



STATE ENVIRONMENTAL COUNCIL

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

Phone: (808) 586-4185
Email: oeqchawaii@doh.hawaii.gov

David Y. Ige
Governor

Chairperson
Puananionaona Thoene

Vice Chair
Mary Begier

Members
Roy Abe
Stephanie Dunbar-Co
Maka'ala Ka'aumoana
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Robert Parsons
Ron Terry
Michael Tulang
N. Mahina Tuteur

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

Meeting Held on Tuesday, November 10, 2020, 12:00 PM - 1:00 PM
Via ZOOM videoconference

Members Present (5): Ron Terry (Chair); Puanani'ona'ona Thoene; Maka'ala Ka'aumoana; Michael Tulang; Robin Kaye
Public Present: Emma Yuen (State DLNR); Sandy Pfund, Claude Allen and Seiji Ogawa (CCH Dept. of Land Management - DLM); Lenore Ohye, Neil Fujii and Nicholas Ing (State Water Commission - CWRM); Allan Simeon (Hawai'i County DPW); Joanne Krippaehne (Judiciary)
Staff Present: Bill Cooper, Deputy Attorney General; Leslie Segundo, Planner

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

With a quorum of all four members, Chairperson Terry convened the meeting at ~ 12:03 PM. All present were introduced.

2. Review and approval of prior meeting minutes

Approval of minutes of October 6 was deferred to end of meeting; in the end, no time to approve, deferred to December.

3. Exemption list status

Agency	Status Report	Discussion
Honolulu Land Management	<i>List was approved for release by EC on September 1 and published in September 23 Notice for nominal 15 day comment; List now ready for consideration of EC concurrence</i>	Chair asked Les if any comments had come to OEQC. He responded that none had been received yet. Committee was asked to comment on list one more time. Member Thoene commented that standard disclaimer with rule language about inapplicability when in sensitive environment and/or cumulative impacts with high potential for impacts should be at beginning of list. There were also still sticky notes on the pdf that should not be on concurred list. DLM was asked if they could address these and they agreed to supply an amended list. Committee agreed it could be advanced to EC without amendment with understanding that it would be added. Member Thoene moved to advance the list to EC for concurrence; Member Kaaumoana seconded. Passed unanimously.

<p>Hawai'i State Land and Natural Resources</p>	<p><i>Committee had requested in October that notes on list be removed and had concerns about silt removal in Part I and beach restoration in Part II and had asked DLNR to consider these carefully and provide responses. DLNR provided a memo that argued for leaving them as-is because "debris (trash)...often is also connected to large quantities of silt, so it seems warranted to keep that de minimis", and that any beach restoration project that is in a sensitive environment would not be exempted and an EA would be published.</i></p>	<p>Emma pointed out that DLNR had done a statewide EA for the small scale beach restoration project. Member Kaaumoana noted she recognizes the good intentions of DLNR but knowledge is helpful. Silt removal at mouth of streams is not good for biota or natural processes on Kaua'i. She had no knowledge of DLNR debris removal so was not commenting. She felt the statewide EA escaped the notice of everyone on Kaua'i. Small scale beach restoration on Kauai is not a good idea in her opinion and some folks on Kaua'i are still working on challenging the EA, but she does not want to stop this list for that reason. Emma said DLNR used to clear "sand" off Wailua River mouth but they stopped doing that. Chair Terry said exemptions being open and available to public are really critical for quelling suspicion and anger. Agencies might want to err on the side of inclusion, especially between de minimis and Part II. Member Kaye moved to advance to EC for concurrence. Member Thoene seconded. Passed unanimously.</p>
<p>Hawaii State Commission on Water Resources</p>	<p><i>Chair Terry has been working with CWRM on the list; he had sent a number of questions, to which CWRM did respond in a memo that was inadvertently left off agenda; status is to consider to advance the list for public comment.</i></p>	<p>Chair Terry first explained the back and forth with CWRM. First concern was that list only included agency actions. Were there never any applicant actions? CWRM responded that for virtually every applicant permit they consider they are not the initial receiving agency; they never issue the first approval. Other agencies take care of Chapter 343 before they see it. Chair Terry said doesn't someone occasionally ask to alter instream flow standards or alter an intake that has a Chapter 343 trigger somehow but no other agency approval? Ms. Ohye said no, it really never happens. Member Kaaumoana said she was also surprised there were no applicant actions that triggered Chapter 343 at the CWRM level. Chair Terry's second question asked whether there were only two Part II items, everything else is de minimis. Are all structures really so minor? CWRM responded that it was similar to DLNR's list; Chair Terry said yes, but so much involves the water, which is inherently more sensitive. Are all CWRM's activities in streams truly so trivial as to always be de minimis. Ms. Ohye said we</p>

