

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 25, 2015

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Statewide

Request to Delegate Authority to the Chairperson to 1) Issue Findings of No Significant Impact for Environmental Assessments Submitted for State Land Dispositions and Projects on State Lands, and 2) Declare Exempt those Actions on State Lands that Are Included in the Department-wide Exemption List, Statewide

APPLICANT:

Department of Land and Natural Resources, Land Division

LEGAL REFERENCE:

Sections 26-15, 171-6, Hawaii Revised Statutes (“HRS”), as amended, and Hawaii Administrative Rules (HAR), Title 11, Chapter 200.

Hawaii Administrative Rules, §11-200-2 Definitions, under Environmental Impact Statements Rules, defines an Approving Agency as an agency that issues an approval prior to actual implementation of an action. Generally, for dispositions of State lands or projects on State lands under the jurisdiction of the Board of Land and Natural Resources, the Department of Land and Natural Resources will be the approving agency.

Pursuant to HRS §26-15 “the department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources . . . . The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.”

Further, HRS, §171-6, identifies the Powers of the Board: “Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads, of departments and the board of land and natural resources under chapter 26. In addition to the foregoing, the board may . . . delegate to the chairperson or

employees of the department of land and natural resources, subject to the Board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board."

REMARKS:

Delegation of Authority to Issue FONSIs

When Land Division brings State land disposition requests to the Board of Land and Natural Resources (Board) for consideration, each disposition triggers HRS Chapter 343, because it constitutes a use of State lands. However, some dispositions qualify for an exemption under HRS Chapter 343 and the Department-wide Exemption List (e.g., because the disposition will result in minimal or no expansion of an existing use). A copy of the Department-wide Exemption List dated June 5, 2015 is attached as Exhibit A.

In some cases, however, there is no exemption applicable to the requested disposition, and the applicant must prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), as applicable. In cases where an EA or EIS is required, the Board has authority to approve the land disposition in concept, with a condition that the applicant return to the Board once it has complied with HRS Chapter 343 for final approval of the lease or other disposition.

In addition, existing lessees occasionally undertake improvements of their leased premises that trigger HRS Chapter 343 and do not fall within an exemption under the statute. This can happen where a lessee intends to construct a new building or increase the height and density of an existing building. Similarly, the Department may undertake capital improvement projects on unencumbered lands that do not fit within an exemption, and an EA or EIS will be required for such projects as well.

In the past, Land Division's practice in both the new disposition and projects on State lands situations has been to review and process a Finding of No Significant Impact (FONSI) on an EA, where applicable, under the Chairperson's approval. However, the Department of the Attorney General recently advised staff that there is no delegation of authority from the Board to the Chairperson to make FONSI determinations. Accordingly, staff now seeks the necessary delegation of authority from the Board to the Chairperson to review EAs and make FONSI determinations, when appropriate. Such delegation of authority will facilitate Land Division's operations without compromising the transparency of the EA process under HRS Chapter 343.<sup>1</sup>

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<sup>1</sup> Pursuant to HRS Chapter 343, draft EAs are published in the Office of Environmental Quality Control's The Environmental Notice (accessible on OEQC's website) and the public can comment on the draft EA for a period of 30 days after publication. Final EAs are also published, and anyone dissatisfied with a FONSI determination can appeal the determination to the circuit courts.

### Delegation of Authority to Make Exemption Determinations

As noted above, Land Division generally brings State land disposition requests to the Board for consideration. These dispositions can include rights-of-entry, revocable permits, leases, easements, remnant sales, exchanges, and executive orders. When appropriate, staff will include an HRS Chapter 343 exemption notification with the proposed request. If the request is approved, the exemption notification becomes part of the official Board action taken on the request.

Occasionally, the Chairperson may declare an exemption for projects on unencumbered State lands, such as survey or data collection activities, renovation or demolition of structures, or the mitigation of hazardous conditions, that do not involve a land disposition and therefore do not come before the Board. Staff is including a recommendation below that authorizes the Chairperson to declare projects on State lands exempt when appropriate under the Department-wide Exemption List.

Additionally, the Board has delegated authority to the Chairperson to issue rights-of-entry in limited situations, such as where the requested land use does not have a commercial component and will not substantially interfere with the public's use of unencumbered lands. See Board action of June 14, 2013, Item D-11, an excerpt of which is attached as Exhibit B. The June 14, 2013 Board action impliedly gave the Chairperson authority to declare an HRS Chapter 343 exemption when appropriate. The staff recommendation below will expressly delegate authority to the Chairperson to declare exemptions for rights-of-entry that do not require Board approval under the June 14, 2013 policy.

Pursuant to an agreement made February 2012 between the Department and Office of Environmental Quality Control ("OEQC"), the Department reports quarterly to the OEQC on actions that the Board or its Chairperson determines to be exempt from HRS Chapter 343. All of the exemption notifications affecting State lands under Land Division's management are included in this list.

