



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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AGENDA

State of Hawai'i, Environmental Council
Tuesday, January 7, 2020, 1:00 PM– 3:30 PM
No. 1 Capitol Building, Executive Office on Aging
Room 410, 250 S. Hotel St., Honolulu, HI 96813

1. Call to order, roll call and quorum, introductions
2. Review and approval of prior meeting minutes
3. OEQC Director's Report
4. Legislative Committee Update
 - Update to Senator Gabbard and Representative Lowen regarding HRS Chapter 343 issues identified during rulemaking process
5. Exemption Committee Update
 - Review of and action on the Department of Land and Natural Resources' updated exemption list
6. Annual Report Committee Update
7. Information & Outreach Committee Update
8. Correspondence received: December 18, 2019, petition for declaratory order of Mr. Douglas Meller concerning the use of state or county lands for the initial phase of a proposed multi-phase action (as noted below, the Council may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a), Hawaii Revised Statutes ("HRS"), without noticing the executive session on the agenda where the executive session was not anticipated in advance.)
9. Next meeting: Tuesday, February 4, 2020, 1:00 – 3:30 pm
10. Public Forum
11. Adjournment

Note: Public comments will be accepted on each agenda item prior to voting or completion of the agenda item.

INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR AUXILIARY AIDS OR SERVICES (e.g., sign language interpreter, computer-assisted note taking, wheel chair accessibility, or parking designated for the disabled) at the meeting, please contact the OEQC at least 72 hours prior to the meeting at 808-586-4185 so that arrangements can be made.

Note: The Council may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a), Hawaii Revised Statutes ("HRS"), without noticing the executive session on the agenda where the executive session was not anticipated in advance. The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote

of each member on the question of holding a meeting closed to the public shall be recorded and entered into the minutes of the meeting. HRS Sections 92-4, 92-5(a) and 92-7(a).

FILE COPY

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PARTY REQUESTING A DECLARATORY ORDER

**PETITION FOR A DECLARATORY ORDER CONCERNING USE OF STATE OR COUNTY LANDS FOR
THE INITIAL PHASE OF A PROPOSED MULTI-PHASE ACTION**

Submitted: December 18, 2019

20-165

By DEC 18 2019 *Received*
Env. Council

WHAT THIS PETITION REQUESTS

This petition requests the Environmental Council of the State of Hawaii (Council) to issue a declaratory order concerning the following specific question:

When an Environmental Assessment (EA) is required for another phase of a proposed multi-phase action, is an EA required prior to use of state or county lands for the initial phase of that multi-phase action?

This petition concerns use of state or county lands for proposed multi-phase agency actions. This petition also concerns use of state or county lands for proposed multi-phase applicant actions which are not exempt under §343-5.5, Hawaii Revised Statutes. (Under §343-5.5, Hawaii Revised Statutes, an application for "... installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway ..." is exempt from Chapter 343, Hawaii Revised Statutes, when the proposed infrastructure is ancillary and secondary to a proposed applicant use of private lands which does not require any kind of discretionary agency consent.) This petition does not request a declaratory order concerning whether any specific proposed use of state or county lands is the initial phase of a proposed multi-phase action. This petition does not request a declaratory order concerning whether an EA or an EIS is required for any specific proposed action.

REASON FOR SUBMISSION OF THIS PETITION

This petition requests a declaratory order to clarify when an EA is required prior to use of state or county lands for proposed multi-phase actions.

When an agency or applicant proposes use of state or county lands for the initial phase of a proposed multi-phase action, and §343-5.5, Hawaii Revised Statutes does not apply, some agencies apparently believe that they have discretion to:

- defer preparation of an EA and determination of whether an EIS is required for other phases of the proposed action; and/or
- determine that an EA is not required prior to use of state or county lands even though an EA or an EIS is required prior to implementation of later phases of the proposed action.

