A CRITIQUE OF SELECTED ENVIRONMENTAL-RELATED LEGISLATION PASSED DURING THE 1974 SESSION OF THE HAWAII STATE LEGISLATURE

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The Environmental Center has compiled a list of 39 separate environmentally-related bills and resolutions that were passed during the 1974 session of the Hawaii State Legislature (Appendix A). Out of that list we have decided to comment on ten pieces of legislation. We have no specific comments to make on the other 29 bills and resolutions.

Our critique is as follows:

A. H.B. 2067, H.D. 1, S.D. 1, C.D. 1. Relating to Environmental Impact Statements

We support the general intent of this bill whereby certain kinds of State law will require the writing, review and approval of an environmental impact statement. We are, however, concerned about many of the specific provisions.

This Act calls for the creation of an Environmental Quality Commission to promulgate the rules and regulations pursuant to this Chapter and to administer or delegate the administering of the resulting EIS review process. We could have seen some merit in the creation of the Commission if its purpose had been that of accepting or rejecting the environmental impact statements. Under the provisions of this Act, however, the Commission creates an unnecessary additional level of bureaucratic red tape and may well create more confusion in the EIS review.

The Governor's Office of Environmental Quality control (OEQC) administers the existing environmental review process as established by the Governor's Executive Order of August 1971.

We strongly believe that O.E.Q.C. should have been identified as the implementing agency pursuant to this chapter. We base this conclusion on the several years experience O.E.Q.C. has had in administering the review process and in establishing the guidelines for the existing review process.

Further reason for supporting O.E.Q.C. as the implementing agency is that this Act does not provide staff support for the Environmental Quality Commission. Therefore, the necessary staff support and related needs will have to come from the Governor's Office and realistically from O.E.Q.C. which has staff administering the existing EIS review process. On that basis, it is very likely that the Commission will delegate to O.E.Q.C. responsibility for the day-to-day administering of the EIS review process. Perhaps the Commission will provide some leadership in the writing of the required regulations (leadership that could just as easily come from O.E.Q.C.) but again the staff work will probably be handled by O.E.Q.C.

Contrary to some public opinion none of the EIS bills discussed before the two houses of our State Legislature would have created an "Environmental Czar" or anything remotely approximating such a centralization of power in O.E.Q.C. The centralized rule and regulation-making function and the coordinating role as prescribed in this Act simply make the total review process much more straight-forward and efficient than would have occurred if the State Legislature had passed a bill similar to the National Environmental Policy Act which would have resulted in a decentralized review process. The actual

decision-making authority with respect to the acceptability of the statement and the ultimate approval or disapproval of the proposed project would have been either in the Office of the Governor or in that of one of the four County Mayor's, depending upon the scope of the project.

H.B. 2067, H.D. 1, S.D. 1, C.D. 2 calls for some expansion in the coverage of the environmental impact statement review process as compared to the requirements set forth in the Governor's Executive Order of 1971. A concern of ours is over the adequacy of State and County-level staffs in reviewing the required environmental impact statements. Without adequate review staff, H.B. 2067 will dilute the existing quality of agency reviews and, in effect, hinder rather than support the EIS review concept. In short, we suggest the State should move cautiously in expanding the scope of the EIS review process beyond those categories of actions now requiring reviews. make this recommendation on the basis of concern about possible overloading of agency coordinating and review staffs and questions over the appropriateness of the EIS review process as an operationally useful decision-making tool for proposed actions of broad scope such as proposed amendations to general plans and proposed legislation.

We support this Act in the expansion of the EIS coverage to include our environmentally fragile shorelines and conservation districts, historic sites and the Waikiki-Diamond Head area of

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Oahu. We also would like to have seen flood plains included in this requirement.

A concern is over the definition of shorelines. There is a certain ambiguity present in the existing shoreline definition which needs to be resolved. The present definition of shoreline includes the "upper reaches of the wash of waves, other than storm or tidal waves, usually evidenced by the edge of vegetation growth, or the upper line of debris left by the wash of waves." The vegetation line and debris line are subject to considerable seasonal and longer term variation resulting in a non-stable boundary upon which legal decisions must be based. In addition, an error most certainly exists in this bill with reference to the shoreline area cited in Sec. 4, (a), (2), (B) which includes the area 300 feet seaward of the shoreline area in the class of action requiring an EIS. The H.D. 1, Sec. 3(a) (2) correctly defined the shoreline area of interest to "the area between the shoreline and 300 feet inland from the shoreline."