### RECOMMENDATION:

That the Board:

- 1) Delegate authority to the Chairperson to issue Findings of No Significant Impact for environmental assessments submitted for State land dispositions or projects on State lands; and

- 2) Delegate authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Respectfully Submitted,



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Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson



EXEMPTION LIST FOR THE  
DEPARTMENT OF LAND AND NATURAL RESOURCES

Approved by the Environmental Council on June 5, 2015

GENERAL NOTES

This exemption list for the Department of Land and Natural Resources ("Department" or "DLNR") was reviewed and concurred on by the Environmental Council on June 5, 2015. This list supersedes all previous exemption lists of the DLNR and its Divisions, including the following:

- (1) December 4, 1991 DLNR Department-wide list
- (2) January 19, 1976 DLNR Division of Fish and Game list
- (3) September 19, 1984 DLNR Division of Water and Land Development list
- (4) April 28, 1986 DLNR Division of Land Management list
- (5) December 4, 1991 DLNR State Parks list
- (6) March, 1995 DLNR Division of Boating and Ocean Recreation list
- (7) June 12, 2008 DLNR Division of Forestry and Wildlife list
- (8) July 13, 2011 DLNR additions to Department-wide list
- (9) May 17, 2012 DLNR addition to Department-wide list

Hawaii Revised Statutes ("Haw. Rev. Stat.") Chapter 343 authorizes the Environmental Council to establish procedures to exempt specific types of action from the preparation of an environmental assessment because the action will have minimal or no significant effect on the environment. The Department, through time and experience, developed the following exemption list identifying particular activities that fall within the exempt classes described in Hawaii Administrative Rules ("HAR") §11-200-8. Pursuant to HAR §11-200-8(b), these exemptions 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.

**Exemption Class 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.*

1. Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources.
2. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.

3. Removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain state lands and waters in a safe condition.
4. Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Division procedures.
5. Rescue of threatened or endangered species.
6. Maintenance dredging of small quantities of material from existing launching ramps, navigation channels, and berthing areas, not to exceed their originally designed depths and as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 35 (Maintenance Dredging of Basins), with disposal of dredged material at approved landfill sites or the placement of sand on adjacent areas in accordance with Haw. Rev. Stat. § 205A-44.
7. Operation, repair and maintenance, of existing Department structures and facilities, including baseyards, offices, cabins, sheds, and fencing.
8. Repair or maintenance of existing signs, buoys, markers, and aids to navigation.
9. Operation, repair and maintenance of existing fisheries facilities, involving capture, containment, sustaining, experimentation, and husbandry of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.
10. Operation, repair and maintenance of existing fish aggregating devices and artificial reefs.
11. Operation, repair and maintenance of existing nurseries, arboreta, and captive propagation facilities.
12. Operation, repair and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 3 (Maintenance).
13. Operation, repair and maintenance of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
14. Operation, repair or maintenance of existing fire tool caches, fuel breaks, and helispots.
15. Minor alterations and repairs required to bring existing buildings, structures, facilities, and equipment into compliance with current building codes and applicable federal and state regulations.
16. Repair and maintenance of existing bollards, walls, gates, fences, lighting, and other similar items necessary for the security or continued operation of a facility or structure.

17. Repair and maintenance of existing utilities and drainage systems.
18. Repairs and modifications to existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that modifications that expand the capacity or geographical service area of existing facilities shall not be exempt.
19. Repairs to existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
20. Repairs necessary to maintain existing electrical, telemetry or communications systems and the structures that house or protect them.
21. Repair and maintenance of existing state owned bridges and flumes.
22. Repair and maintenance of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
23. Repair and maintenance of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats.
24. Repair, modify, and clear existing drainageways and waterways to maintain in safe working condition.
25. Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures.
26. Repair, maintenance, or relining of conveyance structures associated with existing dam or reservoir structures.
27. Repair and maintenance work on or the breaching of existing dam or reservoir structures of an emergency nature due to storm, earthquake, or other natural disaster or other forms of damage, latent defects in construction, and conditions not previously observed during routine inspections that results in a condition that poses a significant hazard to public safety and the environment. The work necessary to mitigate the danger posed to the environment and public safety includes emergency clearing and grading for breaching or stabilization work, installation and operation of siphons and pumping systems to discharge water from the reservoir, construction of seepage drains, and the construction of seepage monitoring berms.
28. Repair and maintenance of historic and archaeological sites to maintain the integrity of

historic structures, archaeological features and sites.

29. Maintenance of existing boardwalks, trails and unpaved roads.

30. Maintenance of state-owned right-of-way other than public right-of-ways.

31. Repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching).

32. Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation.

33. Maintenance of state lands and waters to remove weeds, brushes, grass and other unwanted vegetation.

34. Routine pruning, trimming, thinning, and removal of trees, excluding commercial logging.

35. Termite and pest control treatment using Environmental Protection Agency and State Department of Agriculture approved pesticides under the supervision of certified applicators provided that treatment is limited to existing structures, facilities, or equipment.