PETITIONER'S POSITION

When Chapter 343, Hawaii Revised Statutes, is "triggered", §343-5, Hawaii Revised Statutes, requires a determination of whether an EIS is required at the "earliest practicable time" prior to use of state or county lands. Under Sec. 11-200.1-10, Hawaii Administrative Rules, a determination of whether an EIS is required for a proposed multi-phase action must consider all phases of that proposed action. This means that if an EA is required for a later phase of a proposed multi-phase action, then that EA must be prepared and public notice of whether an

EIS is required must be published prior to use of state or county lands for the initial phase of the proposed multi-phase action. In other words:

- If an EA is required to determine whether an EIS is required for another phase of a proposed multi-phase agency action, then that EA must be prepared and public notice of whether an EIS is required must be published prior to use of state or county lands for the initial phase of that proposed multi-phase agency action.
- If §343-5.5, Hawaii Revised Statutes does not apply, and if an EA is required to determine whether an EIS is required for another phase of a proposed multi-phase applicant action, then that EA must be prepared and public notice of whether an EIS is required must be published prior to use of state or county lands for the initial phase of that proposed multi-phase applicant action.

PETITIONER'S AVAILABILITY TO ATTEND A HEARING

Petitioner would prefer the Council to issue a declaratory order without a hearing. If the Council decides to schedule a hearing concerning this petition, petitioner requests that the hearing be scheduled after February 9, 2020. Because of scheduled travel, it will not be possible to contact petitioner by postal mail, telephone, or email between January 7 and February 5, 2020.

RELEVANT PROVISIONS OF CHAPTER 343, HAWAII REVISED STATUTES

§343-5 Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions that:

(1) Propose the use of state or county lands....

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for the action at the earliest practicable time to determine whether an environmental impact statement shall be required....

(c) For environmental assessments for which a finding of no significant impact is anticipated:

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment ...;

(3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;

(4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and

(5) The agency shall file notice of the determination with the office. When a conflict of interest may exist ... the office may review the agency's determination, consult the agency, and advise the agency ... to comply with this section. The office shall publish the final determination for the public's information....

(d) ... Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action....

(e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required....

For environmental assessments for which a finding of no significant impact is anticipated:

(1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

(2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment ...; and

(3) The applicant shall respond in writing to comments received during the review and the applicant shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information....

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action.

[§343-5.5] Exception to applicability of chapter. *(a) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure*

within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(b) As used in this section: ...

"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

"Primary action" means an action outside of the highway or public right-of-way that is on private property.

"Secondary action" means an action involving infrastructure within the highway or public right-of-way.

§343-6 Rules. *(a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules that shall:*

(1) Prescribe the procedures whereby a group of proposed actions may be treated by a single environmental assessment or statement;

(2) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment;

(3) Prescribe procedures for the preparation of an environmental assessment;

(4) Prescribe the contents of an environmental assessment....

RELEVANT PROVISIONS OF CHAPTER 11-200.1, HAWAII ADMINISTRATIVE RULES

§11-200.1-2. Definitions. *As used in this chapter:*

"Environmental Assessment" or "EA" means a written evaluation that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect.

§11-200.1-10. Multiple or phased actions. *A group of actions shall be treated as a single action when:*

(1) The component actions are phases or increments of a larger total program;

(2) An individual action is a necessary precedent to a larger action;

(3) An individual action represents a commitment to a larger action; or

(4) The actions in question are essentially identical and a single EA or EIS will adequately address the impacts of each individual action and those of the actions as a whole.

PAU

Dated: Honolulu, Hawaii, December 18, 2019

A handwritten signature in black ink that reads "Douglas Meller". The signature is written in a cursive style with a horizontal line underneath the text.

DOUGLAS MELLER

EXEMPTION LIST FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES

For Review and Concurrence by the Environmental Council

DRAFT

GENERAL NOTES

An exemption list for the Department of Land and Natural Resources (“Department” or “DLNR”) was reviewed and concurred on by the Environmental Council on June 5, 2015. An update to this list is being prepared to comply with 2019 revisions to the Hawaii Administrative Rules (“HAR”) §11-200. This revision separates exemption lists into categories listed in §11-200.1-16 (a)(1) and (2). Activities categorized as “Part 1” will fall under §11-200.1-16 (a) (1). Activities categorized as “Part 2” will require an exemption notice and fall under §11-200.1-16 (a) (2). Additionally, the qualifiers limiting the actions to state lands or Department facilities were removed to cover the activities being permitted in the Conservation District as well as Department-initiated actions occurring on partner lands. Once finalized, this list will supersede all previous exemption lists of the DLNR and its Divisions, including the following: (1) December 4, 1991 DLNR Department-wide list (2) January 19, 1976 DLNR Division of Fish and Game list (3) September 19, 1984 DLNR Division of Water and Land Development list (4) April 28, 1986 DLNR Division of Land Management list (5) December 4, 1991 DLNR State Parks list (6) March, 1995 DLNR Division of Boating and Ocean Recreation list (7) June 12, 2008 DLNR Division of Forestry and Wildlife list (8) July 13, 2011 DLNR additions to Department-wide list (9) May 17, 2012 DLNR addition to Department-wide list, and (10) June 5, 2015 DLNR Department-wide list.

Hawaii Revised Statutes (“Haw. Rev. Stat.”) Chapter 343 authorizes the Environmental Council to establish procedures to exempt specific types of action from the preparation of an environmental assessment because the action will have minimal or no significant effect on the environment. The Department, through time and experience, developed the following exemption list identifying particular activities that fall within the exempt classes described in Hawaii Administrative Rules (“HAR”) §11-200 subchapter 8. All exemptions under subchapter 8 are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

Exemption Class 1

Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

PART 1

1. Removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain lands and waters in a safe condition.
2. Rescue of threatened or endangered species.
3. Maintenance dredging of small quantities of material from existing launching ramps, navigation channels, and berthing areas, not to exceed their originally designed depths and as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 35 (Maintenance Dredging

of Basins), with disposal of dredged material at approved landfill sites or the placement of sand on adjacent areas in accordance with Haw. Rev. Stat. § 205A-44.

4. Operation, repair and maintenance, of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.
5. Repair or maintenance of existing signs, buoys, markers, and aids to navigation.
6. Operation, repair and maintenance of existing fisheries facilities, involving capture, containment, sustaining, experimentation, and husbandry of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.
7. Operation, repair and maintenance of existing fish aggregating devices and artificial reefs.
8. Operation, repair and maintenance of existing nurseries, arboreta, and captive propagation facilities.
9. Operation, repair and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit.¹
10. Operation, repair and maintenance of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
11. Operation, repair or maintenance of existing fire tool caches, fuel breaks, and helispots.
12. Repair and maintenance of existing bollards, walls, gates, fences, lighting, and other similar items necessary for the security or continued operation of a facility or structure.
13. Repair and maintenance of existing utilities and drainage systems.
14. Repairs to existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
15. Repairs necessary to maintain existing electrical, telemetry or communications systems and the structures that house or protect them.
16. Repair and maintenance of existing bridges and flumes.
17. Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
18. Repair and maintenance of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats.
19. Repair, modify, and clear existing drainageways and waterways to maintain in safe working condition.

¹ The previous exemption list limited this action to permit #3 "Maintenance," which was removed in this version to be consistent with the other categorical permits issued that would fall under this type of activity.

20. Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures.
21. Repair, maintenance, or relining of conveyance structures associated with existing dam or reservoir structures.
22. Repair and maintenance work on or the breaching of existing dam or reservoir structures of an emergency nature due to storm, earthquake, or other natural disaster or other forms of damage, latent defects in construction, and conditions not previously observed during routine inspections that results in a condition that poses a significant hazard to public safety and the environment. The work necessary to mitigate the danger posed to the environment and public safety includes emergency clearing and grading for breaching or stabilization work, installation and operation of siphons and pumping systems to discharge water from the reservoir, construction of seepage drains, and the construction of seepage monitoring berms.
23. Repair and maintenance of historic and archaeological sites to maintain the integrity of historic structures, archaeological features and sites.
24. Maintenance of existing boardwalks, trails and unpaved roads.
25. Maintenance of right-of-way other than public right-of-ways.
26. Repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching).
27. Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation.
28. Maintenance of lands and waters to remove weeds, brushes, grass and other unwanted vegetation.
29. Routine pruning, trimming, thinning, and removal of trees, excluding commercial logging.
30. Termite and pest control treatment using Environmental Protection Agency and State Department of Agriculture approved pesticides under the supervision of certified applicators provided that treatment is limited to existing structures, facilities, or equipment.
31. Repair and maintenance of existing machinery, equipment, vessels, and vehicles used to support Departmental operations.
32. Removal and disposal of rubbish and debris from lands and waters.
33. Removal of silt, debris, sand and limu from above high water mark, from river and stream mouths, and from boat launching ramps.
34. Clearing of shoreline areas and submerged lands of non-natural hazardous objects and materials such as sunken/derelict craft remnants, oil spill residues, etc.
35. Storage of construction equipment and materials for a limited period of time as necessary to support planned or existing construction or repair.

36. Law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative measures.
37. Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order.
38. Transfer of title to land.
39. Acquisition of land or interests in land.
40. Creation or termination of easement, covenants, or other rights in structures or land.
41. Leases of state land involving negligible or no expansion or change of use beyond that previously existing.
42. Subdivision or consolidation of lots not previously subdivided.
43. The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.
44. Conduct public meetings and hearings for the purpose of the collection and dissemination of public information, to discuss matters under the jurisdiction of the Department, to develop administrative rules, guidelines or other public policy, and other similar purposes.
45. Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.
46. Use of lands and waters by those exercising traditional and customary practices for minor non-commercial purposes or for the gaining of traditional ecological knowledge.
47. Granting to a person the privilege to conduct operations involving the provision of goods, wares, merchandise, or services to the general public including, but not limited to, tours, food and beverage operations, retail operations, rental operations, or communications and telecommunications services in or on an existing building, facility, or area.

PART 2

1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources.
2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.

Exemption Class 2

Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

PART 1

1. Replacement or reconstruction of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.
2. Replacement or reconstruction of existing signs, markers, buoys, or aids to navigation.
3. Replacement or reconstruction of existing fisheries facilities.
4. Replacement or reconstruction of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
5. Replacement or reconstruction of existing bollards, walls, gates, fences, lighting and other similar items necessary for the security or continued operation of a facility or structure.
6. Minor upgrades or replacement of existing utilities and drainage systems. Drainage improvements will generally consist of the installation of culverts, pipes, and construction of gutters or other similar infrastructure where minor flooding occurs.
7. Replacement of cesspools with individual wastewater systems located generally on the same site with substantially the same purpose and capacity.
8. Replacement or reconstruction of existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that reconstructions that expand the capacity or geographical service area of existing facilities shall not be exempt.
9. Replacement or reconstruction of existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
10. Replacement or reconstruction of existing electrical, telemetry, or communications systems and the structures that house or protect them.
11. Replacement or reconstruction of existing bridges and flumes.
12. Replacement or reconstruction of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
13. Replacement or reconstruction of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats, in a size commensurate with existing system and source capacities and requirements to provide service in existing water systems.
14. Replacement or reconstruction of existing drainageways and waterways.
15. Replacement or reconstruction of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway expansion or improvements, and spillway reconstruction to mitigate possible failures.
16. Rehabilitation and restoration of existing structures and features at historic and archaeological sites in compliance with Chapter 13-275, Hawaii Administrative Rules, "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Section 6E-7 and 6E-8, Hawaii

Revised Statutes” which requires review by the State Historic Preservation Division for agency actions that may affect historic properties.