A provision of the original H.B. 2067 we supported was that an accepted EIS would satisfy the requirements of the Act only if the action had not commenced within two years of acceptance or substantial changes to the proposed action had been made before its commencement. This provision, in our opinions, was a highly desirable one that should have been retained in the final version of the bill.

Another provision of the original H.B. 2067 that was deleted from later drafts was the injunctive relief section.

This section and a reasonable standing to sue provision, in our

estimation, are absolutely essential if the Act is to be enforceable. Therefore, we were greatly disappointed that the injunctive relief section was removed.

The same level of disappointment holds for the standing to sue section. Although we favor a nonrestrictive provision, we supported the limited coverage proposed by the Temporary Commission on Environmental Planning. The basis of our support was that the TCEP version had a much better chance of passage. The additional constraint of limiting the standing to sue to "affected agencies" or "persons who will be aggrieved by a proposed action" severely and unfairly eliminates public input into development decision-making over many land areas of our State. More specifically we refer to the less populated areas of Oahu and the neighbor islands.

B. H.B. 2547, H.D. 1. Relating to Environmental Policy

The Environmental Center is fully supportive of the intent of this policy act in that it provides a comprehensive policy and guideline framework for directing and integrating the intra- and inter-government and private planning endeavors of our State. It is a comprehensive policy act dealing not only with our broad "natural" or biophysical environment concerns but also our concerns about the quality of man's sociocultural environment and the interaction of these two major components of our Hawaii environment. In no way can this bill be called an "environmentalist" act since it calls for a balanced and harmonious relationship between man and his environment rather than a shift from

pro-development planning to planning favoring preservation of our biophysical environment. If the Act had been pro-preservation in intent, we seriously doubt that it would have received its broad community support as expressed during the Temporary Commission on State-Wide Environmental Planning (TCEP) hearings.

We believe H.B. 2547, H.D. 1, in some respects, is a better document than either TCEP's proposed policy act or the original H.B. 2547. We feel that the wordy and somewhat nebulous "Findings and Declaration of Necessity" section deleted from H.B. 2547, H.D. 1, detracted from and obfuscated the major provisions of the earlier draft bills—namely their purpose and policy sections. Another important amendation, in our estimation, was the changing of the 37 TCEP and H.B. 2547 policy statements from proposed binding legal policy statements to fewer recommended quidelines.

Although H.B. 2547, H.D. 1, has been improved in part, over the TCEP bill and H.B. 2547, we believe it has one critical weakness in its lack of a specific implementation section. The TCEP bill and H.B. 2547 both contained a section calling for all State and County agencies, boards and commissions, through specific prescribed measures, to implement the policies. Without that section, we believe that the Environmental Policy Act lacks any teeth. Although, through S.B. 1397, S.D. 1, the State Environmental Council is now required to monitor the progress of State, County, and Federal agencies in complying with the State Environmental Policy, we are pessimistic about

what they will have to report.

C. H.B. 2065, H.D. 1, S.D. 1, C.D.1. Relating to Soil Erosion and Sediment Control

We strongly support the purpose of this bill which is to provide additional legal and administrative mechanisms with which better land management and land use practices can be achieved. More specifically the concern is over non-point urban sediment pollution sources. The Department of Health already regulates all point discharges and agricultural-related non-point discharges in accordance with HRS 342, "Environmental Quality." A further expansion of the Department's regulatory function, in controlling sediment pollution, has been their approval of grading activities at the request of the City and County of Honolulu. The semi-autonomous Soil and Water Conservation Districts, created in accordance with HRS 180, have been highly successful in assisting the State's agricultural industries in implementing sound rural-land management and use practices that minimize soil erosion problems. Thus the major existing problems of soil erosion, transport and deposition and the needed legal and administrative tools to deal with them involve our urban areas.

