



# STATE ENVIRONMENTAL ADVISORY COUNCIL

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April 2024 Meeting Minutes

Exemption Committee

State of Hawai'i Environmental Advisory Council

Meeting Held on Tuesday, April 2, 2024, 12:00 - 1:00 PM

Via ZOOM videoconference

*Governor*  
Josh Green, M.D.

*Lt. Governor*  
Sylvia Luke

*OPSD Interim Director*  
Mary Alice Evans

*Chairperson*  
Puananionaona Thoene

*Vice Chair*  
Mary Begier

*Members*  
Stephanie Dunbar-Co  
Dawn Hegger-Nordblom  
Ian Robin Kaye  
Theresita Kinnaman  
Michele Lefebvre  
Rachel Sprague  
Michael Tulang

Members Present (2): Michele Lefebvre (Chair); Puananionaona Thoene

Members Absent (1): Michael Tulang

Staff Present: Tom Eisen

Members of the Public Present: Cherie-Noelle Kaanana (DHHL), Jiaping Fouse (SFA), Jessica

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

With two of three members present, Michele Lefebvre convened the meeting at 12:01 PM. All present were introduced.

2. Exemption list status

Agency	Status	Next Action
LISTS		
Department of Hawaiian Homelands	Received 01/12/2024 <a href="#">Redline strikeout version</a> shows changes from 2021 list, <a href="#">clean version</a> shows all edits accepted	Committee review and discussion of list.
State of Hawaii, School Facilities Authority	Received 03/08/2024 <a href="#">The list</a> was first received <a href="#">Jan 2023</a> , discussed with SFA at 02/07/2023 committee meeting.	Committee review and discussion of list.

## Department of Hawaiian Home Lands

Regarding the general comments that Exemptions Committee provided to DHHL, Cherie explained that throughout 2023, there was significant internal collaboration within the Department of Hawaiian Home Lands (DHHL), with input from various divisions, to update the exemption list. This process involved gathering input from numerous individuals to ensure a comprehensive update. Cherie explained she is serving as the liaison for today's meeting and will provide concise answers to the committee's comments the best she can, but specific queries may need to be directed to the relevant division for a more thorough response. She will take any unanswered questions to other DHHL staff to address in a future meeting or via email. Cherie explained the revised list incorporates activities from other approved state agency

exemption lists and that DHHL is open to feedback and suggested changes, with the primary goal of streamlining the process for existing homestead lessees to make improvements to their lots. DHHL seeks to provide parity between its homestead lessees and private homeowners, viewing individual Homestead lots as the private possessions of lessees for their betterment. The detailed draft exemption list may not be necessary if DHHL and the committee view homestead leases similarly to private homeownerships, rather than as state leases for public purposes. The update includes increased specificity to provide future safeguards for environmental management and prevent misinterpretation of activities. This specificity is intended to reduce the level of discretion required by staff and offer clearer guidance for exemption determinations.

The committee acknowledged and thanked Cherie for the explanation and context for the list. Onaona explained that several of the committee's comments were related to the categorization of items into Part One versus Part Two exemptions. Part One items are administrative in nature, not likely to impact the environment significantly. If there is any question during the review process about whether something should be classified as Part One or Part Two, it typically leans toward being a Part Two exemption. Part Two exemptions require agencies to list all exemptions granted the prior month, and send those for publication to the Environmental Review Program (ERP) for publication. The committee explained there were also some redundant exemptions, which we can review.

- Part 1, Type 1: the numbering after 10 should be corrected to follow sequentially, rather than restarting at 1 again. DHHL will make this correction.
- Part 1, Type 1, Second Number 10 (should be 20): Cherie explained that a similar exemption is on DLNR's list, and it may help DHHL lessee's know these types of activities which could include restoration of loi or fish ponds. It is not necessary to move it, but it may be helpful to list to an example to explain what this could apply to.
- Part 1, Type 1, Second Number 16 (should be 26): Rather than cross-reference another agency's NEPA exemption categories, the committee recommends being explicit that DHHL is trying to capture hazard abatement or removal for individual homeowners. IF it's a large scale hazard abatement project, this type of action would fall under Part 2.
- Part 1, Type 2: DHHL explained the rationale with adding size limits was to help lessee's understand when exemptions should be applied.
- Part 1, Type 2 (1)(e): If installation of systems apply for individual homeowner this makes sense as a Part 1, but if installations are occurring during development of a larger subdivision this would be a Part 2. Since scale matters, maybe the list should be divided into exemptions that apply to individual lessee's and which apply to larger DHHL projects.

