



STATE ENVIRONMENTAL COUNCIL

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I. Robin Kaye
Keith Kawaoka (*Acting*)
Theresita Kinnaman
Robert Parsons
Ron Terry
Michael Tulang
N. Mahina Tuteur

October 6, 2020, Meeting Minutes Draft
For Review at November 10, 2020 Meeting
Exemption Committee Meeting
State of Hawai'i Environmental Council

Meeting Held on Tuesday, October 6, 2020, 12:00 PM - 1:00 PM
Via ZOOM videoconference

Members Present (4): Ron Terry (Chair); Puanani'ona'ona Thoene; Maka'ala Ka'aumoana; Michael Tulang; Robin Kaye
Public Present: Emma Yuen (DLNR); Pane Meatoga (Operating Engineers Union)
Staff Present: Bill Cooper, Deputy Attorney General; Leslie Segundo, Planner
Note: Text in bold indicates the original text of the agenda

1. Call to order, roll call and quorum, introductions.

With a quorum of all four members, Chairperson Terry convened the meeting at ~ 12:05 PM. All present were introduced.

2. Review and approval of prior meeting minutes

Minutes of September 1, 2020, were approved unanimously with no changes.

3. Exemption list status

Chair reported on each item.

| Agency | Status Report | Discussion |
|----------------------------------|------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hawai'i DPW | <i>Internal preparation; Chair will report on discussions with Agency</i> | Discussion by chair of how effective process was in stimulating environmental discussion in agency; Committee members endorsed this. List is expected to come to Committee next meeting. |
| Kaua'i DOW | <i>DOW still considering how to address comments from May Committee</i> | No news from this agency; no further discussion. |
| Honolulu Design and Construction | <i>List was concurred with by EC on September 1 and published in September 23 Notice</i> | No discussion other than report that process is over. |
| Honolulu Land Management | <i>List was approved for release by EC on September 1 and published in September</i> | Chair asked Les if any comments had come to OEQC. He responded that none had been received yet. We expect to have all comments, if any, attached to next meeting agenda and discussion and a potential action item. |

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| | <i>23 Notice for nominal 15 day comment</i> | |
| Hawai'i State Land and Natural Resources | <i>List underwent minor formatting changes to correct categories</i> | There was a potential action item of review for possible "re-concurrence", but Committee members noticed some substantive issues that had escaped notice previously. Particularly Page 3, Operations, Type 1, Part I, Item #32, related to silt removal, which may not be appropriate for de minimis in all cases. Emma Yuen was asked if this could be moved to Part II; she said that it was more complex, and she would go discuss with other agency personnel and come back to us. Furthermore, Member Kaaumoana was concerned that Page 10, Type 4, Part 2, # 18, which dealt with "beach restoration", might usually be inappropriate for exemption. Several other members noted that the clause concerning the inapplicability to exemptions in particularly sensitive environments where impacts were likely would normally apply here, and that at least the project would receive an Exemption Notice and the possibility of public review. Emma Yuen was asked to consult with her agency on this as well. |
| Honolulu Environmental Services | <i>Initial list provided to Chair, who assigned review to member Kaye; continuing coordination with agency</i> | Chair reported that review was complete, with a number of comments for agency consideration; ball is now in agency's court to respond. |

4. Discussion of Potential Exemption List of Judiciary Projects

Atty. General Cooper explained that while DAGS normally handles construction projects, in the interest of expediency the Judiciary has been managing projects that, if DAGS handled them, would be subject to Chapter 343. As the Judiciary, similar to the Legislature, is not an Executive agency, it is not subject to Chapter 343. But because the construction management function is far outside what it is presumed the Legislature intended when they confined Chapter 343 to Executive agencies, the Judiciary has inquired of Atty. General Cooper about whether they should act as an Executive Agency with Chapter 343 duties and privileges. They were particularly interested in obtaining concurrence on a proposed exemption list. The Exemptions Committee discussed various hypothetical angles of this. One was that the Judiciary, in acting in place of DAGS, was essentially assuming the duties and privileges of an Executive agency and might be treated as such. Another was that the Judiciary could be treated as an applicant (which might seem out of place for an agency, but the federal government can be an applicant under Chapter 343). There was a question of who then would be the approving agency. Furthermore, applicants do not have exemption lists, because they do not have the power to exempt. Another idea was to identify the issue to the Legislature and perhaps have a change to one or more statutes that would permit Executive and Legislative agencies acting in this manner to be

covered by Chapter 343. A similar issue exists in the Legislature with respect to Grants-in-aid (GIA). Atty. General Cooper was asked to inquire of the Judiciary about the nature, number and frequency of the projects they thought they might be undertaking so that we could understand the issue better. Further discussion was deferred to the next meeting.

5. Next meeting date and agenda.

Next meeting set for November 10. Several members wished to have the issue of County-wide lists considered at this or another future meeting.

6. Adjournment.

Chair Terry adjourned the meeting at 12:56 PM