17. Replacement or reconstruction of existing boardwalks, trails, and unpaved roads.
18. Replacement or reconstruction of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps.
19. Replacement or renovation of existing landscaping or vegetation.
20. Re-vegetate burned or eroded areas to encourage the succession of selected plant species to prevent soil erosion and promote the goals of the Department.
21. Replacement or reconstruction of existing machinery, equipment, vessels, or vehicles used to support Departmental operations.
22. Minor alterations and repairs required to bring existing buildings, structures, facilities, and equipment into compliance with current building codes and applicable federal and state regulations.
23. Replacement or reconstruction of existing nurseries, arboreta, and captive propagation facilities.
24. Repairs and modifications to existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that modifications that expand the capacity or geographical service area of existing facilities shall not be exempt.

PART 2

1. Replacement or reconstruction of fish aggregating devices or artificial reefs.
2. Replacement or reconstruction of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, not to exceed the footprint of the existing facility, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit.²

Exemption Class 3

Construction and location of single new, small facilities or structures and the alteration and modification of same and installation of new, small, equipment and facilities and the alteration and modification of same including but not limited to: (A) Single family residences not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty persons or less, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; and (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.

PART 1

² The previous exemption list limited this action to permit #3 “Maintenance,” which was removed in this version to be consistent with the other categorical permits issued that would fall under this type of activity.

1. Improvement of existing trails and construction or improvement of boardwalks on existing trails for recreation, education, and management.
2. Construction of security features, including fencing, gates, cameras, and other similar items.
3. Installation of weatherports and radio repeaters and other similar communications equipment and related infrastructure for natural resource management purposes or for emergency response.
4. Construction of drainage swales and structures and other similar surface runoff management techniques with minimal or no effect on the environment.
5. Re-burial of previously identified or inadvertently discovered remains over fifty (50) years old, with Department and landowner approval and according to guidelines provided in HAR Chapter 13-300.
6. Installation and removal of irrigation systems.
7. Utility service connection and installation.
8. Construction and location of new, small facilities or structures necessary to support or enhance safe and effective management of lands and waters, such as utility sheds, storage buildings, nurseries, trash containers, fire caches, tollbooths, gates, safety enhancements (e.g., handrails, guard rails, ramps), covered or open areas for endangered species, game birds and mammals, auxiliary buildings for food or equipment storage, incubators and brooders, open-top breeding and release pens, field aviaries, and hacking boxes, and for watershed and native forest management and restoration, and other similar structures.
9. Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of lands and waters, such as outdoor showers, signage, interpretive kiosks, viewing platforms, tables, grills, lifeguard stations, improvements necessary for compliance with the Americans with Disabilities Act, and other similar structures.

PART 2

1. Natural resource management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats, such as fences around or to manage rare, threatened or endangered plants. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.
2. Construction and location of new, small facilities or structures necessary to support or enhance safe and effective management of lands and waters, such as baseyards, caretaker's residences, work cabins and shelters, sanitation facilities, and other similar structures.
3. Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of lands and waters, such as comfort stations and related individual wastewater disposal systems, sanitation facilities, pavilions, shelters, cabins, campgrounds, and other similar structures.
4. Construction of roadways with distances less than 1,000 yards (excluding access roads) and walkways.
5. Construction of off-street parking facilities having capacities of up to 25 passenger vehicle stalls.

6. Installation of automatic fish feeding devices in reservoirs, ponds, or other impoundments and fish aggregating devices within pre-approved sites.
7. Installation of marine vessel sewage pump out stations and supporting facilities.
8. Construction of irrigation ditches, flumes and structures having less than 200 gpm.
9. Construction of Civil Defense emergency system facilities.
10. Installation of rearing pens for cage culture of fishes and aquatic organisms.

Exemption Class 4

Minor alteration in the conditions of land, water, or vegetation.

