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KAHOOLAWE ISLAND RESERVE COMMISSION  
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May 1, 2026

Via Email

Mr. Wayne Chung Tanaka  
Executive Director  
Sierra Club of Hawai'i  
[wayne.tanaka@sierraclub.org](mailto:wayne.tanaka@sierraclub.org)

**Re: Sierra Club of Hawai'i Comments on the Department of Land and Natural Resources' Proposed Exemption List**

Aloha Mr. Tanaka,

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](mailto: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](mailto:dbedt.opsd.erp@hawaii.gov))  
Michele Lefebvre ([michele.louise.lefebvre@gmail.com](mailto:michele.louise.lefebvre@gmail.com))

Attachment: Sierra Club Letter



March 5, 2026

*Via Email*

Dawn Hegger-Nordblom  
Chairperson, Environmental Advisory Council  
State of Hawai'i  
[dbedt.opsd.erp@hawaii.gov](mailto: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