Impact Analysis Reports (TIAR) required at the EA/EIS stages are routinely updated and required at each phase of the project.

The criteria for requiring a supplemental EIS was changed to recognize projects that are built out or developed over time. The timing of when a project is developed has no direct impact on the

environment on which the project is sited, and is more a function of the prevailing market conditions rather than of the individual developer. All of the other criteria listed (i.e. size, scope, intensity, use or location) are decisions that have a direct impact on the environment and are at the discretion of the developer. Furthermore, as conditions around the project site change over time, the developer will be required to update applicable reports and analysis of impacts created by the subsequent phases being developed.

The subject bill is similar to the bill introduced by the Chamber of Commerce of Hawaii, House Bill No. 1409. While the Chamber's bill provides a more comprehensive approach to revisions to Chapter 343 HRS, the subject bill also addresses many of the needed revisions.

The BIA supports H.B. No. 792.

Thank you for this opportunity to express our views.

A handwritten signature in black ink that reads "Karen I. Nakamura". The signature is written in a cursive, flowing style.

Chief Executive Officer
BIA-Hawaii

coffman3 - Sean

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 02, 2011 10:20 AM
To: EEPtestimony
Cc: pennysfh@hawaii.rr.com
Subject: Testimony for HB792 on 2/3/2011 8:30:00 AM

Testimony for EEP 2/3/2011 8:30:00 AM HB792

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Penny Levin
Organization: Individual
Address: Wailuku, Maui
Phone:
E-mail: pennysfh@hawaii.rr.com
Submitted on: 2/2/2011

Comments:

Aloha Honorable Council Members;

Too many EIS documents are outdated. The information that we understand today regarding environmental impacts is ten-fold what we knew even five or ten years ago. Our decisions on developments and what we allow on the land should be based on the best information we have now - not 10 or 20 years ago.

Too many lands sold from developer to developer have substantial changes in proposed buildouts, inside and out. This bill however, does not define what that means or who will decide when a project is significantly different from the original proposal.

This is the kuleana of the Environmental Council. Please let them do their job and vote NO on HB792.

Mahalo for this opportunity to testify.

Testimony before the House Committee on Energy and Environmental Protection

**By Rouen Liu
Permit Engineer, Engineering Department
Hawaiian Electric Company, Inc.**

February 3, 2011

**House Bill 792
Relating to Environmental Impact Statements**

Chair Morita, Vice Chair Coffman and Members of the Committee:

My name is Rouen Liu and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

Position:

We support HB792 which appears to be an overall improvement to Hawaii's Environmental Impact Statement Law.

Comments:

- Specific sections which we support in the bill are:
 - Utility and access connections shall not require an environmental assessment or an environmental impact statement.
 - An applicant action shall not be subject to this chapter solely because a ministerial consent is required.
 - If comments are repetitive or voluminous, comments shall be summarized and the summary shall be appended to the final assessment or final environmental impact statement.

Thank you for the opportunity to testify on this matter.

From: Nancy Davlantes [ndavlantes@aol.com]
Sent: Wednesday, February 02, 2011 12:19 PM
To: EEPtestimony
Subject: HB792 for EEP Hearing Feb 3 at 8:30 AM

Dear Chairperson Morita and Members of the Committee,

I am opposed to this bill because it would limit supplemental EISs to only for significant changes in a project (but not the timing of a project) and would exclude significant changes in the environment or available information.

It's the Environmental Council's duty to rule on this and no action should be taken until the Council resolves it.

Thank you for considering my testimony.

Nancy Davlantes
47-228 Kamehameha Hwy
Kaneohe, HI



**BOARD OF DIRECTORS
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THE OUTDOOR CIRCLE

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President

February 3, 2011

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1st Vice President

The Honorable Representative Hermina Morita, Chair
House Committee on Energy and Environmental Protection
Hawai'i State Capitol
Honolulu, HI 96813

Jean Campbell
2nd Vice President

Maureen Murphy
3rd Vice President

RE: Testimony supporting of HB792 Relating to the Environment

Betsy Connors
4th Vice President

Chair Morita and Members of the Committee:

Diane Harding
Treasurer

Thank you for this opportunity to present testimony in support of HB 792.

