SB 2873

NEIL ABERCROMBIE
GOVERNOR

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
JADE BUTAY
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 23, 2012

S.B. 2873
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

SENATE COMMITTEE ON ENERGY & ENVIRONMENT

The Department of Transportation strongly supports Administration Senate Bill 2873 to permanently amend Chapter 343, Hawaii Revised Statutes, to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required.

The amendment will save the Department of Transportation unnecessary work effort and man hours on the processing of minor work project reviews. Without the exemption, we're looking at a range of processing times and costs from several months and several thousands of dollars (for simple projects such as a home driveway access) to possibly a year or more and tens of thousands of dollars if a consultant needs to be retained to process an environmental review due to any opposition to the minor work project.

The Department of Transportation has been inundated with a large number of minor work project reviews that increases the processing time for applications affecting rights-of-way. Amending this chapter will relieve the DOT from conducting an environmental assessment (EA) when they are not the initiators of the EA process and will prevent unnecessary delays for actions that are clearly exempt from the EA requirements.

Thank you for the opportunity to provide testimony.

NEIL ABERCROMBIE
GOVERNOR OF HAWAI'I

GARY L. HOOSER
DIRECTOR

STATE OF HAWAI'I
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
235 S BERETANIA ST. SUITE 702
HONOLULU, HAWAI'I 96813
Tel. (808) 586-4185
Fax. (808) 586-4186
Email: oeqc@doh.hawaii.gov

COMMITTEE ON ENERGY AND ENVIRONMENT

SB 2873, RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Testimony of Gary Hooser
Director of the Office of Environmental Quality Control

February 23, 2012

Office's Position: Support intent however oppose existing language and offer amendments.

Fiscal Implications: None

Purpose and Justification: This measure proposes to permanently amend chapter 343, Hawaii Revised Statutes to clarify and make permanent current exemptions for secondary actions that occur within the highway or public right-of-way.

While the OEQC supports the intent of allowing the exemption of minor highway improvements occurring within a highway or public right-of-way, we feel fundamentally that this measure is not necessary as provisions for exempting minor and inconsequential actions from Chapter 343 already exist.

Several testifiers attest to situations where someone would have to do an expensive environmental review to construct a "home driveway access" and that onerous and expensive EAs and EISes for "projects with insignificant environmental impacts" were required under existing law. With all due respect to those testifying to that effect, these claims reflect not a flaw

in the law that needs correcting via the legislative process, but rather a lack of understanding of the basic law itself.

Additional testimony claims that this legislation is needed because the courts have ruled that using a public right-of-way "triggers" an EA/EIS. Again this statement indicates a clear misunderstanding of the law: EAs and EISes are not "triggered". Chapter 343 may be triggered but at that point, the agency then chooses which of three paths to take next – either they can (1) exempt the project if it is deemed to be minor and have no or negligible impacts, or they can require an (2) EA or an (3) EIS. No minor driveway or right of way construction is required to conduct an EA or an EIS unless the agency determines that one is necessary.

The primary purpose and focus of Chapter 343 is based on evaluating environmental impacts. The existing law is clear that agencies already have the authority to quickly exempt any project or action that is expected to have no or negligible environmental impacts. While most minor driveway ingress and egress type highway improvements fall into this category, there is a point somewhere however depending on the size, scope, location and possibly other factors – where an exemption is not appropriate and a proper environmental review is needed. For this reason, the OEQC opposes "one size fits all" exemptions and believes that each project/action must be evaluated on the potential impacts and not exempted because it meets a certain legal definition and therefore is exempt regardless of what those impacts might be. It is the OEQC's clear belief that this provision exempting actions based on the inter-relationships between primary actions, secondary actions, ministerial permits and discretionary permits is not necessary and in fact because of the convoluted nature of its language is actually problematic.

However, if the legislature deems that they would like to continue supporting this approach we offer the following suggestions for amendments:

a) On page one line 11 amend to read "highway, agency may exempt that secondary action from this chapter" and delete existing language that states "that secondary action shall be exempt from this chapter"

The reason for this amendment is to make it clear this is not a one size fits all rubber stamp exemption and the agency must first at least look at the proposed action and make a conscious decision to exempt.

b) On page one line 12: Suggest deleting "provided that the applicant shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required." and replacing with language that states "provided that the secondary action's environmental impacts are not significant".

This provision will ensure that larger highway projects that may in fact have significant environmental impacts are properly evaluated and not simply automatically exempted without regards to their size, scope, location etc.

c) On page two, line 10: Amend the definition of Secondary Action to - "Secondary action refers to any infrastructure within the highway or public right-of-way that is ancillary or incidental to the primary action."

This clarification ensures that there is no misunderstanding as to the intent of this measure.

Thank you.

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the Senate Committee on Energy and Environment
Thursday, February 23, 2012
2:45 p.m.
State Capitol - Conference Room 225

RE: SENATE BILL NO. 2873 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Chair Gabbard, Vice Chair English, and members of the committees:

The Chamber of Commerce of Hawaii strongly supports S.B. No. 2873 which proposes to permanently amend chapter 343, Hawaii Revised Statutes to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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 legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, the entire project is then required to prepare and environmental assessment for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

The Chamber strongly supports S.B. No. 2873 which effectively excludes the installation and development of infrastructure and utilities within an existing public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

Thank you for this opportunity to express our views.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Testimony to the Senate Committee on Energy and Environment
Thursday, February 23, 2012
2:45 p.m.
Capitol, Room 225

S.B. 2873, Relating to Environmental Impact Statements

Chair Gabbard, Vice-Chair English, and members of the Committee:

My name is Gladys Quinto Marrone, Government Relations Director for 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 **strongly supports** S.B. No. 2873, which proposes to permanently amend chapter 343, Hawaii Revised Statutes to clarify current exemptions for secondary actions and require that applicants prepare environmental assessments when required.

This legislation is needed because of the recent court decisions where any action that involved the use of a state or county road right of way was a "trigger" for the EA/EIS. Because an access improvement, easement, drainage, waterline, etc., is now viewed as a use of state or county lands when it touches (over, under, across) a state or county road right of way, an environmental assessment is required for the entire project.

Requiring the preparation of a 343 HRS document for projects with insignificant environmental impacts makes a mockery of the EA/EIS process. If the legislative intent was that an EA/EIS would be required any time the project touches a public road, then the law should be changed to require an EA/EIS for all projects because all projects, at some point, connect to a public road.

BIA-Hawaii **strongly supports** S.B. No. 2873, which effectively excludes the installation and development of infrastructure and utilities within an existing public right-of-way or highway as the use of state or county lands for purposes of requiring an environmental assessment.

Thank you for this opportunity to express our views.

LAND USE RESEARCH
FOUNDATION OF HAWAII
1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

February 22, 2012

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair
Senate Committee on Energy and Environment

Support of SB 2873, Relating to Environmental Impact Statements ("EIS")
(Permanently amends HRS Chapter 343 to clarify current exemptions for secondary actions.)

Thursday, February 23, 2012, 2:45 p.m., in CR 225

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 **strongly supports the passage of this original version of SB 2873, unamended.** LURF would **oppose any amendment** which would add new requirements which unnecessarily increase the workload, costs and delays relating to agency staff and private consultants, or which provide additional opportunities for lawsuits to stop or delay projects.

SB 2873. This bill permanently amends Chapter 343, Hawaii Revised Statutes ("HRS"), to clarify current exemptions for secondary actions within the highway or public right-of-way and requires that applicants prepare Environmental Assessments ("EA") when required.

LURF's Position. LURF supports this original version of SB 2873, as it would allow the Department of Transportation ("DOT") and the Department of Health's Office of Environmental Quality Control ("OEQC") to avoid unnecessary work effort on the processing of minor secondary actions which would clearly be exempt from EA requirements.

In the recent past, the DOT and the OEQC have been inundated with a large number of minor secondary action project reviews, which greatly increase the processing time and expense for applications affecting rights-of-way, including, in some cases, requiring EAs for telephone and cable telephone connections.

