

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

November 13, 2015

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT: REQUEST APPROVAL TO 1) DELEGATE AUTHORITY TO THE CHAIRPERSON TO ISSUE FINDINGS OF NO SIGNIFICANT IMPACT FOR ENVIRONMENTAL ASSESSMENTS SUBMITTED FOR DEPARTMENT ACTIONS WHEN THE BOARD OF LAND AND NATURAL RESOURCES HAS DELEGATED THE AUTHORITY TO CONDUCT THOSE ACTIONS;**

**AND**

**2) DELEGATE AUTHORITY TO THE CHAIRPERSON OR THEIR AUTHORIZED REPRESENTATIVE TO DECLARE EXEMPT FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT THOSE DEPARTMENT ACTIONS WHICH ARE INCLUDED IN THE DEPARTMENT-WIDE EXEMPTION LIST WHEN THE BOARD OF LAND AND NATURAL RESOURCES HAS DELEGATED THE AUTHORITY TO CONDUCT THOSE ACTIONS**

**BACKGROUND:**

On August 14, 2015 the Board approved submittal K-3, as amended, to 1) delegate authority to the Chairperson to issue Findings of No Significant Impact for environmental assessments submitted in connection with Conservation District Use Applications, and 2) delegate authority to the Chairperson and the Administrator of the Office of Conservation and Coastal Lands to declare exempt those actions within the Conservation District which are included in the Department-wide exemption list, among other recommendations. On September 25, 2015, the Board approved submittal D-17 to delegate authority to the Chairperson to 1) issue Findings of No Significant Impact for Environmental Assessments submitted for State Land Dispositions and projects on State lands and 2) declare exempt those actions on state lands that are included in the Department-wide exemption list, statewide. During the September 25, 2015 meeting, the Board clarified that these delegations of authority would apply solely for actions that have already been delegated from the Board of Land and Natural Resources to the Chairperson.

**DISCUSSION:**

These recent Board decisions authorized delegations for Land Division and Office of Conservation and Coastal Lands items relating to Ch. 343, Hawaii Revised Statutes (HRS). This submittal provides uniformity across the Department and is consistent with prior board Decisions.

While this submittal is from the Division of Forestry and Wildlife, it is meant to apply to the entire Department.

#### *Delegation of Authority*

This submittal only applies to actions which the Board has delegated authority to the Chair or their authorized representatives. Examples of previous delegation precedents include:

**Procurement:** Authorized the Chairperson to negotiate and enter into contracts for small purchases up to \$50,000, subject to approval as to form by the Attorney General's Office (April 13, 2007).

**Management Agreements:** Authorized the Chairperson to negotiate, approve, execute, amend, and extend the Right-of-Entry and Release of Liability Agreements for the Division of Forestry and Wildlife to conduct management including but not limited to invasive species and fire control, restoration or introduction of native species, infrastructure installation and maintenance, and monitoring, on private lands, subject to review and approval by the Office of the Attorney General (October 25, 2013).

**Permitting:** The Board has delegated the Chairperson or an authorized representative (such as an Administrator or a District Manager) ability to issue permits for certain actions. For example, the Board authorized the Chairperson, Land Administrator, District Land Agents, and Supervising Land Agent the authority to issue Right-of-Entry permits on unencumbered State lands (September 28, 2001). Or, the Board authorized the Chairperson authority to issue special-use permits for Natural Area Reserves (April 8, 1983) and Forest Reserves (May 21, 1981). More recently, Agenda item C-1 of July 10, 2015, delegated the authority to issue permits for game bird (Ch. 13-122) and game mammal (Ch. 13-123) hunting to the Department Chairperson, Administrator, and Branch Managers of the Division of Forestry and Wildlife as identified in Table 1 of Item C-1.