36. Repair and maintenance of existing machinery, equipment, vessels, and vehicles used to support Departmental operations.

37. Clearing, grading, and grubbing, for which grading permits are not required.

38. Removal and disposal of rubbish and debris from state lands and waters.

39. Removal of silt, debris, sand and limu from above high water mark, from river and stream mouths, and from boat launching ramps.

40. Clearing of shoreline areas and submerged lands of non-natural hazardous objects and materials such as sunken/derelict craft remnants, oil spill residues, etc.

41. Storage of construction equipment and materials for a limited period of time as necessary to support planned or existing construction or repair.

42. Actions that are intended to maintain or support the sustainability of those natural resources under the jurisdiction of the Department, including law enforcement, regulation compliance, resources and environmental monitoring, debris or property removal, and other administrative and management measures.

43. Transfer of management authority over state-owned land, such as setting aside of state lands

to or from other government agencies through a Governor's executive order.

44. Transfer of title to land.

45. Acquisition of land or interests in land.

46. Creation or termination of easement, covenants, or other rights in structures or land.

47. Leases of state land involving negligible or no expansion or change of use beyond that previously existing.

48. Subdivision or consolidation of lots not previously subdivided.

49. The award of grants under Haw. Rev. Stat. Chapter 173A provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.

50. Conduct public meetings and hearings for the purpose of the collection and dissemination of public information, to discuss matters under the jurisdiction of the Department, to develop administrative rules, guidelines or other public policy, and other similar purposes.

51. Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.

52. Use of state lands and waters by those exercising traditional and customary practices for minor non-commercial purposes or for the gaining of traditional ecological knowledge.

53. Granting to a person the privilege to conduct operations involving the provision of goods, wares, merchandise, or services to the general public including, but not limited to, tours, food and beverage operations, retail operations, rental operations, or communications and telecommunications services in or on an existing building, facility, or area.

### **Exemption Class 2**

*Replacement or reconstruction of existing structure 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. Replacement or reconstruction of existing Department structures and facilities, including baseyards, offices, cabins, sheds, and fencing.

2. Replacement or reconstruction of existing signs, markers, buoys, or aids to navigation.

3. Replacement or reconstruction of existing fisheries facilities.

4. Replacement or reconstruction of fish aggregating devices or artificial reefs.
5. Replacement or reconstruction of existing nurseries, arboreta, and captive propagation facilities.
6. Replacement or reconstruction of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, not to exceed the footprint of the existing facility, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 3 (Maintenance).
7. Replacement or reconstruction of existing recreational facilities, such as campsites, cabins, shelters, and other similar structures, and the appurtenant support facilities and structures.
8. Replacement or reconstruction of existing bollards, walls, gates, fences, lighting and other similar items necessary for the security or continued operation of a facility or structure.
9. Minor upgrades or replacement of existing utilities and drainage systems on state lands. Drainage improvements will generally consist of the installation of culverts, pipes, and construction of gutters or other similar infrastructure where minor flooding occurs.
10. Replacement of cesspools with individual wastewater systems located generally on the same site with substantially the same purpose and capacity.
11. Replacement or reconstruction of existing sewage and water pumping stations and treatment facilities to maintain established codes and standards, provided that reconstructions that expand the capacity or geographical service area of existing facilities shall not be exempt.
12. Replacement or reconstruction of existing ground water, surface water, or climatological monitoring equipment, and other similar monitoring and data collection equipment, and the structures that house or protect them.
13. Replacement or reconstruction of existing electrical, telemetry, or communications systems and the structures that house or protect them.
14. Replacement or reconstruction of existing state-owned bridges and flumes.
15. Replacement or reconstruction of existing water diversions and intake structures, including valves, gates, intake boxes, and lines, in order to collect or improve the collection at the location of the existing water source diversion works.
16. Replacement or reconstruction of existing water tanks, water catchment basins, water units, pumps and controls, pipes, channels, dikes, and moats, in a size commensurate with existing system and source capacities and requirements to provide service in existing water systems.

17. Replacement or reconstruction of existing drainageways and waterways.
18. Replacement or reconstruction of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway expansion or improvements, and spillway reconstruction to mitigate possible failures.
19. Rehabilitation and restoration of existing structures and features at historic and archaeological sites.
20. Replacement or reconstruction of existing boardwalks, trails, and unpaved roads.
21. Replacement or reconstruction of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps.
22. Replacement or renovation of existing landscaping or vegetation.
23. Re-vegetate burned or eroded areas to encourage the succession of selected plant species to prevent soil erosion and promote the goals of the Department.
24. Replacement or reconstruction of existing machinery, equipment, vessels, or vehicles used to support Departmental operations.