PART 1

1. Improvements of previously existing graded parking and storage yard areas, including paving, infilling, grading and compacting.
2. Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.
3. Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides in conformance with label instructions, distribution of biocontrol agents already approved and permitted by the State of Hawaii, and other approved methods. This exemption would not apply to issuing permits for initial releases of biocontrol of invasive species which are regulated and permitted by the Department of Agriculture or commercial logging.
4. Vegetation clearing and removal work to mitigate rockfall or on or near the embankment, spillway, or outlet works of a dam facility of vegetation that could pose a threat to the embankment or impede inspection of the facility.
5. Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not apply to vegetation that is likely to be invasive or for tree plantings for which harvesting is planned or is reasonably foreseeable.
6. Gathering plant seed, cuttings, or other vegetative matter for propagation.
7. Minor ground adjustments (e.g., grading, grubbing, cutting, clearing, or filling) that do not require grading permits.
8. Minor alterations in waters, including restoration of native species and control of invasive weeds, algae, invertebrates, fishes or other invasive aquatic organisms.
9. Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; and other approved methods.

10. Management of surface water runoff, including installation of minor drainage ditches and implementation of other stormwater best management practices and low impact development techniques (e.g., bioretention areas, permeable pavers, etc.).
11. Minor alteration of retaining walls.
12. Removal or filling of unused or unusable cesspools pursuant to federal and state regulations.
13. Construction, in accordance with established state standards, required to seal production, monitoring, and geothermal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of disrepair that continued use is impractical or unsafe.
14. Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Division procedures.
15. Captive propagation of birds, mammals, invertebrates, or aquatic organisms; cultivation of plants. Housing, care, feeding, veterinarian examination, breeding (pairing, hatching, brooding, fledgling, rearing), cross fostering, double clutching nests, and experimental studies of native species (including those which are rare, threatened or endangered), game birds and game mammals.
16. The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.
17. Establishment of helispots for fire control, natural resource management, and rescue.

PART 2

1. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources.
2. Clearing of new fuel breaks and other similar fire pre-suppression actions to reduce fire potential and minimize fire severity.
3. Controlled burning of vegetation less than ten (10) acres in size to improve wildlife habitat where non-native vegetative cover constitutes greater than 75% of the area.
4. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.
5. Conduct removal of unexploded ordnance.
6. Grading work to stabilize existing slopes and mitigate rockfall, including work required to mobilize equipment.
7. Construction of walkways and pathways and other similar items.

Exemption Class 5

Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

PART 1

1. Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.).
2. Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping.
3. Conduct topographic, sounding, wave, littoral transport, bathymetric, and location surveys.
4. Periodic collection of data by the State Office of Conservation and Coastal Lands ("OCCL") for the purpose of monitoring existing beaches to include identification, mapping, and analysis of offshore sand deposits, bathymetry mapping, sub-bottom profiling (to measure the thickness of existing sand deposits), vibracore sampling (to conduct grain size analysis to determine suitability of a sand source for beach restoration), deposit depth probing (jet probing of sand depths), and marine biological and water quality surveys to identify sensitive resources or areas of concern.
5. Installation of new, small groundwater, surface water, or climatological monitoring and data collection equipment, structures that house or protect this equipment, and installation of electrical, telemetry, or communications systems to service this equipment.
6. Construct or rehabilitate groundwater monitoring stations in accordance with established state standards, install groundwater monitoring equipment, and collect data.
7. Conduct subsurface investigations (borings) provided the average surface area disturbed is less than one square foot and the implementing division consults with the State Historic Preservation Division on exempting such borings or investigations.
9. Installation of staff gages, water monitoring and reporting equipment at dam facilities and appurtenant works to include trenching work and construction of supporting features such as equipment sheds, transmitting devices, solar panels, and minimal site grading and improvements for the safe operations and installation of these features.
10. Phase II Investigation work on a dam or reservoir, including soil sampling and drilling, water monitoring, and/or test pit excavations. This may include clearing or construction of site improvements needed to mobilize equipment or personnel to accomplish the task.
11. Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.
12. Conduct terrestrial and marine archaeological surveys.
13. Research that the Department declares is designed specifically to monitor, conserve, or enhance native species or native species' habitat.

14. Implanting transponders and affixing tags, transmitters, markers, or other similar devices to birds, mammals, invertebrates, or aquatic organisms to record movement, longevity, growth, distribution, behavior, and other activities; taking disease or blood samples from birds, mammals, invertebrates, or aquatic organisms; and placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders.