Item C-1 also authorized the Department Chairperson, Administrator, and Branch Managers of the Division of Forestry and Wildlife to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for permits issued under the Rules Regulating Game Birds and Game Mammals, as detailed in Table 1 of Item C-1. The second recommendation provides the delegation of authority to declare exemptions for activities in the hunting rules. This submittal would improve uniformity across the Department to provide that type of authority to declare exemptions for other permits that the Board has already delegated.

#### *Findings of No Significant Impact and Environmental Assessment Exemptions*

Actions covered by this submittal must also fall into the following two categories:

1. Delegation of Authority to Issue Findings Of No Significant Impact (FONSIs)

The Hawaii Administrative Rules (HAR), §11-200-2 Definitions, under Environmental Impact Statements Rules, defines an Approving Agency as an agency that issues an approval prior to actual implementation of an action. Department of Land and Natural Resources is the approving agency for various projects using lands managed by the Department or the Department's funds.

As the 'approving agency,' the Board is responsible for environmental review and compliance, and the processing of environmental documents as required by Chapter 343, HRS. This would include seeking agency and public review and comment, declaring exemptions for the class of actions included in the Department's exemption list that have been determined to likely have minimal or no significant effect on the environment; and issue, file and maintain records of FONSI.

Delegation of authority for the Chairperson to issue FONSI for Department actions will facilitate the Department's operations without compromising the transparency of the Environmental Assessment process under Chapter 343, HRS. Pursuant to Chapter 343, HRS, draft EAs are published in the Office of Environmental Quality Control's The Environmental Notice (accessible on OEQC's website) and the public can comment on the draft EA for a period of 30 days after publication. Final EAs are also published in The Environmental Notice, and anyone dissatisfied with a FONSI determination can appeal the determination to the circuit courts.

## 2. Delegation of Authority to Declare Projects Exempt from the Preparation of an Environmental Assessment

Many actions listed in the Department-wide exemption list come before the Board for approval and a declaration of exemption from the preparation of an environmental assessment pursuant to HRS, Chapter 343-6(2). However, other actions may not come before the Board because previously the Board determined that they are appropriate to delegate to the Chairperson or their authorized representative. These actions are generally either management that the Department is conducting, or activities that the Department is permitting.

This recommendation would apply to actions that meet both criteria:

- 1) These actions are on the Department-wide exemption list. The Department-wide exemption list constitutes "actions that will probably have minimal or no significant effect on the environment."<sup>1</sup>

This recommendation only applies to activities listed in the Department-wide exemption list that are officially approved by the Environmental Council of the Office of Environmental Quality Control during their public meetings. This authority is provided by HAR §11-200-8(d) "Each agency, through time and experience, shall develop its own list of specific types of actions which fall within the exempt classes, as long as these lists are consistent with both the letter and intent expressed in these exempt classes and Chapter 343, HRS. These lists and any amendments to the lists shall be submitted to the council for review and concurrence. The lists shall be reviewed periodically by the council."

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<sup>1</sup> §11-200-8, HAR.

The public shall continue to have the right to review the declarations of exemptions. HAR §11-200-8(e) states “Each agency shall maintain records of actions which it has found to be exempt from the requirements for preparation of an environmental assessment in Chapter 343, HRS, and each agency shall produce the records for review upon request.”

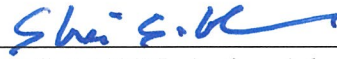
RECOMMENDATION: That the Board:

- 1) Delegate authority to the Chairperson to issue Findings Of No Significant Impact for Environmental Assessments submitted for Department actions when the Board of Land and Natural Resources has delegated the authority to conduct those actions;

And

- 2) Delegate authority to the Chairperson or their authorized representative to declare exempt from the preparation of an Environmental Assessment those Department actions which are included in the Department-wide exemption list when the Board of Land and Natural Resources has delegated the authority to conduct those actions.

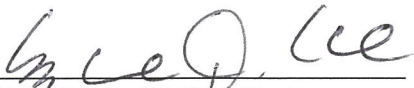
Respectfully submitted,



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SHERI S. MANN, Acting Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources