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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 1, 2026

Via Email

Ms. Kylie W. Wager Cruz
Senior Attorney
Earthjustice
kwager@earthjustice.org

Re: Earthjustice Comments on the Department of Land and Natural Resources' Proposed Exemption List

Aloha Ms. Cruz,

Thank you for your comments on the Department of Land and Natural Resources' (DLNR) Proposed Exemption List. Your comments focused on *General Exemption Type 4, Part 1, Number 21* and *General Exemption Type 8, Part 1, Numbers 6-10*.

General Exemption Type 4, Part 1, Number 21: Currently, DLNR utilizes *General Exemption Type 1, Part 1, Number 44* to issue a variety of permits across various Divisions. This language is notably similar to the language proposed for *General Exemption Type 4, Part 1, Number 21* and *General Exemption Type 5, Part 1, Number 20*:

(Current DLNR Exemption List, rev. 11/10/20) General Exemption Type 1, Part 1, Number 44: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

(Proposed Revisions, 2026) General Exemption Type 4, Part 1, Number 21: "Issue permits, licenses, registrations, and rights-of-entry that are routine in nature, involving negligible impacts beyond that previously existing and result in minor alterations in the conditions of land, water, or vegetation."

(Proposed Revisions, 2026) General Exemption Type 5, Part 1, Number 20: "Issue permits, licenses, registrations, and rights-of-entry that are routine in nature, involving negligible impacts beyond that previously existing and do not result in a serious or major disturbance to an environmental resource."

DLNR's intention to add the two proposed exemptions was to better differentiate between permits, licenses, registrations, and rights-of-entry by more closely reflecting the General Exemption Type in which they are categorized:

- 1) General Exemption Type 1:** Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing;
- 2) General Exemption Type 4:** Minor alterations in the conditions of land, water, or vegetation; and
- 3) General Exemption Type 5:** Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource.

DLNR is not amenable to adding the clarifier of "non-extractive activities," as there are "extractive" activities, such as gathering for personal use, collection for traditional and customary Hawaiian practices, and research that DLNR believes fit the intent of HRS § 343-6(a)(2). Exemptions are only for activities that "probably have minimal or no significant effects on the environment" (HRS § 343-6(a)(2)), considered "individually or cumulatively" (HAR § 11-200.1-59(a)).

Additionally, in 2017 the Hawai'i Supreme Court concluded that commercial aquarium collection of an unlimited number of fish is an action under HEPA that is not exempt from the preparation of an environmental assessment. In 2021, the environmental impact statement for West Hawai'i commercial aquarium collection was accepted. After the HEPA environmental review process was completed, DLNR began the rulemaking process to begin issuing permits for West Hawai'i commercial aquarium collection. The proposed rules require that applicants demonstrate that they are a party of an approved environmental assessment with a finding of no significant impact or an accepted environmental impact statement. According to the 2017 Hawai'i Supreme Court ruling, applicants do not qualify for an exemption.

General Exemption Type 8, Part 1, Numbers 6-10: This change relocated five exemptions that were previously General Exemption Type 1, Part 1, Numbers 36-39 and 41; these exemptions are not newly created.

The Department may do one of these administrative actions to acquire a tract of land, subdivide a parcel, etc., so that the Department may gain the management authority to do an action. If the Department's proposed action is to plant native trees, which is on the exemption list, the Department would be able to proceed with this action with an exemption notification. It would not be logical to require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in this instance solely because this project involved the acquisition or subdivision of land. However, if the Department is gaining management authority to build a road, which is not on the exemption list, an EA or EIS would be required.

In other cases, the Department may gain management authority by acquiring or subdividing a parcel, without any planned actions for the parcel. Until the Department has a plan for an action that would affect the physical properties of the land, there is no meaningful environmental review that can occur.

The lack of tangible changes in the condition of the environment due to the proposed Exemptions No. 6-10 is the reason why these administrative actions are included on the exemption list. While these actions are defined by HAR § 11-200.1-8(a)(1) as a “use,” the Department has analyzed them alongside all the other types of uses and has recommended that these items be included on the exemption list. These exemption items were also included in previous versions of the DLNR’s Exemption List and have undergone multiple reviews by the Environmental Council. The justification provided for these exemption items is that they represent an administrative act, rather than a physical change in the condition of the environment. An environmental review (including potentially an EA or an EIS) would still be triggered once an actual activity was proposed for a specific parcel of land. To be consistent with the previous versions concurred by the Environmental Council, DLNR will delete these proposed changes, reverting them to the original categorizations found in the current Exemption List (rev. November 11, 2020).

DLNR values public participation for its projects. If you have any further concerns or would like to meet about this issue, please contact me at ryan.kp.kanakaole@hawaii.gov.

Sincerely,



Ryan Kanaka‘ole
Acting Chairperson
Department of Land and Natural Resources

cc:
Environmental Review Program (dbedt.opsd.erp@hawaii.gov)
Michele Lefebvre (michele.louise.lefebvre@gmail.com)

Attachment: Earthjustice Letter



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