15. Game and non-game wildlife surveys, vegetation and rare plant surveys, aquatic life surveys, inventory studies, new transect lines, photographing, recording, sampling, collection, culture, and captive propagation.

19. Research to identify, monitor, control, or eradicate introduced species.

20. Conduct assessment and survey of unexploded ordnance.

22. Appraisal of real property for land exchange proposals, determination of acquisition/sales price, rental establishment or the establishment of royalties.

23. Conduct planning and feasibility studies.

24. Permission to enter lands for the purpose of conducting those activities listed above.

PART 2

1. Construction of test wells with casing diameter of not more than 12 inches to provide ground truth for water resources investigations, the suggested size will enable the aquifer to be tested for its physical, chemical, biological qualities, as well as providing a pumping test to determine the specific capacity of the aquifer. Test wells shall not be developed to serve water unless an EIS or negative declaration is prepared.

2. Research or experimental wildlife and plant management actions, including controlled grazing or burning as a management tool.

3. Experimental management actions to identify, monitor, control, or eradicate introduced species.

4. Experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species' habitat.

Exemption Class 6

Construction or placement of minor structures accessory to existing facilities.

PART 1

1. Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.

2. Placement of aerators for increasing the dissolved oxygen content for fish populations in reservoirs, nurseries, ponds.

3. Installation and operation of automatic feeding devices in reservoirs, ponds or other impoundments.

4. Installation of glare screens, bollards, guard rails, vehicular access barriers, and other similar appurtenances designed to protect the public.
5. Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.
6. Alarm systems, camera systems, and similar surveillance items for security and safety purposes.
7. Construction of walls, fencing, or screens around buildings, structures, facilities, or equipment.
8. Water tanks with less than 20,000 gallon capacity.
9. Water catchment systems, lines, and faucets.
10. Placement or construction of gas tanks for fueling cooking stoves installed in or near existing structures.
11. Placement or construction of accessory structures such as office trailers, trash enclosures, bus shelters, picnic shelters, parking and fee collection facilities, checking stations, dock boxes, mooring cleats, bumpers, and mooring buoys, blocks and piles, and other similar structures accessory to existing facilities.
12. Hurricane or wind protection devices and other minor structural accessories that will facilitate resistance to damaging effects of natural hazards.

PART 2

1. Construction or placement of lighting systems for street lights, and outdoor security lighting.
2. Construction of interior roadways, driveways, parking areas, sidewalks, pathways, aisles, curbs, gutters, and other similar items.
3. Rearing pens for cage culture of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.

Exemption Class 7

Interior alterations involving things such as partitions, plumbing, and electrical conveyances.

PART 1

1. Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include: a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems; b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations; c. renovations that will result in energy or other operational/cost savings; or d. other similar interior alterations.
2. Expand utilities as need dictates in existing structures.
3. Construction required to maintain or upgrade existing utilities.

Exemption Class 8

Demolition of structures, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes.

PART 1

1. Construction, in accordance with established state standards, required to seal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of disrepair that continued use is impractical or unsafe.
2. Demolition and removal of existing structures, facilities, utilities, and other improvements, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.
3. Demolition and removal of experimental devices or other equipment, when such devices or equipment are no longer used or needed.
4. Demolition and removal of abandoned private property.
5. Demolition and removal of unauthorized improvements.

Exemption Class 9

Zoning variances except shoreline setback variances.

PART 1

1. Application for zoning variance for use of state lands disposed to private parties or to governmental agencies, except shoreline setback variances.

Exemption Class 10

Continuing administrative activities including, but not limited to, purchase of supplies and personnel-related actions.

PART 1

1. Purchase of supplies, equipment, materials, motor vehicles, boats, and services.
2. Contracts for small purchases, professional services, competitive sealed proposals, competitive sealed bidding, or purchase of goods and services which are exempt from Haw. Rev. Stat. Chapter 103D.
3. Requests for federal, state, county or private assistance grants to support ongoing operations or implement programs of the Department.
4. Personnel-related actions.
5. Training, environmental interpretation, public safety efforts and other educational activities.