



March 5, 2026

Via Email

Dawn Hegger-Nordblom
Chairperson, Environmental Advisory Council
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

Aloha Chair Hegger-Nordblom and members of the Council,

The Sierra Club has significant concerns regarding two sets of the proposed changes to the Department of Land and Natural Resources' proposed exemption list, dated February 3, 2026.

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

Unfortunately, the Department of Land and Natural Resources has attempted to exploit this exemption for improper purposes. It attempted to avoid proper environmental review when issuing permits that authorized the draining of streams dry as a continuing activity. The supreme court held:

because the A&B Defendants' water use was conditioned on one-year permits, the continued use under a renewed permit did not merely maintain the status quo. *See Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 784 (9th Cir. 2006) (holding that lease extensions did not "merely preserve[] the status quo" because "[w]ithout the affirmative re-extension of the 1988 leases, [the lease applicant] would have retained no rights at all to the leased property").

Carmichael v. BLNR, 150 Hawai'i 547, 569-70, 506 P.3d 211, 233-34 (2022). To avoid a repeat and to provide much needed clarity, this exemption should instead read:

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.

Similarly, general exemption type 8, part 1, Nos. 6-10 cannot by any stretch of the imagination be considered “continuing administrative activities.” They are discrete decisions respecting specific parcels of land. (Nor can they fit in any of the other exemption categories). Please note, however, that the state legislature has already exempted “the acquisition of unimproved real property” from the requirements of HRS chapter 343. HRS § 343-5(a)(1).

Moreover, these changes could be used to attempt to allow BLNR to transfer title of tens of thousands of acres of public trust “ceded” lands to the U.S. military without review of the environmental consequences.

Mahalo nui for your consideration of these comments,

A handwritten signature in blue ink, appearing to read "Wayne Tanaka", is written over a light blue horizontal line.

Wayne Chung Tanaka
Executive Director
Sierra Club of Hawai'i