



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
Puanani'ona'ona Thoene

Vice Chair
Mary Begler

Members
Roy Abe
Stephanie Dunbar-Co
Dawn Hegger-Nordblom
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I. Robin Kaye
Keith Kawaoka (*Acting*)
Theresita Kinnaman
Robert Parsons
Ron Terry
Michael Tulang
N. Mahina Tuteur

MINUTES (DRAFT)
January 5, 2021, Meeting
For Review at March 2, 2021 Meeting
Exemption Committee Meeting
State of Hawai'i Environmental Council
Meeting Held on Tuesday, January 5, 2021, 12:00- 1:00 PM
Via ZOOM videoconference

Members Present (5): Ron Terry (Chair); Puanani'ona'ona Thoene; Maka'ala Ka'auomoana; Robin Kaye, Michael Tulang
Public Present: (all for portions of meeting) Lenore Ohye, Neil Fujii and Nicholas Ing (State Water Resource Commission - CWRM); Allan Simeon (Hawai'i County DPW);
Staff Present: Kathy Ho, Deputy Attorney General; Leslie Segundo, Planner

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

With a quorum of all five members, Chairperson Terry convened the meeting at ~ 12:03 PM. All present were introduced. Newly arrived attendees were introduced as they came into Zoom meeting.

2. Review and approval of prior meeting minutes

Review and approval of minutes of December 1 were deferred to end of meeting and then deferred to next meeting because of lack of time.

3. Exemption list status (includes only items with action or discussion at meeting)

Re: CCH CWRM Department of Environmental Services list: It was noted that it was scheduled to be published in the *OEQC Environmental Notice* on January 8 for public comment.

Agency	Status	Next Action
ACTION LISTS		
Commission on Water Resources Management	<i>List was published for public comment in November 23 OEQC.</i>	15-day nominal comment period is complete. Mr. Segundo reported that both were on Sharepoint Site and that no comments have been received. After brief discussion, it was moved and seconded (Kaye/Ka'auomoana) to recommend that the Council concur with the list. Motion carried unanimously. Member Ka'auomoana expressed appreciation for effort involved and also noted that lists can evolve and should periodically be reviewed. Ms. Ohye said her agency takes Chapter 343 extremely seriously and will be sure to make any tweaks needed as moving forward.

Hawai'i DPW	<i>List was published for public comment in November 23 OEQC.</i>	15-day nominal comment period is complete. Mr. Segundo reported that both were on Sharepoint Site and that no comments have been received. He noted that the list is semi-organized by Division as well. After brief discussion, it was moved and seconded (Ka`aumoana/Kaye) to recommend that the Council concur with the list. Motion carried unanimously.
Honolulu P&R	<i>The City and County of Honolulu, Department of Parks and Recreation, informed us that they will not make a separate exemption list and will instead utilize the recently reorganized CCH Department of Design and Construction list, as it covers all possible park projects.</i>	Discussion of whether the list was appropriate and a sound approach. Questions on the relationship of P&R and DDC. Atty. General Ho said she would look at the rules and law. If they adopt a list they must use their own expertise gathered through their experience. Mr. Segundo says no matter what list you use, you need to produce individual Exemption Notices and file a List of Exemption Notices. He is concerned that an agency understand the process fully and not rely on other agencies. Member Thoene said that relying completely on DDC's list might not be sufficient to allow use of de minimis. It is unknown. The analysis of the list is important. Chair Terry asked if we should write back to them. Member Kaaumoana said so, a cautionary note to make sure they go through the process. Chair Terry said he would make a list of bullet points that are questions raised by this action. Invite Mr. Reid of P&R to attend and answer questions. If he does not attend, maybe then we write a letter with the questions. He requested Atty. General Ho to further research the legality. Member Thoene said this does not appear to be the way to get a concurred list. P&R said they determined that a list was "no longer required." Chair Terry agreed. Atty. General Ho said the Rules require that an agency adopt its own list, not adopt another. In the end, Chair Terry said he would make the bullet points.
LISTS IN ACTIVE REVIEW BY CHAIR ETC.		
Honolulu Facility Maintenance	<i>Initial list provided to Chair.</i>	NO ACTION TODAY – Chair Terry noted that he had provided initial comments to DHHL and was awaiting their review and response.
Department of Hawaiian Home Lands	<i>Initial list provided to Chair</i>	NO ACTION TODAY – Chair Terry noted that he had provided initial comments to DHHL and was awaiting their review and response.

4. Soliciting feedback from agencies on their experience publishing lists of exemption notices, including public contact and consultations.

Chair Terry reported that several agency representatives had called but no written responses would come in. He requested deferral of discussion until another meeting in which we have some responses.

5. Pros and cons of County-wide lists.

From the County of Maui, Michele McLean, AICP, Planning Director, and Jordan Hart, Deputy Director, joined to share their thoughts and take questions. She explained that although Planning is never a proposing agency, but often an approving agency. She inquired about the validity of their current list, since it is not conformant with the new Rules. We assured her that it was, that agencies have time to re-organize. She noted that having both individual agency lists and an umbrella County-wide list for infrequent users is helpful. Planning handles Chapter 343 docs more than other agencies, so both for the County-wide list and for Chapter 343 docs, Planning ends up being a critical player. She notes that the Planning Commission (PC) is asked to comment on the Draft EA, which makes a smoother process. There are some projects that have an EA but no PC involvement – e.g., 201H affordable housing. Planning still tries to circulate the Draft EA to the PC. Jordan Hart said he was interested in participating in the County-wide list process. Chair Terry and Members Thoene and Kaye explained the mechanics of how the process is going with other agencies to help the County of Maui's reorganization process. Member Ka`aumoana emphasized that we don't want agencies to struggle in the dark; we are here to help individual agencies or agencies all together. Member Kaye asked if Ms. McLean had regular conversations with other County's Planning Directors. She said yes, quite regularly, and sometimes include Daniel Orodener of LUC and Mary Alice Evans of OP from the State.

During the discussion of the DPW list, Member Ka`aumoana asked Mr. Simeon whether the County of Hawaii was interested in a County-wide list. He mentioned the various agencies that have lists. He said that if they did it, it would be a very long list and could be difficult, but was worth further consideration. He said that the former Managing Director was somewhat interested in a County-wide list because of his work in Planning and familiarity with Chapter 343. She noted that the requirement for a published List of Exemption Notices has brought a new diligence and rigor to agency exemption notices – in particular outside consultation.

6. Query from a public member on whether agency exemption lists require rule-making.

Member Thoene asked for clarification on where item came from. Member Ka`aumoana said that attorney Lance Collins and she are in periodic communication. He said that he had earlier talked with former Director Glenn about the need for rule-making in association with exemptions. Chair Terry said exactly what aspect of exemptions is he talking about? Process to make exemptions, exemption lists, or individual exemptions? Member Ka`aumoana said she would like to follow up with Lance and find out more specifics. All she knows is that Mr. Collins felt that Director Glenn had not addressed his concerns in the Rules. Member Thoene said by process of elimination the issue must be exemption lists, which she does not feel that this is appropriate for rule making. She said we definitely need more clarity. Member Ka`aumoana said she would connect Chair Terry and Mr. Collins via email, and perhaps at the next meeting we will have more specifics.

7. Next meeting date and agenda.

Expect to have meeting in February, probably again at 12:00 noon.

8. Adjournment.

Chair Terry adjourned the meeting at 12:52 PM