



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
235 South Beretania Street, Suite 702, Honolulu, HI 96813

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AGENDA

State of Hawai'i, Environmental Council
Tuesday, February 4, 2020, 1:00 PM– 3:30 PM
No. 1 Capitol Center Building, Room 410
250 S. Hotel Street, 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
 - Action to authorize testimony on legislation
5. Exemption Committee Update
 - Review of and action on the County of Kaua'i, Department of Water updated exemption list
 - Discussion of and action on the comment period for exemption lists
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
 - Executive Session
9. Next meeting: Tuesday, March 5, 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

DOUGLAS MELLER
2615 Aaliamanu Place,
Honolulu, HI 96813
Email: *douglasmeller@gmail.com*
Phone: (808) 595-8208

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



Water has no substitute.....Conserve it

received DEQC 2020-01-10

January 10, 2020

Ron Terry, Chairperson
State Environmental Council Exemption Committee
Office of Environmental Quality Control
235 S. Beretania Street, Suite 702
Honolulu, HI 96813

Dear Mr. Terry:

Subject: Update to the Comprehensive Agency Exemption List for the Department of Water, County of Kaua'i

The Department of Water, County of Kaua'i (DOW) has reorganized its Exemption List to conform more closely to the current rules that came into effect on August 9, 2019. We are submitting our reorganized Exemption List to the Environmental Council for concurrence, pursuant to HAR Section 11-200.1-16.

No actions were removed or modified, and no new actions were added to the Comprehensive Exemption List for the Department of Water, County of Kaua'i as approved by the Environmental Council, March 10, 2004. However, the list has been divided into two categories: Part (1) for *de minimus* actions and Part (2) for actions that fall within the general types in HAR Section 11-200.1-15 but are not necessarily *de minimus*.

Our understanding for placing actions under Part (1) is that they are routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review. Actions from the DOW 2004 Exemption List that weren't identified as Part (1) *de minimus* exemptions remained as part (2) exemptions.

We are seeking to obtain concurrence from the Exemption Committee and move forward towards publishing the proposed list for public comment. Should you have any questions about the proposed Exemption List please contact Mr. Valentino Reyna of our staff at (808) 245-5434 or via email at vreyne@kauaiwater.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kurt S. Akamine".

Kurt S. Akamine, Chairperson
Board of Water Supply
County of Kaua'i

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Attachments:

1. Existing Comprehensive Exemption List for the Department of Water, County of Kaua'i as Approved by the Environmental Council, March 10, 2004
2. Proposed Comprehensive Exemption List, Department of Water, County of Kaua'i

01-10-0127 0000

81-00

[Handwritten signature]

**COMPREHENSIVE EXEMPTION LIST
FOR THE DEPARTMENT OF WATER, COUNTY OF KAUAI
AS APPROVED BY THE ENVIRONMENTAL COUNCIL, MARCH 10, 2004**

Pursuant to EIS Regulation Section 11-200-8(a) Hawaii Administrative Rules, the following types of action shall generally be declared exempt by the Department of Water, County of Kaua'i, from requirements to prepare an environmental assessment.

As stipulated by EIS Regulation 1:33b, all exemptions under this list are inapplicable when the cumulative impact of planned successive action of the same type, 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.

As stipulated by Section 11-200-8(a) HAR, if an exempt action is proposed in a particularly sensitive environment or if successive exempt actions could have a cumulative significant impact, the exempt status of the action would be invalid. Environmentally sensitive areas include flood plains, wetlands, beaches, and coastal areas, erosion-prone areas, geologically hazardous land, critical habitat, estuaries, historical, archeological, and culturally significant sites.

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.

1. Painting of building exterior or interior.
2. Repair of damage to building exterior or interior caused by termites, dry rot, and so forth.
3. Fumigation and treatment of buildings for termites, cockroaches, ants, vermin, and other pests using pesticides registered by the State Department of Agriculture and the EPA.
4. Floodlighting under 15 feet in height for security, safety, and decorative purposes.
5. Litter container pickup.
6. Manhole and meter box cover adjustment
7. Parking lot cleaning.
8. Parking lot resurfacing and striping.
9. Reroofing.
10. Maintenance of spillways channels and streams by use of hand tools and light equipment, but not by use of herbicides.
11. Storm drain cleaning.