The group then discussed the fact that although this list was written with individual homeowner in mind, we shouldn't be thinking of individuals as agencies because it's not just the trigger of use of State lands – you also need discretionary approval for HRS Chapter 343 to apply. Tom further clarified that since there is this double screen to get into HRS Chapter 343 for private applicants (both the trigger and a discretionary consent), this process may not apply to the private homeowner. The committee asked if HUD has any discretionary process for granting funding that may meet the second requirement for 343. The group discussed if HUD has approval process when a lessee

performs work on their homes. Cherie described a preliminary environmental checklist that DHHL currently, but wasn't sure whether DHHL's review process was discretionary or ministerial approval.

Onaona recommended that DHHL consult with their AGs on this interpretation, but maybe the list should be reorganized or a statement made up front that clarifies that absent a discretionary approval, homeowners doing activities on their property are not subject to HRS Chapter 343. It is also possible that DHHL wants to track the improvements that homeowners conduct on their homes, outside the HRS Chapter 343. The committee suggests that DHHL consider developing an internal exemption list (or just a list of normal actions/activities) that lessee's take on their properties which DHHL can use to identify what would be we'd exempt for the individual homeowner and keep those activities separate from an exemption list that identifies the types of activities that DHHL itself is doing.

- Due to time constraints, the group jumped ahead to the Part 1, Type 10 exemption.
- Part 1, Type 10: Discuss with DHHL. Type 10 in the EIS rules applies to affordable housing, but as written this exemption would apply to all DHHL homestead development. Cherie explained that since the current Part 1, Type 10 exemption does not apply to DHHL, the attempt was to create an exemption that would. This may not be something that can be exempted in a list, but may require a legislative exemption. Cherie asked if the committee was saying that DHHL cannot pursue Type 10 exemptions, but other agencies can and do other agencies need legislative exemptions to exercise this or is it handled differently.

Onaona explained that the Part 10 exemption was specifically developed when the rules were revised to address affordable housing, and not all housing developments. Recently several bills have been introduced that would exempt all types of housing developments, and this is a controversial topic. This is not to say that DHHL cannot pursue this, but as written it is not limited to affordable housing. Onaona explained that while it is important to get beneficiaries homesteaded as quickly as possible and get those homes developed – it may be helpful to have an AG review whether this can be an exemption, and if it can be whether it is more appropriate for it to be a Part 2 exemption. It would be good for DHHL's AG to see if you can add an exemption category for housing generally.

Onaona asked if DHHL had pursued an exemption from HRS Chapter 343 through the legislature, because if this exemption type was in statute that would resolve this issue. Tom pointed out that since the rules state that it has to be consistent with County zoning, an exemption for all housing in DHHL's list may not be able to legally supersede the rules.

Cherie said she would go back to the larger DHHL group to discuss the idea of pulling out homeowner actions and also discuss further the Type 10 exemption. The committee is willing to discuss further on a smaller call, and will wait to hear from Cherie on the next step from DHHL.

- The list was first received in Jan 2023 and discussed with SFA at 02/07/2023 committee meeting.
- Michele identified a small typographical error, that some exemptions have periods after them and some do not. It's not necessary to change, but it might look cleaner.
- Michele went through and compared the edits requested by the committee in February, and all of those edits had been made. The list was also reorganized from the last review, so that all the Part 1 exemptions are listed first and Part 2 exemptions included second.
- Onaona asked about the addition of the Type 10 exemption. Jiaping explained that while most of their projects are capital improvement projects, they wanted to keep the possibility in for future teacher housing which is still in the planning stage at this point.
- Michele asked about Part 2, Type 7 (3) which is named infrastructure and utilities. Michele asked if number 3 should read "zoning for" infrastructure and utilities. Part 2, Type 3 covers the construction of those facilities.

The next step is for the committee to bring the list to the council to recommend that it be published for the 15-day comment period in The Environmental Notice. Then if any comments are received by the public, then the agency can make any adjustments to the list if needed and put the list up for concurrence to the full Council. Jiaping will make the edit to Part 2, Type 7, and we will add the item to the May meeting full Council agenda.

3. Review and approval of March 2024 meeting minutes.

Deferred to May meeting due to timing.

4. Adjournment.

The meeting was adjourned at 1:00 PM.