### **Exemption Class 3**

*Construction and location of single new, small facilities or structures and the alteration and modification of 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 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 twenty persons or less, 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; and (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.*

1. Fences around or to manage rare, threatened or endangered plants, 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. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use.

2. Construction and location of new, small facilities or structures necessary to support or enhance natural resource management actions on state lands and waters that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species' habitat, such as nurseries, helispots, and other similar structures.
3. Construction and location of new, small facilities or structures necessary to support or enhance safe and effective management of state lands and waters, such as baseyards, caretaker's residences, work cabins and shelters, utility sheds, storage buildings, sanitation facilities, plant nurseries, trash containers, fire caches, radio repeaters, tollbooths, gates, installation of signage, safety enhancements (e.g., handrails, lighting), and other similar structures.
4. Construction and location of new, small facilities or structures necessary to support or enhance public recreational use of state lands and waters, such as comfort stations and related individual wastewater disposal systems, sanitation facilities, outdoor showers, signage, interpretive kiosks, viewing platforms, pavilions, shelters, tables, grills, cabins, campgrounds, lifeguard stations, improvements necessary for compliance with the Americans with Disabilities Act, and other similar structures.
5. Construction on state lands of roadways with distances less than 1,000 yards (excluding access roads) and walkways.
6. Construction of off-street parking facilities having capacities of up to 25 passenger vehicle stalls, on state lands.
7. Improvement of existing trails and construction or improvement of boardwalks on existing trails for recreation, education, and management.
8. Water catchment systems with less than 20,000 gallon capacity and above ground, non-destructive irrigation systems.
9. Construction of security features, including fencing, gates, cameras, lighting, and other similar items.
10. Installation of weatherports and radio repeaters and other similar communications equipment and related infrastructure for natural resource management purposes or for emergency response.
11. Installation of automatic fish feeding devices in reservoirs, ponds, or other impoundments, rearing pens for cage culture of fishes and aquatic organisms, and fish aggregating devices within pre-approved sites.
12. Installation of marine vessel sewage pump out stations and supporting facilities.
13. 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 this equipment.

14. Construction of drainage swales and structures and other similar surface runoff management techniques with minimal or no effect on the environment.

15. Utility service connection and installation.

16. Construction of irrigation ditches, flumes and structures having less than 200 gpm.

17. Installation and removal of irrigation systems.

18. Construction of Civil Defense emergency system facilities.

19. Re-burial of previously identified or inadvertently discovered remains over fifty (50) years old, with Department and landowner approval and according to guidelines provided in HAR Chapter 13-300.

#### **Exemption Class 4**

*Minor alteration in the conditions of land, water, or vegetation.*

1. Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent further damage from occurring and to restore the topographical features and biological resources.
2. Construction of walkways and pathways and installation of guard rails, handrails, ramps, and other similar items.
3. Improvement of existing trails and construction or improvement of boardwalks on existing trails for recreation, education, and management.
4. Improvements of previously existing graded parking and storage yard areas, including paving, infilling, grading and compacting.
5. Establishment of helispots for fire control, natural resource management, and rescue.
6. Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions.
7. Clearing of fuel breaks and other similar fire pre-suppression actions to reduce fire potential and minimize fire severity.
8. Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides in conformance with label instructions, distribution of biocontrol agents

approved by the State of Hawaii, and other approved methods.

9. Vegetation clearing and removal work on or near the embankment, spillway, or outlet works of a dam facility of vegetation that could pose a threat to the embankment or impede inspection of the facility.

10. Vegetation clearing and grading work to stabilize existing slopes and mitigate rockfall, including work required to mobilize equipment.

11. Controlled burning of vegetation less than ten (10) acres in size to improve wildlife habitat where non-native vegetative cover constitutes greater than 75% of the area.

12. Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, native wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not apply to vegetation that is likely to be invasive or for tree plantings for which harvesting is planned or is reasonably foreseeable.

13. Gathering plant seed, cuttings, or other vegetative matter for propagation.

14. Minor ground adjustments (e.g., grading, grubbing, cutting, or filling) that do not require grading permits.

15. Minor alterations in state waters, including restoration of native species and control of invasive weeds, algae, invertebrates, fishes or other invasive aquatic organisms.

16. Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; distribution of biocontrol agents approved by the state of Hawaii; and other approved methods.

17. Management of surface water runoff, including installation of minor drainage ditches and implementation of other stormwater best management practices and low impact development techniques (e.g., bioretention areas, permeable pavers, etc.).

18. Minor alteration of retaining walls.

19. Removal or filling of unused or unusable cesspools pursuant to federal and state regulations.

20. Beach restoration, sand dune restoration, and sand pushing activities of less than 10,000 cubic yards of beach quality sand.

21. Construction, in accordance with established state standards, required to seal production, monitoring, and geothermal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of

disrepair that continued use is impractical or unsafe.

22. Natural resource management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats, such as removal of introduced vegetation, reintroduction of native species into their historic range, or construction of fencing. This exemption would not apply to biocontrol of invasive species or commercial logging.

### **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. Conduct surveys or collect data on existing environmental conditions (e.g, noise, air quality, water flow, water quality, etc.).
2. Non-destructive data collection and inventory, including field, aerial and satellite surveying and mapping.
3. Conduct topographic, sounding, wave, littoral transport, bathymetric, and location surveys.
4. Periodic collection of data by the State Office of Conservation and Coastal Lands ("OCCL") for the purpose of monitoring existing state beaches to include identification, mapping, and analysis of offshore sand deposits, bathymetry mapping, sub-bottom profiling (to measure the thickness of existing sand deposits), vibracore sampling (to conduct grain size analysis to determine suitability of a sand source for beach restoration), deposit depth probing (jet probing of sand depths), and marine biological and water quality surveys to identify sensitive resources or areas of concern.
5. Installation of climatological stations and equipment and streamflow gaging stations and equipment, and other similar equipment necessary to measure environmental factors and collect data.
6. Construct or rehabilitate groundwater monitoring stations in accordance with established state standards, install groundwater monitoring equipment, and collect data.
7. Conduct subsurface investigations (borings) provided the average surface area disturbed is less than one square foot and the implementing division consults with the State Historic Preservation Division on exempting such borings or investigations.
8. Construction of test wells with casing diameter of not more than 12 inches to provide ground truth for water resources investigations, the suggested size will enable the aquifer to be tested for its physical, chemical, biological qualities, as well as providing a pumping test to determine the specific capacity of the aquifer. Test wells shall not be developed to serve water unless an EIS or

negative declaration is prepared.

9. Installation of staff gages, water monitoring and reporting equipment at dam facilities and appurtenant works to include trenching work and construction of supporting features such as equipment sheds, transmitting devices, solar panels, and minimal site grading and improvements for the safe operations and installation of these features.

10. Phase II Investigation work on a dam or reservoir, including soil sampling and drilling, water monitoring, and/or test pit excavations. This may include clearing or construction of site improvements needed to mobilize equipment or personnel to accomplish the task.

11. Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.

12. Conduct terrestrial and marine archaeological surveys.

13. Research or experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species' habitat.

14. Implanting transponders and affixing tags, transmitters, markers, or other similar devices to birds, mammals, invertebrates, or aquatic organisms to record movement, longevity, growth, distribution, behavior, and other activities; taking disease or blood samples from birds, mammals, invertebrates, or aquatic organisms; and placing remote monitoring devices (to determine animal movement), cameras, equipment and feeders.

15. Game and non-game wildlife surveys, vegetation and rare plant surveys, aquatic life surveys, inventory studies, new transect lines, photographing, recording, sampling, collection, culture, and captive propagation.

16. Captive propagation of birds, mammals, invertebrates, or aquatic organisms; cultivation of plants. Housing, care, feeding, veterinarian examination, breeding (pairing, hatching, brooding, fledgling, rearing), cross fostering, double clutching nests, and experimental studies of native species (including those which are rare, threatened or endangered), game birds and game mammals.

17. The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.

18. Research or experimental wildlife and plant management actions, including controlled grazing or burning as a management tool and outplanting.

19. Research or experimental management actions to identify, monitor, control, or eradicate introduced species.
20. Conduct assessment, survey, and removal of unexploded ordnance.
21. Appraisal of real property for land exchange proposals, determination of acquisition/sales price, rental establishment or the establishment of royalties.
22. Conduct planning and feasibility studies.
23. Permission to enter state lands for the purpose of conducting those activities listed above.

**Exemption Class 6**

*Construction or placement of minor structures accessory to existing facilities.*

1. Construction, placement or installation of signage, pavement markings, buoys, or other similar structures.
2. Placement of aerators for increasing the dissolved oxygen content for fish populations in reservoirs, nurseries, ponds.
3. Installation and operation of automatic feeding devices in reservoirs, ponds or other impoundments.
4. Installation of glare screens, bollards, guard rails, vehicular access barriers, and other similar appurtenances designed to protect the public on state lands.
5. Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities on state lands.
6. Construction or placement of lighting systems for street lights, facility lighting, and security lighting.
7. Alarm systems, camera systems, and similar surveillance items on state lands for security and safety purposes.
8. Construction of walls, fencing, or screens around buildings, structures, facilities, or equipment on state lands.
9. Construction of interior roadways, driveways, parking areas, sidewalks, pathways, aisles, curbs, gutters, and other similar items on state lands.