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Attachment 1: Existing Comprehensive Exemption List

12. Vegetation clearing from vacant lot, except by use of herbicides.
13. Repair of vehicles, equipment and tools including testing and maintenance of compressors, generators, tapping and boring machines, pipe cutters, small water pumps, welding and soldering equipment, electrical testing equipment, water analysis equipment and telemeter equipment.
14. Reservoir painting
15. Well sealing.
16. Repair and maintenance of pipeline tunnels.
17. Repair and maintenance of access roads.
18. Mechanical control of vegetation along roadways, trails, and building sites.
19. Repair and maintenance of water mains, service connection meter, fire hydrant, fire standpipes, valves, manholes, stream gages, and monitor wells.
20. Repair and maintenance of water treatment equipment and facilities.
21. Repair and maintenance of water well and booster pumps, pressure break tank, surface and ground water intake, remote control valve, chlorination, and appurtenances.
22. Repair and maintenance of electrical equipment.
23. Repair and maintenance of cable cars, tracks, and winches.
24. Repair and maintenance of elevators.
25. Repair and maintenance of chain-link fencing and gates.
26. Repair of curbs and sidewalks.
27. Repair and maintenance of reservoirs and pump buildings.
28. Repair and maintenance of retaining walls and screen walls.
29. Repair of air conditioning and ventilator equipment.
30. Repair of telemetered circuits and communication systems.
31. Repair of microwave reflectors, antennas, towers, and poles.
32. Repair of berms.
33. Repair of bridging for pipeline support.

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34. Repair of drainage structures and storm drain lines.
35. Repair of footbridges.
36. Repair of guardrails.
37. Repair of electrical equipment.
38. Repair of fuel tanks
39. Acquisition of land or easements on which existing facilities are situated.
40. Maintenance of grounds by such means as mowing, trimming, and weeding.
41. Spot control and treatment of plant growth, insects and weeds for landscaped grounds of the department using pesticides and herbicides approved by the State Department of Agriculture and the EPA in accordance with the label instructions.
42. Temporary and permanent road patching for repair and maintenance of water facilities.

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.

1. Replacement or reconstruction:
 - A. Buildings, provided there would be no substantial change in use.
 - B. Bridging for pipeline support.
 - C. Berms.
 - D. Drainage structures.
 - E. Driveways.
 - F. Footbridges.
 - G. Stream retaining walls.
 - H. Curbs and sidewalks.
 - I. Baseyards.
 - J. Reservoirs.
 - K. Wells.
 - L. Booster pumps.
 - M. Pressure breaker tanks.
 - N. Surface and Ground water intake.
 - O. Remote control valves.
 - P. Chlorination and water treatment.
2. Replacement of:
 - A. Equipment, including electrical and water treatment.
 - B. Doors.
 - C. Guard rails.
 - D. Fuel tanks.

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- E. Water meter service connections, fire hydrants, fire standpipes, valves, manholes, stream gages, and monitor wells.
 - F. Water well and booster pumps and appurtenances.
 - G. Air conditioning and ventilation systems.
 - H. Elevators.
 - I. Chain link fencing and gates.
 - J. Telemetered circuits and communication systems.
 - K. Microwave reflectors, antennas, towers and poles.
3. Replacement of waterlines and appurtenances where no change in purpose is intended. Replacement may be size for size, or may involve an increase in pipe diameter if the existing waterline is inadequate to meet current Water System Standards and current zoning requirements.
4. Replacement of signs.
5. Replacement of vehicles, equipment, tools including compressors, generators, tapping and boring machines, small water pumps, welding and soldering equipment, electrical testing equipment, water analysis equipment and telemeter equipment.

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 less than 3,500 square feet not in conjunction with the building of two (2) or more such units; (b) multi-unit structures designed for not more than four (4) dwelling units if not in conjunction with the building of two (2) or more such structures; (c) stores, offices and restaurants designed for total occupant load of twenty (20) persons or less, if not in conjunction with the building of two (2) or more such structures; (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 ; and acquisition of utility easements.

1. Construction or alteration of:
- A. Carports and garages
 - B. Cement rubble masonry, hollow block, or reinforced concrete walls not more than six feet in height.
 - C. Fencing.
 - D. Guard rails.
 - E. Sidewalks and covered walkways.
 - F. Observation well shelters (kiosks).
 - G. Stream gauging stations.
 - H. Rain gauging stations.
 - I. Telemetry and remote control (SCADA) equipment and appurtenances including interior or exterior cabinets, solar power equipment, antenna, electronic equipment, and telemetry equipment.
 - J. Shelters for emergency generators at existing pump stations.
 - K. Site security upgrades including fencing, access controls, intrusion alarms, security camera and telemetry.

Attachment 1: Existing Comprehensive Exemption List

- L. Existing buildings and facilities to comply with the Americans with Disabilities Act (ADA) requirements.
- 2. Installation or modification of:
 - A. Office air conditioning and ventilation.
 - B. Equipment in existing buildings, such as emergency electric generators in existing water pump stations.
 - C. Storm drain lines.
 - D. Intrusion alarm systems.
 - E. Monitoring devices.
 - F. Water meter service connections and service laterals.
 - G. Motor control center and chlorinator building.
 - H. Telemeter and other monitoring and control equipment.
- 3. Extension of existing waterline to complete grid within existing right-of-way and easements.
- 4. Oversizing of new pipelines as allowed by Department Rules pertaining to Extensions of Mains.
- 5. Extension of existing storm drains.
- 6. Installation of new meter service connections off existing mains within road right-of-way.
- 7. Expansion of existing well and booster pump station to master planned capacity, including installations of filtration, water treatment and additional pumping equipment and appurtenances, provided circumstances have not changed substantively from the time the master plan was prepared.
- 8. Installation of new water mains and fire hydrants to provide fire protection
- 9. Installation of temporary emergency water well pumping, filtration, and water treatment equipment.
- 10. Construction of additional storage tank capacity not to exceed 100,000 gallons.
- 11. Installation of monitoring equipment and facilitators for measuring physical, chemical, biological parameters of water quality.
- 12. Alteration to water well pumping equipment including installation of control valves, chlorination systems or alteration of pumps.
- 13. Water service connections.
- 14. Utility connections for electricity, gas, and sewage.
- 15. Window modifications.
- 16. Installation of new fire hydrants off existing pipeline for fire protection.

Attachment 1: Existing Comprehensive Exemption List

17. Relocation of fire hydrant or fire standpipe to clear new construction such as a driveway or to eliminate a hazardous condition.
18. Installation of telemetering equipment and wires.
19. Installation of signs.
20. Installation of filtration and water treatment equipment.
21. Installation of pressure regulating equipment such as booster pumps, pressure reducers, pressure relief, etc. where the intent is to route water from one pressure zone to the next.

Exemption Class #4: Minor alterations in the conditions of land, water, or vegetation.

1. Construction of berms.
2. Tree trimming, grubbing and mowing of landscape at lawn areas, planting of trees, other plants, and sods, and pruning of trees and shrubs.
3. Construction of drainage ditches.
4. Construction of footpaths.
5. Landscaping and installation of sprinkler system.
6. Construction of seepage drains, including dry wells.
7. Minor ground adjustments for landscaping purposes or for leveling grounds for which grading permits are not required.
8. Temporary access roads with minimal grading and tree removal to repair and maintain security of existing facilities.
9. Incident cleaning of land and preliminary site work for surveying, engineering design, and geologic and hydrologic studies.

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.

1. Chemical, bacteriological, and viral laboratory analysis.
2. Fresh and saline water sampling.
3. Recycling of wastewater study.
4. Stream study and survey.

5. Subsurface exploration soil boring and archaeological investigation. Archaeological investigations include historical research and archaeological inventory surveys, including subsurface test pits.
6. Collection of geologic samples.
7. Leak detection survey.
8. Use at any one time or not more than 2.8 curies of americium 241 and the storage of the same radioactive material for well logging purposes in accordance with the requirements of the USA Nuclear Regulatory Commission.
9. Surveying, engineering design, and geologic and hydrologic studies with minor trimming of vegetation.
10. Surveying work to verify control points and topographic work.
11. Drilling and testing of monitor wells as defined by the Commission on Water Resources Management. The well shall not be capable of being used or intended to be used to withdraw ground water for the purposes of exploring or developing ground water.
12. Collection of water samples for bacteriological and chemical analysis.

Exemption Class #6: Construction or placement of minor structures accessory to existing facilities.