Yvonne Lim Warren
Assistant Treasurer

The Outdoor Circle strongly believes that it is essential that supplemental environmental reviews be required on projects that have substantially changed since the Environmental Impact Statement (EIS) or Environmental Assessment (EA) was produced for the same project.

Teresa Trueman-Madriaga
Secretary

Diane Anderson
Advisor

Without this requirement it would be possible for applicants to implement major changes in projects that had previously been planned and evaluated under Hawaii's environmental review laws. Of course the most frequently cited example of such a circumstance involves and applicant's proposal to greatly revise the development project at Turtle Bay on O'ahu's North Shore without being required to analyze the changed impacts of the project on the environment.

Steve Mechler
Advisor

Denise Soderholm
Advisor

Marcy Fleming
Bradley Tothorow
Finance

HB792 corrects the glaring hole in Hawaii environmental review laws that currently imply that once an EIS or EA is created for a project, no further analysis of impacts is needed regardless of how the project changes over time.

BRANCHES

East Honolulu (O'ahu)

Please pass HB792 as a means of protecting Hawaii's precious finite resources from impacts that have not been properly scrutinized.

Kane'ohe (O'ahu)

Mahalo

Kapolei (O'ahu)

Kaua'i

Bob Loy

Kona (Hawai'i)

Director of Environmental Programs

Lani-Kailua (O'ahu)

Maui

North Shore (O'ahu)

Waikoloa Village (Hawai'i)

Waimea (Hawai'i)

**HB 792
RELATING TO THE ENVIRONMENT**

**PAUL T. OSHIRO
MANAGER-GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 3, 2011

Chairs Morita and Members of the House Committee on Energy and Environmental Protection:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 792, "A BILL FOR AN ACT RELATING TO THE ENVIRONMENT." We support this bill.

Under the existing Hawaii Revised Statutes (HRS) Chapter 343, Environmental Impact Statements, a proposed action which meets any of thirteen "triggers" requires an environmental assessment (EA), unless exempted, to determine whether the proposed action may have a significant effect on the environment such that an environmental impact statement (EIS) must be prepared. While not specifically addressed in Chapter 343, Hawaii Administrative Rules Chapter 11-200 contains general provisions, content requirements, and public review procedures for the preparation of Supplemental Environmental Impact Statements (SEIS).

In light of recent court rulings on various EAVEIS and SEIS provisions, we believe that this bill is needed to provide clear guidance and clarity to Hawaii's environmental review law. The new SEIS section in this bill will codify in statute the government entity responsible for determining when a SEIS must be prepared, the scope and content of the SEIS, and the timetable for public review and comment. Provisions are also

included in this bill to extend existing statutory provisions that are scheduled to sunset on July 1, 2011 relating to EA/EIS exemptions for utility and access connections within government owned rights of ways. The bill also clarifies EA/EIS requirements for ministerial and discretionary consents.

We believe that this bill will alleviate unwarranted delays in the State and County entitlement and review process. Without this bill, confusion and uncertainty among both agencies and applicants regarding environmental review requirements may prevail, resulting in an increase in both the number of required environmental reports and in subsequent litigation. Both will just add unnecessary cost to any project—public or private. Absent this bill, an expansion in the number of actions requiring environmental review for minor utility and access connections within government owned rights of ways may overwhelm the environmental review system and result in a considerable slow down in construction and other related activities throughout the State.

We believe that by providing clear parameters and requirements for Hawaii's environmental review law, this bill will benefit everyone. It will address the uncertainty that has been created by recent court decisions, thereby greatly alleviating the potential for undue delays, greater uncertainty and undue litigation in the entitlement and review process, thus supporting—not worsening—Hawaii's economic recovery, providing a much needed stimulus to the construction industry and supporting sustained economic health for Hawaii.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.



The REALTOR® Building
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February 1, 2011

The Honorable Hermina M. Morita

House Committee on Energy and Environmental Protection
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 792 Relating to Environmental Impact Statements

HEARING: Thursday, February 3, 2011 at 8:30 a.m.

Aloha Chair Morita, Vice Chair Coffman, and Members of the Committee:

I am Vern Yamanaka, Chair of the Subcommittee on Land Use, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR supports H.B. 792 which clarifies the Hawaii Environmental Protection Act ("HEPA") by:

1. Establishing that an accepted Environmental Impact Statement ("EIS") is valid as long as a supplemental document is not required;
2. Adding language into the "Findings and Purpose" to reinforce that HEPA is a public disclosure and environmental review process, which is distinct from the regulatory or permitting process;
3. Adding new definitions, including "exempt," "ministerial approval," and "supplemental statement." The changes would also modify how "action" is defined by removing the current definition of "action" by placing it within the context of "Agency action" and "Applicant action." Also, the definition of "discretionary consent" is revised.
4. Amending the "Applicability and Requirements" section to clarify that the "use of government owned rights-of-ways solely for utility and access connections" would not require an Environmental Assessment ("EA") or EIS;
5. Clarifying that, in certain cases, an applicant would be allowed to proceed directly to the preparation of an EIS without having to file an EA; and
6. Clarifying that an agency, when making its determination to accept an EA or EIS, must provide an explanation of how the document meets the requirements of HEPA as a public disclosure document.

The HEPA was adopted in 1974 to provide a system of environmental review during decision-making. The Hawai'i State Legislature, when adopting HEPA, stated within its findings and purpose that an "environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions."

HEPA's environmental review applies to action by a state or county agency or by an individual applicant that require a discretionary consent or approval. The HRS identifies certain

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categories of actions that automatically trigger the review requirements of HEPA. For example, any action that proposes the use of state or county lands, or that propose a use within a shoreline area, will require environmental review. Actions that are subject to HEPA cannot be undertaken (or discretionary approval cannot be granted) until the review requirements are satisfied.

Environmental review under HEPA can be in the form of an EA or an EIS. An EA can be used as a screening tool to determine if an EIS is required—the permitting authority reviewing an EA may determine that an EIS is not required and issue a Finding of No Significant Impact (“FONSI”). If the permitting agency determines that the action “may have a significant effect on the environment,” the agency or the applicant must prepare an EIS.

In 2010, the Hawai'i Supreme Court issued a decision in *Unite Here! Local 5 v. City and County of Honolulu* (generally referred to as the “Turtle Bay” decision.) The decision involved the question of whether a project applicant (Turtle Bay, LLC) was required to prepare a supplemental EIS for a subdivision approval before it proceeded with its plans to expand a resort. The Court found that it was required to prepare a supplemental EIS because the reports and studies done at the time of the original EIS was no longer sufficient. This decision arguably results in exposing numerous projects to the potential that they will be subject to additional EIS reviews long after the original project approvals were obtained.

As such, HAR believes that by establishing that an accepted EIS is valid as long as a supplemental document is not required provides certainty to the potential exposure of previous projects and clarity to future projects based on the Turtle Bay decision. Often uncertainty leads to additional costs and time which in turn is folded into the costs of the development, such as a housing development, which may be passed to the homeowner.

In 2006, the Hawai'i State Supreme Court ruled in the Koa Ridge case that an EA or EIS was required if a project or development proposes the use of State lands associated with infrastructure improvements within a public right-of-way. The consequence of this decision was that minor improvements, regardless of their environmental impact, were required to submit an EA/EIS.

In 2009, to address the impact of this decision, the Legislature passed Act 87 to eliminate the EA/EIS requirement for certain actions that involve the installation, improvement, renovation, construction, or development of infrastructure (including roadway improvements, waterlines, wastewater lines and facilities, drainage facilities, and electrical, communication, and cable utilities) within a public right-of-way or highway by clarifying that such projects are exempt under HEPA. However, Act 87 sunsets this year.

By permanently excluding the EA/EIS requirement for government-owned rights-of-ways, the burden on homeowners who make minor improvements will be reduced, particularly where the environmental impact of the project would be minimal.

Mahalo for the opportunity to testify.