



March 10, 2026

Via Email

Environmental Advisory Council
Office of Planning and Sustainable Development
Department of Business, Economic Development & Tourism
State of Hawai'i
dbedt.opsd.erp@hawaii.gov

Re: Proposed Exemption List for the Department of Land and Natural Resources, dated February 3, 2026

Dear Chair Hegger-Nordblom, Vice Chair Stone, and Council Members,

Pursuant to the February 23, 2026 issue of The Environmental Notice, Earthjustice hereby submits comments on the Department of Land and Natural Resources' ("DLNR's") proposed exemption list, dated February 3, 2026, which proposes changes to DLNR's existing list exempting activities from the Hawai'i Environmental Policy Act ("HEPA"), Hawai'i Revised Statutes ("HRS") chapter 343, dated November 10, 2020. Although we appreciate DLNR's efforts to use its existing authority to implement HEPA by promulgating exemptions specific to DLNR—rather than seeking controversial and overbroad statutory exemptions as occurred during the 2025 legislative session¹—we are concerned that some of the proposed exemptions do not satisfy HEPA's requirements.

Proposed New Exemption for Permitting Ongoing Activities – General Exemption Type 4, Part 1, No. 21

General Exemption Type 4, Part 1, No. 21—which would to apply to permits, licenses, registrations, and rights-of-entry for ongoing activities—is overbroad on its face and does not satisfy HEPA's requirement authorizing exemptions only for activities that will "probably have minimal or no significant effects on the environment," HRS § 343-6(a)(2), either "individually or cumulatively," Haw. Admin. R. ("HAR") § 11-200.15(a). *See also Kahana Sunset Owners Ass'n v.*

¹ *See, e.g.,* House Bill 123 (2025); House Bill 658 (2025); House Bill 661 (2025); Senate Bill 22 (2025); Senate Bill 1074 (2025).

Cnty. of Maui, 86 Hawai'i 66, 72, 947 P.2d 378, 384 (1997) (affirming HEPA's intent to exempt "only very minor projects").

As currently worded, this proposed exemption could be used to try to exempt DLNR approvals of ongoing *extractive* activities—including commercial-scale aquarium collection and water diversions—that have been harming ecosystems for decades and have a long history of skirting environmental review. The proposed exemption would run afoul of court rulings in the *Umberger*² and *Carmichael*³ cases, which held that ongoing commercial aquarium collection and stream water diversions that had previously occurred under successive governmental approvals without any environmental review are subject to HEPA. Thus, the proposed exemption is not only invalid under HRS § 343-6(a)(2) but would also lead to unnecessary and duplicative litigation retreading settled case law.

General Exemption Type 4, Part 1, No. 21, therefore, should be amended to make clear that the exemption does *not apply to extractive activities* as follows:

Issue permits, licenses, registrations, and rights-of-entry that are routine in nature, involving **non-extractive activities with** negligible impacts beyond that previously existing and result in minor alterations in the conditions of land, water, or vegetation.

Proposed New Exemptions for Continuing Administrative Activities – General Exemption Type 8, Part 1, Nos. 6–10.

General Exemption Type 8, Part 1, Nos. 6–10—which would apply to various land use and land right transactions—does not satisfy HEPA's requirement that agency exemptions fall within the designated exempt category under HAR § 11-200.1-15. HAR § 11-200.1-16(a)(2); *see Kahana Sunset*, 86 Hawai'i at 71, 947 P.2d at 383 (Agency exemptions "must be consistent with both the letter and the intent contained within the administrative rule exemption."). Specifically, the transfer, acquisition, subdivision, or consolidation of land rights does not fall within the designated exempt category for "[c]ontinuing administrative activities." HAR § 11-200.1-15(c)(8). Such land transactions are a far cry from the other administrative activities included under this category on DLNR's current exemption list, including purchasing supplies and equipment, contracts for small purchases, grant requests, personnel actions, and training

² *Umberger v. Dep't of Land & Nat. Res.*, 140 Hawai'i 500, 403 P.3d 277 (2017).

³ *Carmichael v. Bd. of Land & Nat. Res.*, No. 1CC151000650, Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment (Dec. 21, 2023).

Director Evans, OPSD

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and education. *See* General Exemption Type 8, Part 1, Nos. 1–5. DLNR’s attempt to shoehorn land transactions into this “administrative” category must be rejected.

Moreover, proposed exemptions Type 8, Part 1, Nos. 6–9—relating to land management transfers, title transfers, land acquisitions, land easements, and other land rights—would wholesale exempt an entire class of activities triggering HEPA review under HRS § 343-5(a), specifically, the “use of state . . . lands” including “any use (title, lease, permit, easement, license, etc.) or entitlement to those lands.” HAR § 11-200.1-8(a)(1). Because these proposed exemptions would swallow the general rule that land use transactions are actions subject to HEPA, they are legally invalid without language limiting the exemptions to “very minor projects.” *Kahana Sunset*, 86 Hawai‘i at 72, 947 P.2d at 384. The exemptions could, for example, incorporate land-area maximums to prevent DLNR from attempting to leverage them for controversial land use transactions with significant harmful impacts such as those involving military training areas on state lands in Hawai‘i.

Mahalo for the opportunity to provide comments. Please don’t hesitate to contact me at kwager@earthjustice.org or (808) 599-2436 to discuss this matter further.

Sincerely,

/s/ Kylie W. Wager Cruz

KYLIE W. WAGER CRUZ

EARTHJUSTICE