1. Construction at existing facilities of small new buildings or small building additions, such as storage sheds, offices, or shower/locker rooms.
2. Installation of exterior lighting designed to minimize impact to wildlife and aesthetics. Exterior lighting will be 15 feet or less above ground level and be shielded to minimize fugitive light.
3. Construction or location of portable field buildings.
4. Construction or location of temporary field buildings.
5. Installation of underground fuel tanks and dispensers not to exceed 2,000 gallon capacity.
6. Construction or installation of supervisory control and data acquisition (SCADA) system equipment and appurtenances.
7. Construction or installation of security improvements.

Exemption Class #7: Interior alterations involving such things such as partitions, plumbing, and electrical conveyances.

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1. Partition installation, relocation, or removal.
2. Plumbing installation, relocation, or removal.
3. Electrical installation, relocation, or removal.
4. Door installation, relocation, or removal.
5. Window installation, relocation, or removal.

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, 16 U.S.C., Section 470, as amended, or Chapter 6E, Hawaii Revised Statutes or Kauai Historic Resources Inventory.

1. Removal of architectural features.
2. Demolition of abandoned buildings and structures.
3. Demolition of reservoirs and other abandoned water system appurtenances.
4. Removal and disposal of demolition materials.
5. Demolition of sidewalks and curbs.

Exemption Class #9: Zoning variances except shoreline setback variances.

1. Building set-back variances.

Exemption Class #10: Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

1. Purchases of supplies, services, and equipment to support existing operations.
2. Personnel-related actions.
3. Subdivision of Board of Water Supply property to accommodate State or County road improvement projects.
4. Consolidation of existing parcels required over a period of time.
5. Acquisition of land easements on which water system facilities and appurtenances are presently situated or under construction.

Attachment 2: Proposed Comprehensive Exemption List

Proposed EA Exemption List in Part 1 and Part 2 EA Exemption List

Part 1: de minimis

(1) Routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review. Examples of routine activities and ordinary functions may include, among others: routine repair, routine maintenance, purchase of supplies, and continuing administrative activities involving personnel only, nondestructive data collection, installation of routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveniences

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

1. Painting of building exterior or interior.
2. Repair of damage to building exterior or interior caused by termites, dry rot, and so forth.
3. Fumigation and treatment of buildings for termites, cockroaches, ants, vermin, and other pests using pesticides registered by the State Department of Agriculture and the EPA.
4. Floodlighting under 15 feet in height for security, safety, and decorative purposes.
5. Litter container pickup
6. Manhole and meter box cover adjustment
7. Parking lot cleaning.
8. Parking lot resurfacing and striping.
9. Reroofing.
10. Maintenance of spillway channels and streams by use of hand tools and light equipment but not by use of herbicides.
11. Storm drain cleaning
12. Vegetation clearing from vacant lot, except by use of herbicides.
13. Repair of vehicles, equipment and tools including testing and maintenance of compressors, generators, tapping and boring machines, pipe cutters, small water pumps, welding and soldering equipment, electrical testing equipment, water analysis equipment and telemeter equipment
14. Reservoir painting
15. Well sealing
16. Repair and maintenance of pipeline tunnels.
17. Repair and maintenance of access roads.
18. Mechanical control of vegetation along roadways, trails, and rounding sites.
19. Repair and maintenance of water mains, service connection meter, fire hydrant, fire standpipes, valves, manholes, stream gages, and monitor wells.
20. Repair and maintenance of water treatment equipment and facilities.
21. Repair and maintenance of water well and booster pumps, pressure break tank, surface and ground water intake, remote control valve, chlorination, and appurtenances.
22. Repair and maintenance of electrical equipment.
23. Repair and maintenance of cable cars, tracks, and winches.
24. Repair and maintenance of elevators.
25. Repair and maintenance of chain-link fencing and gates.
26. Repair of curbs and sidewalks.
27. Repair and maintenance of reservoirs and pump buildings.
28. Repair and maintenance of retaining walls and screen walls.
29. Repair of air conditioning and ventilator equipment
30. Repair of telemetered circuits and communication systems.
31. Repair of microwave reflectors, antennas, towers, and poles.
32. Repair of berms.
33. Repair of bridging for pipeline support.
34. Repair of drainage structures and storm drain lines.
35. Repair of footbridges.
36. Repair of guardrails.
37. Repair of electrical equipment.
38. Repair of fuel tanks
39. Acquisition of land or easements on which existing facilities are situated.
40. Maintenance of grounds by such means as mowing, trimming, and weeding.
41. Spot control and treatment of plant growth, insects and weeds for landscaped grounds of the department using pesticides and herbicides approved by the State Department of Agriculture and the EPA in accordance with the label instructions.
42. Temporary and permanent road patching for repair and maintenance of water facilities.