		<p>mostly do administrative work and our only construction involves installation and monitoring of well and stream gauges, which today are extremely minor facilities, not like the old days. She explained what they look like and how little potential impact there is. They don't put in new roads. They usually hike to install stream gauges in sensitive areas. They work with USGS. Stream gauges are just a bubble transducer on a wire that measures water pressure. Very non-obtrusive. Final issue was to use "Types" not "Classes". Mr. Ing said they could change that. Member Thoene asked about replacement or reconstruction of existing machinery and vessels. Do you really reconstruct machinery and vessels? Ms. Ohye said no, we could probably change that. Member Thoene then said Page 3, Type 3, Number 4...restricts things to State lands. Should you keep that restriction? Ms. Ohye said probably not. We got this from DLNR list. We should probably change that. Ms. Thoene said on last page, about sealing of production wells, is that really appropriate as de minimis? Ms. Ohye explained why she thought it was very minor. Member Thoene said she still thought it might be Part II and maybe this can be discussed further as part of the public comment period. Chair Terry summarized by saying that we could articulate our concerns as part of the public comment process. Member Thoene moved to advance the list to EC for concurrence; Member Kaye seconded. Passed unanimously.</p>
<p>Hawai'i DPW</p>	<p><i>Chair Terry has been working with DPW on the list; DPW has taken care of all his initial concerns; status is to consider to advance the list for public comment</i></p>	<p>There was no time for discussion. Chair Terry asked if we could just move it out for public comment, as he was aware of no issues. He was open to a veto by any member not comfortable with this. Member Thoene said she agreed. Mr. Simeon explained the basis of the list on 2015 concurred list, reorganization and consolidation. Member Tulang moved to advance the list to EC for concurrence; Member Thoene seconded. Passed unanimously.</p>
<p>Honolulu Environmental Services</p>	<p><i>Initial list provided to Chair, who assigned review to member Kaye; continuing coordination with agency</i></p>	<p>Chair did not report on this as there was no time.</p>

4. Discussion of Potential Exemption List of Judiciary Projects

Atty. General Cooper introduced subject of Judiciary inquiring about whether they should have an exemption list, or whether there was some alternative. Ms. Krippaehne stated that she was the Capital Improvements Administrator for Judiciary. AG Cooper said he had received the list of projects for which the Judiciary was seeking exemptions. It seems like all they need are building permits, no discretionary permits. Ms. Krippaehne said mostly building permits, some others like UIC for a drywell. Chair Terry said this also appears to be discretionary. Judiciary does not appear to be in the Chapter 343 realm, if it may be considered as an applicant. Let's continue this conversation at the next meeting. Member Thoene said the reason we are stuck on this is that Judiciary is not defined as a Chapter 343 agency; if you are an applicant, an exemption list is not appropriate, but on the other hand the work you do must have some trigger other than use of government funds or lands in order to involve Chapter 343. Time elapsed for discussion and the issue was deferred to the next meeting.

5. Next meeting date and agenda.

Next meeting set for December 1, 2020, at 11:30 to allow more time for discussion.

6. Adjournment.

Chair Terry adjourned the meeting at 12:59 PM