

Nicholas:

Thanks very much for calling and discussing your agency's list with me - and especially for preparing one and submitting it for Environmental Council concurrence.

As I mentioned, I had two main concerns. One was that the list seemed to include only agency actions, and I wondered whether there were any circumstances in which the Commission would need to consider applicant actions for possible exemption. I think I conveyed that sufficiently in our discussion and that you will be able to follow up on that with your permitting team.

The second was a little more complex and had to do with new facilities that fit in under Type 3 (by the way, we have eliminated the terminology "Classes" for exemptions in the new rules and these should be labeled as Types, as in "Exemption Type 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

Our Council has generally taken the view that many, and sometimes most, new facilities may be exempt but should not be de minimis. The rules call out these types of actions as eligible for de minimis (emphasis added):

*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 conveyances;*

Your draft list names as de minimis re replacement and reconstruction (i.e., Type 2) of

4. Replacement or reconstruction of existing groundwater, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
5. Replacement or reconstruction of existing electrical, telemetry, or communications systems, and the structures that house or protect them.

These seem suitable to me. And then it also lists as de minimis this Type 3 activity:

Construction and location of new, small facilities or structures necessary to support or enhance safe and effective water resource management, such as sheds, storage buildings, equipment housing, or other similar structures

I am wondering whether this is appropriately labeled as de minimis. I could imagine that up in our high-elevation, forested watersheds, some of these new, small facilities might be in somewhat virgin territory, involving construction of new roads or driveways, clearing of vegetation, and requiring surveys for endangered flora and fauna, archaeological remains, and care being taken not to cause erosion and sedimentation. It surprises me to think that if this were true, there would be no need to prepare at least an Exemption Notice. Are these new, small facilities truly extremely minor and merit no environmental consideration? Or is it instead the case that for all new facilities in environments like I describe that you would not even consider them eligible for an exemption and instead would prepare a full Environmental Assessment?

I feel that some of these questions may occur to our Exemption Committee and the full Environmental Council in review and I wanted to raise them early for your consideration.

I want to reiterate something I said in our conversation. This is your agency's list, not ours, to use for your convenience. Our concurrence helps on public input and sort of puts the "Good Housekeeping Stamp of Approval", but it is not required. Our review is meant to be helpful to agencies and the public, and these comments are made in that spirit.

Again, thanks

Ron Terry
Exemption Committee Chair
Hawaii State Environmental Council

Hello Ron,

Our branches at CWRM have reviewed your questions and our response is in to blue written below:

Re: your 1st question and concern, the Commission issues permits for water source developments or water uses that are in support of a larger development project and is generally not the initial agency receiving and agreeing to process the request for approval where an EA or EIS is triggered. Where an EA or EIS is required, the Commission will not act on a permit until the applicant has completed the Chapter 343 process.

Re: your 2nd question: We included the exemption you highlighted in Part 2 of our list, based on the concurrence of DLNR's list on 3/3/20, where the following exemption is included under Part 1 of Exemption Class 3:

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.

This is to cover small sheds that house the water monitoring equipment and are accessory to the stream gages or monitor wells that are constructed for basic hydrologic data collection. However, we note the installation of such structures are already covered under our proposed Exemption Class 5, Part 1 (shown below) so we can delete the exemption you highlighted from our proposed list.

3. 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 these equipment or structures.

Attached is a revised exemption list that deletes the exemption you highlighted.

Thanks

Nicholas Ing