LURF **supports the current version of SB 2873,** based on, among other things:

- **"If it ain't broke, no need to fix it."** The existing law has been in effect for several years and it has worked, without any problems. The law should become permanent, without any amendments.

- **Consensus based.** The existing law was a result of a consensus between government agencies, private developers and the former director of OEQC. Any proposed amendments would not have gone through the collaborative process with parties who prepare EAs and EIS, and those most directly impacted.

- **Current law relieves unnecessary major backlogs, delays and expenses.** The existing law was a result of unnecessary major backlogs, delays and expenses to private individuals and agencies. In the recent past, the DOT and the OEQC have been inundated with a large number of minor secondary action project reviews, which greatly increase the processing time and expense for applications affecting rights-of-way, including, in some cases, requiring EAs for telephone and cable telephone connections.

- **Sufficient environmental oversight exists on "primary actions."** Sufficient oversight will continue to exist for "primary actions," on private property which is outside of the highway or public right of way, as applicants for such actions will continue to be required to prepare an EA or and Environmental Impact Statement relating to the proposed action at the earliest practicable time.

For the reasons stated above, LURF is in **strong support of this original version of SB 2873**, and respectfully urges your favorable consideration of this bill and that it **pass unamended.**

Thank you for the opportunity to present testimony regarding this matter.

NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
HAWAII CHAPTER

February 22, 2012

The Hon. Mike Gabbard, Chair, and
Members of the Senate Committee on
Energy and the Environment
State Capitol, Room 225
Honolulu, Hawaii 96813

Re: Testimony in Support of Senate Bill No. 2873, Relating to Environmental Impact Statements

Dear Chair Gabbard and Members of the Committee:

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. Before Act 87 of the 2009 Session Laws was passed, a number of projects could not move forward because they were required to do an environmental assessment / environmental impact statement before they could get approval to install or connect utilities, because the utility connections were within a public road or right-of-way and several Hawaii Supreme Court cases had concluded that would trigger Chapter 343. Act 87 sought to address that problem but was a temporary measure. We believe there should be a permanent blanket exemption of such minor actions as connecting utilities, because they do not have an effect on the environment, and agencies should not have to waste time or resources going through an individual exemption analysis on these situations.

This is one of several similar bills that are currently going through the Legislature. We understand that a couple (HB 2611, HD1 and SB 2281, SD 1), have been amended from their original form to actually exacerbate the problems which the original bills were intended to address. We would be opposed to amending SB 2873 in such a manner. It should be kept in its original form.

Thank you for the opportunity to testify on this measure.

Very truly yours,

James K. Mee
Chair, Legislative Affairs Committee

P.O. Box 1601, Honolulu, HI 96806 * Phone (808) 845-4994 * Fax (808) 847-6575

Testimony before the Senate Committee on Energy and Environment

By Kerstan Wong
Manager, Engineering Department
Hawaiian Electric Company, Inc.

February 23, 2012

SB 2873
Relating to Environmental Impact Statements

Chair Gabbard, Vice Chair English and Members of the Committee:

My name is Kerstan Wong 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 the intent of SB 2873. However, we have concerns on the language as written in one particular section of the bill and offer comments and an amendment.

Comments:

Current language in the bill requires the applicant to submit documentation from the appropriate agency confirming that no further discretionary approvals are required. In many cases, the applicant is the utility simply providing service as requested by an Owner or Developer of the primary action. Examples of a primary action could be a new residential development or improvements to an existing building.

Therefore, the utility is not the best entity to submit documentation from the appropriate agency as the utility would have minimum details about the primary action of the Owner or Developer. We suggest changing the language on page 1, line 12 to read:

> 12 … provided that the applicant ***for the primary action*** shall submit
> 13 documentation from the appropriate agency confirming that no
> 14 further discretionary approvals are required.

With the suggested change, the Owner or Developer of the primary action would be responsible for submitting documentation confirming that no further discretionary approvals are required. We feel the Owner or Developer of the primary action is in the best position to comply with the requirements of the section since they are the entity that is causing the secondary action to occur.

Thank you for the opportunity to testify on this matter.