



STATE ENVIRONMENTAL COUNCIL

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

March 2, 2021, Meeting Minutes Draft
For Review at the April 6, 2021, Meeting
Exemption Committee Meeting
State of Hawai'i Environmental Council

Meeting Held on Tuesday, March 2, 2021, 11:30 AM - 1:00 PM
Via ZOOM videoconference

Members Present (4): Ron Terry (Chair); Puananionaona Thoene;
Robin Kaye, Mike Tulang; Absent: Maka'ala Ka'umoana;
Public Present: (all for portions of meeting) Nancy McPherson and Malia Cox (DHHL); Michael
O'Keefe (CCH- DES)
Staff Present: Leslie Segundo, Planner; Absent: Kathy Ho, Deputy Attorney General

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

With a quorum of four members, Chairperson Terry convened the meeting at ~ 11:32 PM. All present were introduced. Newly arrived attendees were introduced as they came into Zoom meeting.

2. Review and approval of prior meeting minutes

Minutes of December (Thoene/Kaye) and January 10 (Thoene/Kaye) meetings were approved with spelling errors corrected and, for December, a change in wording clarifying a point on the Judiciary item, indicating that, with the clarity offered by our committee's discussion, the Judiciary could and would inform consultants of the determination of Chapter 343 applicability on projects they were being awarded.

3. Exemption list status

Two agency lists were on the agenda: Department of Hawaiian Home Lands (DHHL) and City and County of Honolulu, Department of Environmental Services (DES).

The DHHL exemption list was being considered for recommendation to the EC for release for public comment. Chair reported that the initial list had been provided to him and that he reviewed and asked questions, which were answered with an list amended. Member Thoene noted how extensive the list is and how many activities DHHL engages in. She pointed out some wording issues ("superseded"). Various attendees noted a few typos. Motion to advance to EC with recommendation to release for public comment (Thoene/Kaye) was approved unanimously with no changes.

The DES list was opened up for discussion. Mr. O'Keefe was no longer on the call and there were no other representatives. Chair Terry asked Mr. Segundo if OEQC received any comments in response to publication of the list and he replied no. Member Thoene noted that for the list still did not include the standard disclaimer language about sensitive environments and cumulative impacts that we requested they include when we voted to advance it for public comment. Motion to advance to EC with recommendation for concurrence (Thoene/Kaye) was approved

unanimously, with a recommendation to EC that they condition concurrence on actual inclusion of the disclaimer.

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

Chair Terry reviewed the letter to agencies of December 14, 2020 and noted that a follow-up email had been sent in January. He then went over the eight basic questions that each agency was asked to consider, which asked if the new requirements prompted any change in their environmental analysis, about the amount of new work they required, about whether the public contacted them, and if they had any suggestions to change the process within or outside the scope of existing law and regulations. I received four responses, about 15 percent of the parties I sent to. Got substantive written responses from DLNR and CWRM. Trevor Fitzpatrick of DLNR passed letter around to all divisions. He reported that they all felt familiar and comfortable with the process. One division said the new process helped improve their methods. Ms. Thoene asked if there were any specifics on how they improved; Trevor had not said. He had not been contacted by the public on any exemptions. Trevor did say he would like some more guidance on de minimis. Chair Terry said that would be a good future homework task. Kaleo Manuel of CWRM sent a memo with similar statements. It helps them, they do not find it difficult, and they have not been contacted by the public, and they support the effort for more transparency. Chair Terry feels satisfied that it feels like we hit the mark and we have not created any major problems, although we may hear more and may need to tweak or change the process. Then he related a call from an agency official who felt that some people in their agency are doing it incorrectly, and are not trained properly, and are even doing it incorrectly on purpose. The agency director knows the problem and is overlooking it, and it has caused actual problems related to exemptions. Chair Terry found the conversation disturbing. One thing the official said is that the agency needs OEQC training and oversight, and not just random phone consultations. Member Thoene asked if this agency had received some training in the initial outreach. Chair Terry responded yes. She said that it is a matter to discuss with AG Ho. She asked Mr. Segundo if OEQC had received inquiries or conducted training. He said they answer questions but there is no capacity for training at the moment, especially cause of the lack of a full-time Director. Member Thoene asked if since these incidents, has the agency reached out for training. Chair Terry said it appeared not. She said it might be necessary for the agency official might need to come forward formally, perhaps to our agency. Member Kaye asked if Chair Terry had a relationship with the Director by which he could bring it up. He agreed that this is a question for the AG. Member Thoene said to mention it at the Environmental Council meeting. Member Kaye asked about Maui County feedback. Chair Terry said he hadn't received anything. Member Kaye said he would remind her. Ms. McPherson said that her agency would also like to follow-up and provide some responses to the question.

5. Next meeting date and agenda.

Expect to have meeting in April (currently scheduled for the 6th), 11:30 would be good time again.

6. Adjournment.

Chair Terry adjourned the meeting at ~12:42 PM.