10. Water tanks with less than 20,000 gallon capacity.
11. Water catchment systems, lines, and faucets.
12. Placement or construction of gas tanks for fueling cooking stoves installed in or near existing structures.
13. Placement or construction of accessory structures such as utility sheds, storage or maintenance sheds, office trailers, trash enclosures, comfort stations or sanitation facilities and related individual wastewater disposal systems, bus shelters, pavilions or picnic shelters, parking and fee collection facilities, checking stations, interpretive kiosks and displays, dock boxes, mooring cleats, bumpers, and mooring buoys, blocks and piles, and other similar structures accessory to existing facilities on state lands and waters.
14. Hurricane or wind protection devices and other minor structural accessories that will facilitate resistance to damaging effects of natural hazards on state lands.
15. Rearing pens for cage culture of various freshwater, estuarine, and marine fishes, invertebrates, and other aquatic organisms.
16. Installation of weatherports and radio repeaters for natural resource management purposes or for emergency response.

**Exemption Class 7**

*Interior alterations involving things such as partitions, plumbing, and electrical conveyances.*

1. Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include:
  - a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems;
  - b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations;
  - c. renovations that will result in energy or other operational/cost savings; or
  - d. other similar interior alterations.
2. Expand utilities as need dictates in existing structures.
3. Construction required to maintain or upgrade existing utilities.

**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, or Chapter 6E, Hawaii Revised Statutes.*

1. Construction, in accordance with established state standards, required to seal wells, that have been permanently discontinued, that are unsealed, leaking, polluting, deteriorating in quality, uncontrollable, buried, or that are in such a state of disrepair that continued use is impractical or unsafe.
2. Demolition and removal of existing structures, facilities, utilities, and other improvements on state lands, 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, 16 U.S.C §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.
3. Demolition and removal of experimental devices or other equipment, when such devices or equipment are no longer used or needed.
4. Demolition and removal of abandoned private property from state lands.
5. Demolition and removal of unauthorized improvements from state property.

**Exemption Class 9**

*Zoning variances except shoreline setback variances.*

1. Application for zoning variance for use of state lands disposed to private parties or to governmental agencies, except shoreline setback variances.

**Exemption Class 10**

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

1. Purchase of supplies, equipment, materials, motor vehicles, boats, and services.
2. Contracts for small purchases, professional services, competitive sealed proposals, competitive sealed bidding, or purchase of goods and services which are exempt from Haw. Rev. Stat. Chapter 103D.
3. Requests for federal, state, county or private assistance grants to support ongoing operations or implement programs of the Department.
4. Personnel-related actions.
5. Training, environmental interpretation, public safety efforts and other educational activities.

**AMENDED**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 14, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Statewide

Amend Prior Board Action of September 28, 2001, Item D-4, as amended, Delegation of Authority to Issue Right-of-Entry Permits on Unencumbered State Lands. The Purpose of the Amendment is to Declare an Exemption from the Requirements of Hawaii Revised Statutes Chapter 343 on Environmental Assessments for the Wiki Permits System, Restrict to the Chairperson the Delegation of Authority to Issue Right-of-Entry Permits, Specify the Circumstances under which Right-of-Entry Permits onto Unencumbered State Lands will be Issued by the Board and the Chairperson, Establish a Schedule of Fees Applicable to the Processing of Late Requests for Right-of-Entry Permits, and Implement a Procedure for the Issuance of After-the-Fact Right-of-Entry Permits under Special Circumstances.

BACKGROUND:

On September 28, 2001, under agenda item D-4, as amended, the Board of Land and Natural Resources adopted an amended policy regarding the issuance of right-of-entry permits onto unencumbered State lands. A copy of the prior Board action is attached as Exhibit 1.

In short, this action set the minimum rent to be charged for right-of-entry permits, and delegated to the Chairperson, the Land Division Administrator, the district land agents and the supervising land agent different levels of authority to issue permits based on factors such as the duration of the permit and the land use designation of the area it covered. For example, the Board gave the Chairperson authority to issue permits of any duration regardless of the land use designation, while the district land agents could only issue permits of up to one month and could not issue permits in the conservation district. See Exhibit 1, pages 4-5, for additional details.

REMARKS:

The prior Board action of September 28, 2001 contains an explanation of why right-of-

APPROVED <sup>as amended</sup> BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
June 14, 2013 JD.

D-11

**EXHIBIT B**

entry permits are used, and much of that discussion remains relevant today. Individuals, organizations, and business entities frequently request temporary use of State unencumbered lands for special events and the best way to balance these requests with the general public's right to use the lands is a permitting system that describes the use and includes an obligation on the permittee's part to indemnify the State and obtain liability insurance naming the State as an additional insured. However, since the Board's adoption of the amended policy in 2001, there have been several developments that require staff to return to the Board with a request to update the policy.

First, based on the 2001 delegated authority, Land Division implemented an automated permitting system called Wiki Permits in November 2008 to cover a limited category of commercial events on unencumbered State beaches, including weddings, vow renewals, christenings, etc.<sup>1</sup> Wiki Permits allows a person who obtains a permit to hold an event on a beach for a fee, but limits the duration of the permit to two hours, does not give the permittee exclusive use of any permitted area, and substantially restricts the kinds of objects that can be brought onto the beach.<sup>2</sup> Wiki Permits is frequently used by wedding coordinators and others. Approximately 8,300 permits were pulled on Wiki Permits in 2012 alone. Each permit bears the Chairperson's electronic signature.