The bill provides two levels of administrative mechanisms.

First the Department of Health is required to create conservation standards within 90 days after passage of the bill. Secondly, the Counties have to adopt soil erosion and sediment control

ordinances within one year of the passage of H.B. 2065. If within the one year period any County fails to enact these ordinances, the Department of Health is required to establish soil erosion and sediment control regulations within 180 days, which will be effective in that non-complying County.

The only weakness we see in the bill is the complete lack of detail on what the conservation standards shall contain and the process through which the Department of Health will formulate them.

D. H.B. 2276-74, H.D. 2. Relating to Shoreline Setbacks The Environmental Center is fully aware of the need to utilize our offshore sand reserves rather than continuously mining our finite area of land for such raw materials. We were strongly opposed, however, to HB 2276 in its initial form as it would have permitted sand mining irrespective of existing areal prohibitions, i.e. within 1000 feet seaward or in ocean water of 30 or less feet in depth, if such sand mining were for "experimental" purposes. Unfortunately, the term "experimental" was not further defined; hence it was conceivable that anyone could mine sand under the guise of "experimental," thus effectively circumventing the intent of the original legislation to protect Hawaii's shorelines (Section 205-33). The revised version of this bill, House Draft 2, which was passed by the legislature, eliminated our major concern by amending the original draft by restricting sand mining for experimental purposes "... to be conducted by the Department of Ocean Engineering, University of

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Hawaii, in the offshore waters one-half mile north of Keauhou
Bay"

It is unfortunate that the legislature saw fit to limit "experimental" mining by specifically defining the area and contractor of such an operation. Such specificity seems unduly personal to be included as a State statute. More appropriate would have been a clear definition of the term "experimental" and the establishment of a system of evaluating requests for "experimental" sand mining. Numerous other alternatives could be proposed that would have accomplished the desired protection of the shoreline resources.

Presumably if the proposed sand mining operation off Keauhou Bay is "successful," i.e. the Ocean Engineering Department's equipment proves operational and the shoreline is not damaged, then additional legislation will be required next session in order to use the equipment so developed. It seems that considerable time and effort could have been saved by drafting legislation which would have allowed for continued use of this equipment with proper supervision and control. For example, the Army Corps of Engineers has proposed to improve Kaawa Beach Park by bringing in 9300 cubic yards of sand at an initial cost of \$160,000. Equipment similar to that being developed by the Ocean Engineering Department could do the job at an estimated cost of \$25,000, and no transportation-traffic problem to the beach and vicinity.

The entire status of the shoreline management system needs to be reevaluated and appropriate legislation enacted to both protect and wisely administer our shoreline resources.

E. S.B. 1397, S.D. 1. Relating to Environmental Quality

We are in accord with the intent of this bill as we believe a monitoring mechanism definitely needs to be established within the State Administration to ascertain and report on the progress of State, County and federal agencies in achieving the State's environmental policies. Without this monitoring mechanism there is no way for the legislature or the public, etc. to know whether these agencies are ignoring or implementing these policies.

We are not, however, convinced that the State Environmental Council is the body to carry out this monitoring function. The Council lacks staff except for that provided by the Governor's Office of Environmental Quality Control (O.E.Q.C.). Since this Act does not call for an appropriation to provide the required staffing support, O.E.Q.C. also will be expected to supply this significant expansion in staff needs from its own limited staff. Therefore the actual day-to-day gathering, collecting, assessing and reporting of data will be done by O.E.Q.C. Furthermore, since the Council is an Advisory Body that meets approximately once a month, the day-to-day supervision of the monitoring effort again will be done by O.E.Q.C. Therefore, it makes more sense, in our estimation, that the monitoring mechanism be a function of O.E.Q.C. rather than of Environmental Council.

Certainly the Council needs to be concerned about the status of environmental policy implementation. Nevertheless, any recommendations they make, whether the monitoring mechanisms are assigned to them or O.E.Q.C., will come from data prepared by O.E.Q.C.