Attachment 2: Proposed Comprehensive Exemption List

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	
1. Replacement or Reconstruction:	
a.	Buildings, provided there would be no substantial change in use.
b.	Bridging for pipeline support.
c.	Berms
d.	Drainage structures.
e.	Driveways.
f.	Footbridges.
h.	Curbs and sidewalks.
k.	Wells.
l.	Booster pumps.
m.	Pressure breaker tanks.
n.	Surface and ground water intake.
o.	Remote control valves.
p.	Chlorination and water treatment.
2. Replacement of:	
a.	Equipment, including electrical and water treatment.
b.	Doors.
c.	Guard rails.
d.	Fuel tanks.
e.	Water meter service connections, fire hydrants, fire standpipes, valves, manholes, stream gages, and monitor wells.
f.	Water well and booster pumps and appurtenances.
g.	Air conditioning and ventilation systems.
h.	Elevators
i.	Chain link fencing and gates.
j.	Telemetered circuits and communication systems.
k.	Microwave reflectors, antennas, towers and poles.
4. Replacement of signs.	
5. Replacement of vehicles, equipment, tools including compressors, generators, tapping and boring machines, small water pumps, welding and soldering equipment, electrical testing equipment, water analysis equipment and telemeter equipment.	
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 less than 3,500 square feet not in conjunction with the building of two (2) or more such units; (b) multi-unit structures designed for not more than four (4) dwelling units if not in conjunction with the building of two (2) or more such structures; (c) stores, offices and restaurants designed for total occupant load of twenty (20) persons or less, if not in conjunction with building two (2) or more such structures; (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; and acquisition of utility easements.	
1. Construction or alteration of:	
a.	Carports and garages
b.	Cement rubble masonry, hollow block, or reinforced concrete walls not more than six feet in height.
c.	Fencing.
d.	Guard rails.
e.	Sidewalks and covered walkways.
f.	Observation well shelters (kiosks).
g.	Stream gauging stations.
h.	Rain gauging stations.
i.	Telemetry and remote control (SCADA) equipment and appurtenances including interior or exterior cabinets, solar power equipment, antenna, electronic equipment, and telemetry equipment.
j.	Shelters for emergency generators at existing pump stations.
k.	Site security upgrades including fencing, access controls, intrusion alarms, security camera and telemetry.
1. Existing buildings and facilities to comply with the Americans with Disabilities Act (ADA) requirements.	
2. Installation or modification of:	
a.	Office air conditioning and ventilation.
b.	Equipment in existing buildings, such as emergency electric generators in existing water pump stations.
d.	Intrusion alarm systems.
e.	Monitoring devices:
f.	Water meter service connections and services laterals.
g.	Motor control center and chlorinator building.
h.	Telemeter and other monitoring and control equipment.
5.	Installation of new meter service connections off existing mains within road right-of-way.

Attachment 2: Proposed Comprehensive Exemption List

- Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.
- 1. Purchases of supplies, services, and equipment to support existing operations.
- 2. Personnel-related actions.
- 3. Subdivision of Board of Water Supply property to accommodate State or County road improvement projects.
- 4. Consolidation of existing parcels required over a period of time.
- 5. Acquisition of land easements on which water system facilities and appurtenances are presently situated or under construction.

