

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

KEITH A. REGAN
ACTING LIEUTENANT GOVERNOR
KA HOPE KIA'ĀINA KŪ WĀ



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 1, 2026

Via Email

Ms. Ashley K. Obrey
Senior Staff Attorney
Native Hawaiian Legal Corporation
ashley.obrey@nhlchi.org

Re: Native Hawaiian Legal Corporation Comments on the Department of Land and Natural Resources' Proposed Exemption List

Aloha Ms. Obrey,

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.

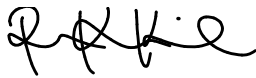
The Department may do one of these administrative actions to acquire a tract of land, subdivide a parcel, etc., so that the Department may gain the management authority to do an action. If the Department's proposed action is to plant native trees, which is on the exemption list, the Department would 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: Native Hawaiian Legal Corporation Letter



Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai‘i 96813
Phone (808) 521-2302 • www.nativehawaiianlegalcorp.org



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, Department of Land and Natural Resources (February 3, 2026)

Aloha e Chair Hegger-Nordblom, Vice Chair Stone, and Councilmembers:

The Native Hawaiian Legal Corporation submits the following comments on the Department of Land and Natural Resources' ("DLNR's") proposed exemption list, dated February 3, 2026, which proposes exempting certain activities from the Hawai‘i Environmental Policy Act ("HEPA"), Hawai‘i Revised Statutes ("HRS") chapter 343. NHLC supports efforts to ensure DLNR's exemption list complies with HEPA. However, several of the proposed exemptions fall short of that goal and directly contradict the statute and existing administrative rules.

Proposed General Exemption Type 4, Part 1, No. 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.

HEPA authorizes exemptions 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). As currently drafted, Proposed General Exemption Type 4, Part 1, No. 21 fails to distinguish between minor administrative renewals and the continuation of large-scale, extractive uses of public trust resources, including surface water diversions and commercial-scale aquarium collection – activities with a history of significantly harming natural and cultural resources while evading environmental review for decades. Not only is the exemption invalid under HRS § 343-6(a)(2) but it also ignores court rulings on the applicability of HEPA.

In *Carmichael*, the environmental court recently held that BLNR's successive annual renewal of revocable permits authorizing the diversion of East Maui stream water without environmental review violated HEPA. It further concluded that the diversion activity did not fall within any recognized exempt category, and that, even if it had, the cumulative impact would have foreclosed the exemption.¹ In *Umberger*, the Hawai'i Supreme Court rejected the argument that repeated renewals of commercial licenses for aquarium fish collection were routine or exempt, concluding that the activity had potential significant environmental effects that required environmental review regardless of how long it had been occurring.² Proposed Exemption Type 4, Part 1, No. 21 authorizes the very conduct the courts have condemned, treating the continuation of extractive activities as routine and exempt, without any examination of cumulative harm to public trust resources.

To comply with the law and prevent DLNR from repeating the conduct that the courts have already condemned, the proposed exemption must be narrowed to exclude 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.

- *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.*
- *Transfer of title to land.*
- *Acquisition of land or interests in land.*
- *Creation or termination of easement, covenants, or other rights in structures or land.*
- *Subdivision or consolidation of lots not previously subdivided.*

The use of state land is an agency action that triggers environmental review. See HRS § 343-5(a)(1). According to HAR § 11-200.1-8(a)(1), the "use of state or county lands" includes "any use (title, lease, permit, easement, license, etc.) or entitlement to those lands." Because Proposed General Exemption Type 8, Part 1, Nos. 6-9 seeks to exempt from HEPA the very uses explicitly identified in that provision, the exemption effectively and improperly attempts

¹ See *Carmichael v. Bd. of Land and Nat. Res.*, Civ. No. 15-1-0650-04 (JPC), Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment at 2 (Dec. 21, 2023).

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

to rewrite that rule. A wholesale exemption of an entire trigger category is beyond DLNR's authority and should not be entertained.

Further, even if consistent with HEPA's implementing rules, Proposed General Exemption Type 8, Part 1, Nos. 6-10 would exempt from HEPA the above-mentioned land use and land rights transactions, which do not fall within the designated exempt category for "[c]ontinuing **administrative** activities." HAR § 11-200.1-15(c)(8)(emphasis added). Agency exemptions "must be consistent with both the letter and the intent contained within the administrative rule exemption." *Kahana Sunset Owners Ass'n v. Cnty. of Maui*, 86 Hawai'i 66, 71, 947 P.2d 378, 383 (1997). Land transactions are categorically different from the truly administrative activities DLNR already lists under this exemption – *i.e.*, purchasing supplies, small-purchase contracts, grant requests, personnel actions, and training. *See* General Exemption Type 8, Part 1, Nos. 1-5. The proposed additions bear no resemblance to those activities and do not fit within this exemption category.

Conclusion

Environmental review is not a bureaucratic obstacle. It is one of the primary tools through which the state fulfills its public trust obligations. NHLC respectfully urges the Environmental Advisory Council to reject Proposed General Exemption Type 4, Part 1, No. 21 and Proposed General Exemption Type 8, Part 1, Nos. 6-10.

Mahalo for the opportunity to provide these comments.

Me ka ha'aha'a,



Ashley K. Obrey
Senior Staff Attorney