- F. S.R. 80, S.D. 1; S.C.R. 26, S.D. 1; H.R. 62, H.D. 1. Requesting the Governor's Office to determine the State of Hawaii's environmental and population carrying capacity.
 - S.R. 81, S.D. 1; S.C.R. 27, S.D. 1
 Requesting the Governor's Office to submit to the next
 session of the Legislature a proposal for officially
 declaring areas or systems in danger of environmental overload and outlining related steps to prevent such overload.

The above bills and resolutions all reflect the recommendations of the Temporary Commission on State-Wide Environmental Planning with regard to the need for developing criteria whereby the carrying capacity and overload conditions of the State can be defined. The Environmental Center supported the intent of these bills but expressed concern over the use of the term carrying capacity. Carrying capacity in general usage is synonymous with maximum sustainable populations, maximum load of vehicles, maximum cattle per acre, etc. We strongly recommended the inclusion of the term "optimum" when referring to carrying capacity and thereby recognize that certain less tangible factors such as quality of life must be considered in the determination of carrying capacity and overload conditions.

We were pleased to learn that our specific recommendation for the addition of the word optimum was adopted and included in the final drafts of these bills.

It should also be noted that words like "carrying capacity" and "overload" are in reality merely buzz words. They are commonly spoken but are only vaguely understood and have little if any operational meaning. Before we can even consider research methodologies, we must first carefully define these words or concepts in an operational sense. Another concern is that by their popular usage, such buzz words suggest or connote easy solutions to our environmental problems. No panaceas exist now and it is doubtful that simple kinds of ultimate solutions will ever be derived. We are dealing with far more than maximum, natural carrying capacities of land units and, in fact, have been since man first learned how to modify the biophysical environment to his own advantage many millenia ago. Involved are human technology, aspirations for a better life style, perceptions, knowledge and appreciation of the natural environment, moral questions involving such issues as human population controls and possibly just basic future survival. All of these parameters are changing with time. Therefore today's relations might not be appropriate tomorrow. Perhaps the outcome of this study will be decision-making guidelines with which we can better plan and implement measures that will insure a certain "quality of life" over the near future.

ENVIRONMENTAL BILLS AND RESOLUTIONS PASSED SEVENTH LEGISLATURE REGULAR SESSION OF 1974

AP	P	E	N	D	Ι	X	A

-		Senate Stand. Comm.	House Stand. Comm.	Conf.
Bill No.	<u>Title</u>	Rep. No.	Rep. No.	Rep. No.
SB 878, SD2, HD1	Relating to a Statewide Trail and Access System, and Making an Appropriation Therefor.	216-73 759-74	660-74 717-74	
SB 964, SD1	Relating to State Parks, Recreation Areas and Historic Objects and Sites	354-73 564-73	675-74 7 14-74	
SB 965, SD1	Relating to State Parks, Historical Objects and Sites, and Outdoor Recrea- tion; Rules and Enforcement	4 08-73 550-73	47-74 685-74	
SB 1245, SD1, HD1	Relating to Ecology, Environment and Recreation	795-74	673-74 71 5-74	
SB 1391, SD2	Creating the Position of Energy Resources Coordinator in the Office of the Governor	280-74 7 98-74	710-74 746-74	
SB 1397, SD2	Relating to Environmental Quality Control	26-74 281-74 630-74	635-74	
SB 1409, SD2	Relating to Hawaii Research Center for Futures Study (Effective date is 7/1/74)	2 93-74 800-74	658-74 716-74	

Bill No.	<u>Title</u>	Senate Stand. Comm. Rep. No.	House Stand. Comm. Rep. No.	Conf. Comm. Rep. No.
HB 104, HD2	Establishing Access to and Transit Along Shorelines and Waters Under State Jurisdiction	1042-74	35-73 217-74 474-74	
HB 342, HD1	Relating to Aviary Game Birds	1043-74	524-73 508-74	
HB 2065, HD1, SD1, CD1	Relating to Soil Erosion and Sediment Control	455-74	165-74 234-74	SC 1-74 HC 2-74
HB 2067, HD1, SD1, CD1	Relating to Environmental Impact Statements	956-74	127-74 556-74	SC 27-74 HC 27-74
НВ 2196	Relating to the Disposition of Public Lands	877-74	186-74	
HB 2241, HD1, SD1	Relating to Unreasonable Noise	967-74	480-74	
нв 2263	Relating to the Marine Affairs Coordinator	1022-74	125-74 528-74	
НВ 2276, HD2	Relating to Shoreline Setbacks	1044-74	235-74 527-74	
нв 2363	Relating to a State Program for Energy Planning and Conservation	452-74 1025-74	4 8-74	
нв 2376	Establishing the Hawaii Natural Energy Institute and Making an Appropriation for Planning the Structure and Operation Therefor.	1026-74	4 3-74 525-74	
нв 2425, нD2	Relating to use of Public Lands for Agricultural Purposes	959-74	289-74 533-74	