Part 2: General types of actions eligible for exemption

- (1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.
- (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:
 - 1. Replacement or Reconstruction:
 - a. Stream retaining walls.
 - b. Baseyards
 - c. Reservoirs.
 - 2. Replacement of waterlines and appurtenances where no change in purpose is intended. Replacement may be size for size, or may involve an increase in pipe diameter if the existing waterline is inadequate to meet current Water System Standards and current zoning requirements.
 - (3) Construction and location of single, new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small equipment or facilities and the alteration and modification of the equipment or facilities, including, but not limited to:
 - (A) Single-family residences, less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if 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 individuals or fewer per structure, 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; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements.
 - 2. Installation or modification of:
 - a. Storm drain lines.
 - b. Extension of existing waterline to complete grid within existing right-of-way and easements.
 - c. Oversizing of new pipelines as allowed by Department Rules pertaining to Extensions of Mains.
 - d. Extension of existing storm drains.
 - 3. Expansion of existing well and booster pump station to master planned capacity, including installations of filtration, water treatment and additional pumping equipment and appurtenances, provided circumstances have not changed substantively from the time the master plan was prepared
 - 4. Installation of new water mains and fire hydrants to provide fire protection
 - 5. Installation of new fire hydrants off existing pipeline for fire protection
 - 6. Installation of underground fuel tanks and dispensers not to exceed 2,000 gallon capacity.
 - (4) Minor alterations in the conditions of land, water, or vegetation;
 - (5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource;
 - (6) Demolition of structures, except those structures that are listed on the national register or Hawaii Register of Historic Places;
 - (7) Zoning variances except shoreline setback variances;
 - (8) Continuing administrative activities;
 - (9) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond previously existing uses, and for which the legislature has appropriated or otherwise authorized funding; and
 - (10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county proposing agency or approving agency, that meets the following:
 - (A) Has the use of state or county lands or funds or is within Waikiki as the sole triggers for compliance with chapter 343, HRS.
 - (B) As proposed conforms with the existing state urban land use classification;
 - (C) As proposed is consistent with the existing county zoning classification that allows housing; and
 - (D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200.1-13(b) (II).

Attachment 2: Proposed Comprehensive Exemption List

9.	Installation of temporary emergency water well pumping, filtration, and water treatment equipment.
10.	Construction of additional storage tank capacity not to exceed 100,000 gallons.
11.	Installation of monitoring equipment and facilities for measuring physical, chemical, biological parameters of water quality.
12.	Alteration to water well pumping equipment including installation of control valves, chlorination systems or alteration of pumps.
13.	Water service connections.
14.	Utility connections for electricity, gas, and sewage.
15.	Window modifications.
17.	Relocation of fire hydrant or fire standpipe to clear new construction such as a driveway or to eliminate a hazardous condition.
18.	Installation of telemetering equipment and wires.
19.	Installation of signs.
20.	Installation of filtration and water treatment equipment.
21.	Installation of pressure regulating equipment such as booster pumps, pressure reducers, pressure relief, etc.; where the intent is to route water from one pressure zone to the next.
Minor alterations in the conditions of land, water, or vegetation	
1.	Construction of berms.
2.	Tree trimming, grubbing and mowing of landscape at lawn areas, planting of trees, other plants, and sods, and pruning of trees and shrubs.
3.	Construction of drainage ditches.
4.	Construction of footpaths.
5.	Landscape and installation of sprinkler system.
6.	Construction of seepage drains, including dry wells.
7.	Minor ground adjustments for landscaping purposes or for leveling grounds for which grading permits are not required.
8.	Temporary access roads with minimal grading and tree removal to repair and maintain security of existing facilities.
9.	Incident cleaning of land and preliminary site work for surveying, engineering design, and geologic and hydrologic studies.
Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.	
1.	Chemical, bacteriological, and viral laboratory analysis.
2.	Fresh and saline water sampling.
3.	Recycling of wastewater study.
4.	Stream study and survey.
5.	Subsurface exploration soil boring and archaeological investigation. Archaeological investigations include historical research and archaeological inventory surveys, including subsurface test pits.
6.	Collection of geologic samples.
7.	Leak detection survey.
8.	Use at any one time or not more than 2.5 curies of americium 241 and the storage of the same radioactive material for well logging purposes in accordance with the requirements of the USA Nuclear Regulatory Commission.
9.	Surveying, engineering design, and geologic and hydrologic studies with minor trimming of vegetation.
10.	Surveying work to verify control points and topographic work.
11.	Drilling and testing of monitor wells as defined by the Commission on Water Resources Management. The well shall not be capable of being used or intended to be used to withdraw ground water for the purposes of exploring or developing ground water.
12.	Collection of water samples for bacteriological and chemical analysis.
Construction or placement of minor structures accessory to existing facilities.	
1.	Construction at existing facilities of small new buildings or small building additions, such as storage sheds, offices, or shower/locker rooms.
2.	Installation of exterior lighting designed to minimize impact to wildlife and aesthetics. Exterior lighting will be 15 feet or less above ground level and be shielded to minimize fugitive light.
3.	Construction or location of portable field buildings.
4.	Construction or location of temporary field buildings.
6.	Construction or installation of supervisory control and data acquisition (SCADA) system equipment and appurtenances.
7.	Construction or installation of security improvements.
Interior alterations involving such things such as partitions, plumbing, and electrical conveyances.	
1.	Partition installation, relocation, or removal.
2.	Plumbing installation, relocation, or removal.
3.	Electrical installation, relocation, or removal.
4.	Door installation, relocation, or removal.
5.	Window installation, relocation, or removal.
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, 16 U.S.C., Section 470, as amended, or Chapter 611, Hawaii Revised Statutes or Kawai Historic Resources Inventory.	
1.	Removal of architectural features.
2.	Demolition of abandoned buildings and structures.
3.	Demolition of reservoirs and other abandoned water system appurtenances.
4.	Removal and disposal of demolition materials.
5.	Demolition of sidewalks and curbs.
Zoning variances except shoreline setback variances.	
1.	Building set-back variances.

THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

S.B. NO. 2777

A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL COUNCIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 341, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§341- Environmental council special fund; established. (a)

There is created in the state treasury a special fund to be designated as the environmental council special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund;
- (2) All revenues from the environmental response, energy, and food security tax pursuant to section 243-3.5(a)(5);
- (3) Gifts, donations, and grants from public agencies, private persons, and private entities; and
- (4) Any interest earned on the balance of the special fund.

(b) Moneys in the environmental council special fund shall be used for the functions pursuant to section 341-6."

SECTION 2. Section 243-3.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed a state environmental response, energy, and food security

tax on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user of petroleum product, other than a refiner. The tax shall be \$1.05 on each barrel or fractional part of a barrel of petroleum product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

(1) 5 cents of the tax on each barrel shall be deposited into the environmental response revolving fund established under section 128D-2;

(2) 5 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;

(3) 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169.1; ~~and~~

(4) 15 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-10[-]; and

(5) 0.00525 cent of the tax on each barrel shall be deposited into the environmental council special fund established under section 341- .

(b) In addition to subsection (a), the tax shall also be imposed on each one million British thermal units of fossil fuel sold by a distributor to any retail dealer or end user, other than a refiner, of fossil fuel. The tax shall be 19 cents on each one million British thermal units of fossil fuel; provided that of the tax collected pursuant to this subsection:

(1) 4.8 per cent of the tax on each one million British thermal units shall be deposited into the environmental response revolving fund established under section 128D-2;

(2) 14.3 per cent of the tax on each one million British thermal units shall be deposited into the energy security special fund established under section 201-12.8;

(3) 9.5 per cent of the tax on each one million British thermal units shall be deposited into the energy systems development special fund established under section 304A-2169.1; ~~and~~

(4) 14.3 per cent of the tax on each one million British thermal units shall be deposited into the agricultural development and food security special fund established under section 141-10[-]; and

(5) 0.005 per cent of the tax on each one million British thermal units shall be deposited into the environmental council special fund established under section 341- .

The tax imposed by this subsection shall be paid by the distributor of the fossil fuel."

SECTION 3. There is appropriated out of the environmental response revolving fund created under section 128D-2, Hawaii Revised Statutes, the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2020-2021 to be used for the purposes of the environmental council special fund.

The sum appropriated shall be expended by the department of health for the funding of the environmental security council for purposes consistent with this Act.

SECTION 4. There is appropriated out of the environmental council special fund established by this Act the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2020-2021 for the purposes of this Act.

The sum appropriated shall be expended by the department of health for the funding of the environmental security council for purposes consistent with this Act.

SECTION 5. In codifying the new sections added by sections one and two of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Environmental Response, Energy, and Food Security Tax; Environmental Council Special Fund; Appropriations

Description:

Establishes the Environmental Council Special Fund; dedicates 0.005 per cent of the Environmental Response, Energy, and Food Security Tax to the Environmental Council Special Fund. Appropriates \$50,000 to the Environmental Council Special Fund from the Environmental Response Revolving fund.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.