Second, in 2009, the former Chairperson implemented a department-wide procedure requiring that a separate exemption notification be prepared and signed by the Chairperson for each project or land use falling within the purview of Hawaii Revised Statutes Chapter 343 on Environmental Assessments. This procedure required exemption notifications to be generated for each right-of-entry permit. Because the Chairperson had to sign the exemption notification, it made sense for her/him to sign the right-of-entry permit at the same time. Additionally, having the Chairperson sign each right-of-entry permit ensures that the permits are issued uniformly in each district and contain the necessary protections of the State's interests. As a result, the Chairperson currently signs

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1 These events are considered commercial because some participant, whether the officiant, wedding planner or photographer, is generally receiving compensation for performing services. The definition of "commercial activity" Under Hawaii Administrative Rules Sections 13-221-2 and -35 casts a wide net. Where a person establishes that there is no commercial aspect to his or her event, the person can obtain an acknowledgment letter from Land Division that the event is not commercial, thereby obviating the need for a permit under the Wiki Permits system. However, the person is bound by the same restrictions applicable to Wiki Permit permittees as to items allowed to be placed on the beach in conjunction with the event. A person who wants to hold a non-commercial event on the beach that requires the placement of temporary structures or similar items would need to obtain a regular right-of-entry permit from the Board as discussed below.

2 Permitted objects include unamplified musical instruments, a limited number of chairs as strictly necessary for the support of elderly, infirm or disabled persons attending the event, and a small podium or cake stand, not to exceed three square feet in size.

every right-of-entry permit issued for unencumbered lands. Staff therefore believes that there is no longer a need for the Administrator, supervising land agent or district land agents to have delegated authority to sign the permits.

Third, also in 2009, after the implementation of the Wiki Permits system, the Department of the Attorney General (DAG) required staff to take requests for commercial uses of public beaches, such as fireworks displays, to the Board for approval. Prior to this time, the Chairperson or district land agents had been issuing permits for these displays under the 2001 delegated authority. Fireworks displays are commercial use of unencumbered lands, but require the temporary placement of firing racks and other equipment on the beach and thus are not eligible under the Wiki Permits system. Staff now brings fireworks display requests to the Board for approval of each show.<sup>3</sup>

Fourth, occasionally an applicant for temporary commercial use of unencumbered lands approaches staff with a late request for a right-of-entry, often because of a last-minute request from a customer or client to retain applicant's services. Sometimes staff is able to expedite the request and get it on the next Board agenda in advance of the requested event date. But sometimes the request comes in so late that it is not possible to get the request to the Board for consideration prior to the event.

#### Proposed Changes in Policy

Staff is including a recommendation below that the Board affirm and ratify its 2001 policy on the issuance of right-of-entry permits, with the following changes:

First, amend the written policy to clarify that the issuance of right-of-entry permits, whether by the Board or the Chairperson, is subject to HRS Chapter 343, Environmental Assessments. An exemption notification is to be prepared for the Chairperson's signature for each event, when appropriate. When an event is not eligible to receive an exemption notification, it will not be permitted without full compliance with HRS Chapter 343. As for permits issued through the Wiki Permits system, staff is attaching a statewide notification of exemption for the Wiki Permits program. See Exhibit 2.

Second, amend the delegation of authority to provide that the Chairperson is to sign all right-of-entry permits.

Third, among the unencumbered lands Land Division manages are many of the State's beaches, which require special attention. These lands are highly valued recreational resources. Accordingly, with the exception of permits issued under the Wiki Permits

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<sup>3</sup> For a period of a little more two years from late 2009 to early 2012, the Board issued revocable permits for fireworks displays. This procedure involved an inordinate amount of time and paperwork for each event. In 2012, DAG concurred in the use of Board-approved right-of-entry permits for fireworks shows.

system and the film permitting system,<sup>4</sup> staff is recommending all requests for right-of-entry for commercial use of unencumbered lands be brought to the Board for review and approval.<sup>5</sup> Further, all non-commercial events that occupy a specified area and have the potential to substantially interfere with the general public's recreational use of unencumbered lands shall be brought to the Board for review and approval.<sup>6</sup>

Fourth, in cases where the request to hold an event (whether commercial or non-commercial) is received too late to bring to the Board for consideration but the proposed use is routine and similar uses have been made at the same location in the recent past, staff is proposing that the Board allow the Chairperson to issue a right-of-entry permit at his discretion, provided that an after-the-fact approval for the permit is sought at the next available Board meeting. Additionally, staff is recommending that surcharges be imposed for late requests for rights-of-entry on an escalating basis. A request will be deemed timely if it is received at least four weeks prior to the date of the event. Staff is proposing that additional fees be assessed for late requests as follows:

<b>Date Request Received</b>	<b>Surcharge</b>
More than four weeks in advance of event	No additional charge
In the fourth week before the event	\$250
In the third week before the event	\$500
In the second before the event	\$1,000
One week or less before the event	\$1,000 plus 3% of the contract amount the permittee is receiving for providing its services at the event (for commercial uses)

Under this schedule, for an event desired to be held on Saturday, June 29, a timely request (meaning no surcharges incurred) would be one received prior to the close of business

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4 In prior actions, the Board adopted a specific policy on commercial filming on lands under its jurisdiction. See Board action of January 8, 1988, Item H-4, which approved a Memorandum of Agreement (MOA) between DLNR and the Department of Business, Economic Development and Tourism regarding film permit procedures (executed in September 1993). Nothing in the present submittal is intended to modify the Board's policy on film permits or the MOA.

5 Examples of covered events include fireworks displays and events that require the placement of temporary stages or other structures or equipment on the beach.

6 Examples of covered events include canoe races, surf meets, and sandcastle building contests, where there is no commercial element to the events. Under this approach, the Chairperson would retain authority to issue right-of-entry permits for limited uses of the beach that do not require the occupancy of a specific area. One example is a request for a manual beach clean-up by a community organization. If the event involves a group of volunteers walking the beach and collecting rubbish by hand, with no temporary shelters or other structures required, staff believes the Chairperson should have discretion to issue a right-of-entry permit for this type of event.

(COB) on Friday, May 31. A request received after COB, Friday, May 31 up to COB on Friday, June 7, is received in the fourth week before the event. A request received after COB, Friday, June 7 up to COB on Friday, June 14, is received in the third week before the event. A request received after COB, Friday, June 14 up to COB on Friday, June 21, is received in the second week before the event. A request received after COB, Friday, June 21 up to COB on Friday, June 28, is received one week or less before the event. A request that is sent electronically on a holiday or weekend will be deemed to be received on the next business day. A request received after the event will be treated as an unauthorized use of State lands and an enforcement action will be brought to the Board with a recommendation for a fine.

Again, such late or after-the-fact requests will be at the Chairperson's discretion.

RECOMMENDATION: That the Board:

- A. Amend its prior action of September 28, 2001, Item D-4, as amended, by deleting the Recommendation section in its entirety and replacing it with the following:

RECOMMENDATION: That the Board:

1. Rescind its prior Board actions of June 24, 1983 (agenda item F-9) and of June 14, 1991 (agenda item F-11).
2. Find that the issuance of right-of-entry permits, whether by the Board or the Chairperson, is subject to HRS Chapter 343, Environmental Assessments. An exemption notification shall be prepared for the Chairperson's signature for each event, when appropriate. When an event is not eligible to receive an exemption notification, it will not be permitted without full compliance with HRS Chapter 343.
3. Declare that, after considering the potential effects of the Wiki Permits system as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the Wiki Permits system and the permits issued thereunder will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment.
4. Delegate to the Chairperson of the Board of Land and Natural Resources the authority to sign right-of-entry permits on behalf of the Board, provided, however:
  - a. With the exception of Wiki Permits and film permits issued by the Film Office of the Department of Business, Economic Development and Tourism, all requests for rights-of-entry for commercial use of unencumbered lands shall be presented to the Board for review and approval at a public meeting. Wiki Permits and film permits will continue

to be issued in accordance with their existing procedures.

- b. All requests for rights-of-entry for non-commercial events that occupy a specified area and have the potential to substantially interfere with the general public's recreational use of unencumbered lands shall be presented to the Board for review and approval at a public meeting.
5. Authorize the Chairperson to issue right-of-entry permits at his discretion without prior Board approval in cases where the request for a right-of-entry to hold a commercial or non-commercial event on unencumbered State lands is received too late to bring to the Board for consideration but the proposed use is routine and the Board has approved at least one substantially similar event at the same location within the twelve months preceding the date of the event, provided, however:
- a. That Land Division staff shall request after-the-fact approval of the right-of-entry permit at the next available Board meeting following the event.
  - b. The Chairperson is authorized to impose a surcharge for late requests for rights-of-entry on an escalating basis as set forth in the table above. For non-commercial events, the Chairperson may waive or reduce the surcharge at his discretion.
- B. Nothing in this approval shall be deemed to modify the Board's action of January 8, 1988, Item H-4, relating to film permits, or the Memorandum of Agreement between DLNR and the Department of Business, Economic Development and Tourism regarding film permit procedures executed in September 1993.
- C. Except as amended hereby, the Board's prior action of September 28, 2001 shall remain the same.

Respectfully Submitted,



Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson

Land Board Meeting: June 14, 2013; D-11  
Approved as amended. On page 4, the  
Board amended the surcharge chart in  
part as follows:

"In the second week before the event"	"\$1,000"
"One week or less before the event"	"\$2,000"