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Bill No.	<u>Title</u>	Rep. No.	Rep. No.	Rep. No.
HB 2482, HD1	Relating to the Use of Solid Wastes for Agricultural Purposes	1046-74	473-74	
HB 2484, HD1	Relating to Abandoned Vehicles	1064-74	424-74	
HB 2547, HD1	Relating to Environmental Quality	1047-74	134-74 306-74 559-74	
HB 2859, HD1	Relating to Plant and Non-Domestic Animal Quarantine	881-74 1036-74	569-74	
HB 2860, HD2	Relating to Environmental Quality	1048-74	305-74 547-74	
нв 3097	Relating to a State Natural Energy Laboratory	1041-74	584-74	
SCR 2; SD1	Requesting the Ad Hoc Commission on Operations, Revenues and Expenditures to Consider the Environmental Goals and Policies of the State of Hawaii	150-74	439-74 766-74	
SCR 3, SD1, HD1	Requesting the United States of America and its various Governmental Agencies to Cooperate with the State of Hawaii and its Counties in the Formulation and Implementation of Environmental Programs	134-74	440-74 661-74	
SCR 26, SD1	Requesting the Governor's Office to Determine the State of Hawaii's Environ- mental Carrying Capacity	135-74	438-74 767-74	
SCR 27, SD1	Requesting the Governor's Office to Submit to the Next Session of the Legislature a Proposal for Officially Declaring Areas or Systems in Danger of Environmental Overload and Outlining Related Steps to Prevent such Overload	136-74	444 -74 765-74	

Bill No.	<u>Title</u>	Senate Stand. Comm. Rep. No.	House Stand. Comm. Rep. No.	Conf. Comm. Rep. No.
SCR 52	Requesting the Office of the Governor to Direct Appropriate Departments, Agencies, and Commissions in Conjunction with a Joint Interim Committee Consisting of Members from each House to Conduct an Analysis of and Develop an Implementation for the Preliminary Draft of the State of Hawaii Growth Policies Plan: 1974-1984	1113-74	757-74	
SCR 53	Requesting the Hawaii Environmental Simulation Laboratory to Report to the Eighth State Legislature	893-74	742- 73	
SR 4, SD1	Requesting the Ad Hoc Commission on Operations, Revenues and Expenditures to Consider the Goals and Policies of the Hawaii Environmental Policy Act	1186-74		
S R 7 1	Requesting the Department of Health to Conduct an Objective and Scientific Evaluation of the Results of the New Year's Eve Fireworks Pollution Study	192-74		
SR 80, SD1	Requesting the Governor's Office to Determine the State of Hawaii's Environmental Carrying Capacity	1187-74		
SR 81, SD1	Requesting the Governor's Office to Submit to the Next Session of the Legislature a Proposal for Officially Declaring Areas or Systems in Danger of Environmental Overload and Outlining Related Steps to Prevent Such Overload	1188-74		
SR .114	Requesting the University of Hawaii to Conduct Research on Solar Energy	187-74		

Bill No.	Title	Senate Stand. Comm. Rep. No.	House Stand. Comm. Rep. No.	Conf. Comm. Rep. No.
SR 140	Requesting the Hawaii Environmental Simulation Laboratory to Develop a Methodology for the Environmental Evaluation of Capital Budget Expenditures	1147-74		
HR 58, HD1	Requesting the Development of a Trail System		105-74	
HR 62, HD1	Requesting a Determination as to the Population Carrying Capacity of the State		131-74	
HR 432	Relating to Environmental Education		712-74 778-74	