

Guidelines on Exemptions from Preparing Environmental Review Documents

Once an agency determines that an action "triggers" the EIS law, it must decide if the action is either:

- exempt from preparing a review document;
- will require an relatively brief review via an environmental assessment;
- or will require a full environmental impact statement.

Minor Projects Should be Declared Exempt

Certain activities are deemed minor or routine by the state or county agency that has oversight. The agency can declare the activity exempt from environmental review. There are 10 classes of exempt action under the EIS rules. The exempt classes of actions are summarized as follows:

1. Operation, repairs, or maintenance of existing facilities or topographical features.
2. Replacement or reconstruction of existing structures and facilities.
3. Construction and location of single, new, small facilities or structures.
4. Minor alterations in the conditions of land, water, or vegetation.
5. Basic data collection, research and experimental management.
6. Construction or placement of minor structures accessory to existing facilities.
7. Interior alterations.
8. Demolition of structures except historic structures.
9. Zoning variances except shoreline setback variances.
10. Continuing administrative activities such as purchasing supplies.

Examples of Exemptions

Here are some examples of actions usually declared exempt from environmental review. The exemption class is noted below in italics.

- o Equipment that is on state land (a trigger) requires an overhaul; this exemption represents *repair of existing facilities*.
- o Replacement of a drainage culvert, paid for by county funds (a trigger) is considered *replacement of existing structures*.
- o In the conservation district (a trigger) a homeowner wishes to add a porch to his home; this is *a minor accessory structure to an existing facility*.

Exclusions to the Exemptions

In some cases, an action that would usually be considered exempt can still require an environmental review. If an exempt action is proposed in a particularly sensitive environment, or if successive exempt actions could have a cumulative significant impact, the exempt status of the action would be invalid. Environmentally sensitive areas may include significant flood plains, wetlands, beaches and coastal areas, erosion-prone areas, geologically hazardous land, critical habitat and estuaries.

Agencies Must Consult and Keep Exemption Memos

The proposing or approving agency must consult with agencies or individuals having jurisdiction and expertise before declaring a project to be exempt from preparing an environmental assessment. The exemption declaration memo must be kept on file and made available for review by the public. See the following example of an exemption memo.

<p>[Departmental Letter Head]</p> <p><u>DECLARATION OF EXEMPTION</u></p> <p>from the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR</p> <p>Project Title:</p> <p>Project Number:</p> <p>Project Description:</p> <p>Consulted Parties:</p> <p>Exemption Class:</p> <p>Exempt Item Number:</p> <p>Exempt Item Description:</p> <p>Date of Agency Exemption List:</p> <p>I have considered the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR. I declare that this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.</p> <p>Signature of Director or delegate</p> <p>Date:</p> <p>Original: Agency file Copy: Project file</p>

Preparing an Agency Exemption List

Each agency, through time and experience, must develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any

amendments to the lists must be submitted to the council for review and concurrence. Agencies should review their exemption list every five years and revise it as appropriate. The following are the steps involved in finalizing a new or revised agency exemption list.

Steps in Preparing a New or Revised Agency Exemption List

1. Agency prepares draft exemption list. A review of previous exemption memos would be an excellent start to drafting the exemption list.
2. Agency submits the draft exemption list to the Environmental Council. *[Changes to the old list should be clearly distinguished (such as in Ramseyer format). Agency should also submit the exemption list on computer disk.]*
3. OEQC publishes draft exemption list in *The Environmental Notice*. This begins the 30 day review period for the public, agencies, OEQC and the Environmental Council. Council Members, in their individual capacities, may submit comments made during the 30-day review period.
4. Agency responds to comment letters received from the public and other agencies. Agency prepares pre-final exemption list package. This package includes:
 - a. The pre-final exemption list
 - b. Copies of comments received from the public or other agencies
 - c. Responses to the comments
5. Environmental Council's Exemption List Committee meets to discuss pre-final exemption list. *[Agency representative should be present to answer questions.]*
6. Full Environmental Council meets to review and concur on the exemption list. *[Agency representative should be present to answer questions. This meeting is usually scheduled immediately after the committee meeting.]*
7. Agency finalizes new exemption list and files the list with OEQC.

Council's Periodic Review of Agency Exemption Lists

In compliance with the EIS Rules, the Council will periodically review agency exemption lists that are on file. Based on the review, the Council will recommend that the affected agency revise its exemption list and submit the amended list in accordance with the steps shown above.

An Example of an Agency Exemption List

COMPREHENSIVE EXEMPTION LIST FOR THE COUNTY OF XXX
DEPARTMENT OF YYY
Date

According to section 11-200-8, Hawaii Revised Rules, the (agency) may declare exempt the following types of actions from the requirement to prepare an environmental assessment.

The (agency) shall not make exemption declarations when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant, in a particularly sensitive environment. Sensitive areas may include, but are not limited to significant historical, archaeological, and cultural sites, flood plains, wetlands, beaches, coastal areas, erosion-prone areas, geologically hazardous land, critical habitats, and estuaries.

EXEMPTION CLASS # 1: Operation, repairs, or maintenance of existing structures, facilities, equipment or topographic features involving negligible or no expansion or change of use beyond that previously existing:

1. Repair of roof
2. Painting of existing buildings

EXEMPTION CLASS #2: Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.

1. Reconstruct pavement
2. Replace office building

EXEMPTION CLASS # 3: Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to: (A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices, and restaurants designed for total occupant load of 20 persons or less per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extension to serve such structure or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements.

1. New district office building designed for less than 20 people

EXEMPTION CLASS #4: Minor alterations in the conditions of land, water, or vegetation.

1. Landscaping alongside roadways, around buildings, and within existing parks

EXEMPTION CLASS #5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

1. Biological and ecological study and survey
2. Chemical and bacteriological laboratory analysis

EXEMPTION CLASS # 6: Construction or replacement of minor structures accessory to existing facilities.

1. Plaques, sculptures, and statues
2. Trash enclosures

EXEMPTION CLASS # 7: Interior alterations involving things such as partitions, plumbing, and electrical conveyances.

1. Interior alterations and renovations to County buildings

EXEMPTION CLASS #8: Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S. C. Sec. 470, as amended, or Chapter 6E, HRS.

1. Demolition of County structures, except those structures located on any historic site

EXEMPTION CLASS #9: Zoning variances except shoreline setback variances.

1. Zoning variances of County properties except shoreline setback variances

EXEMPTION CLASS # 10: Continuing administrative activities including, but not limited to, purchase of supplies and personnel-related actions.

1. Buying motor vehicles

What the EIS Rules Say About Exemptions

EIS Rules, Section 11-200-8, Exempt classes of action.

(a) Chapter 343, HRS, states that a list of classes of actions shall be drawn up which, because they will probably have minimal or no significant effect on the environment, may be declared exempt by the proposing agency or approving agency from the preparation of an environmental assessment provided that agencies declaring an action exempt under this section shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption. Actions declared exempt from the preparation of an environmental assessment under this section are not exempt from complying with any other applicable statute or rule. The following list represents exempt classes of action:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same, including, but not limited to:

(A) Single-family residences less than 3,500 square feet not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of 20 persons or less per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource;

(6) Construction or placement of minor structures accessory to existing facilities;

(7) Interior alterations involving things such as partitions, plumbing, and electrical conveyances;

(8) Demolition of structures, except those structures located on any historic site as designated in the national register or Hawaii register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S.C. Sec. 470, as amended, or chapter 6E, HRS;

(9) Zoning variances except shoreline setback variances; and

(10) Continuing administrative activities including, but not limited to purchase of supplies and personnel-related actions.

(b) All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(c) Any agency, at any time, may request that a new exemption class be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, Environmental Council rules.

(d) Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council.

(e) Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in Chapter 343, HRS, and each agency shall produce the records for review upon request.

(f) In the event the governor declares a state of emergency, the governor may exempt any affected program or action from complying with this chapter.