

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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In the matter of a Contested ) DLNR File No. DAR-NWHI-07-01  
Case Hearing involving Dr. ) (CC)  
Greta Aeby/Hawaii Institute of )  
Marine Biology, Northwestern ) MINUTE ORDER NO. 3 (PREHEARING  
Hawaiian Islands Permit ) CONFERENCE PROCEDURES);  
DLNR.NWHI106R008 ) ATTACHMENTS 1-6; CERTIFICATE OF  
 ) SERVICE  
 )

MINUTE ORDER NO. 3  
(PREHEARING CONFERENCE PROCEDURES)

On February 1, 2008, Prehearing Conference #1 was held in the Board of Land and Natural Resources Board Room, Kalanimoku Building, 1151 Punchbowl Street, Room 132, Honolulu, Hawaii, 96813. The prehearing conference was attended by Hearing Officer Louis Chang; Linda L.W. Chow, Deputy Attorney General; David Lonborg, Associate General Counsel, University of Hawaii, representing Petitioner Dr. Greta Aeby; Wade Hargrove, Deputy Attorney General representing the Department of Land and Natural Resources; Colin Yost representing KAHEA: The Hawaiian-Environmental Alliance; Marty Townsend from KAHEA; and Brian Kanenaka from the Dept. of Land and Natural Resources, Division of Aquatic Resources. For all purposes hereinafter, the Petitioner, Dr. Greta Aeby, shall be referred to as "Dr. Aeby" or "Petitioner." The Department of Land and Natural Resources shall be referred to as "DLNR." The intervenor, KAHEA: The

Hawaiian Environmental Alliance, shall be referred to as "KAHEA."

Based on the record maintained by the Department of Land and Natural Resources ("Department"), agreements made at the prehearing conference, and the oral and written arguments presented by the parties, it is hereby ordered that:

**A. CONTESTED CASE HEARING DEADLINES**

1. Pursuant to Section 13-1-28, Hawaii Administrative Rules (HAR), a contested case hearing on the above-entitled matter will begin at 9:00 a.m., Monday, September 8, 2008, at a location to be later identified. The schedule for subsequent hearing days is as indicated in the schedule attached as Attachment 1. This hearing is scheduled for approximately five (5) days. More days may be scheduled as warranted.

2. The Hearing Officer and the parties will conduct a site visit of the subject vessel in early March, 2008, on a date and time to be coordinated by KAHEA.

3. The Parties shall have until no later than close of business on March 14, 2008, to file any motions regarding the scope of the hearing set forth below. If a motion(s) is filed, the opposing memorandum shall be due no later than close of business on March 28, 2008. Reply memorandum shall be due no later than close of business on April 4, 2008. If the Hearing

Officer determines that an oral hearing is required, the oral hearing shall be scheduled for April 14, 2008, at 1:30 PM or as soon thereafter as possible. Parties will be notified in the event an oral hearing is required.

4. Other prehearing motions will be scheduled and heard upon request of any party and upon the discretion of the hearings officer.

5. The DLNR and KAHEA shall serve on the Hearing Officer, the Deputy Attorney General for the Board of Land and Natural Resources ("Board"), and all other parties their **Briefs, Witness Lists** (expert witnesses to be designated by an asterisk), **Witness Statements** setting forth the direct testimony of each witness that a party intends to call as a witness at the hearing held in this matter, **Exhibit Lists** and **Exhibits** by no later than 4:00 p.m., Friday, June 13, 2008.

6. Petitioner shall submit and serve a **Responsive Brief, Responsive Witness List, Responsive Witness Statements, Responsive Exhibit List,** and **Responsive Exhibits** by 4:00 p.m., Friday, July 25, 2008. At the same time, Petitioner shall indicate whether and which of DLNR's or KAHEA's witnesses Petitioner would wish to cross-examine at the hearing.

7. DLNR and KAHEA may submit and serve **Reply Briefs** and any **Rebuttal Evidence** by no later than 4:00 p.m., Friday, August 15, 2008. At the same time, DLNR and KAHEA shall indicate

whether and which of Petitioner's witnesses each would wish to cross-examine at the hearing.

8. Witnesses' written direct testimonies shall be admitted into evidence at the hearing on the understanding that such witnesses shall be made available for cross-examination. Written direct testimony of experts shall also include a resume or brief statement of their qualifications. Witness Lists shall be submitted using the format shown on Attachment 2.

9. All exhibits must be marked and indexed (bound or in three ring binders and tabbed, exhibits containing voluminous pages should be internally numbered for ease of reference). For the purpose of identification of exhibits, the parties will use the marking system detailed on Attachment 3. The parties shall submit the original and one copy of demonstrative exhibits that are not reproducible in reduced size. All parties shall submit an Exhibit List using the format shown on Attachment 4. Only the first reference to each exhibit need be listed.

10. **Requests for Subpoenas** shall be filed in accordance with Attachments 5(1) and 5(2), no later than 4:00 p.m. on Friday, August 29, 2008. Upon receipt, the requested subpoena will be signed and returned to the parties via facsimile with the signed original to follow by mail. Parties are responsible for service of all subpoenas and for any costs associated therewith.

11. An original plus one copy of all briefs, lists, exhibits, statements, and all other documentation shall be filed with the DLNR (Room 131, 1151 Punchbowl Street, Honolulu, or P.O. Box 621, Honolulu, Hawaii 96809). In addition, a copy shall be sent to the undersigned Hearings Officer (P.O. Box 61188, Honolulu, Hawaii 96839), the attorney for the Board of Land and Natural Resources (Linda Chow, 465 S. King Street, Rm. 300, Honolulu, Hawaii 96813) and to each of the parties. (NOTE: Facsimiles do not comply with administrative rules for purposes of filing.)

12. The phone numbers, facsimile numbers and e-mail for each party are listed in Attachment 6.


**B. SCOPE OF THE HEARING**

The parties are limited to the following issues for the contested case hearing: Were there violations of the conditions of the research permit related to the collection, handling and/or transport of live coral specimens in state waters and/or related to the cultivation, transport and handling of coral disease bacteria? If so, what is the appropriate recommended penalty?

C. **BURDEN OF PROOF & ORDER OF PRESENTATION**

The Department of Land and Natural Resources has the overall burden of proof to show that there was a violation of DLNR permit number DLNR.NWHI106R008. The order of presentation shall be first the DLNR, followed by KAHEA and then Petitioner.

SO ORDERED this 20th day of February, 2008.

  
\_\_\_\_\_  
LOU CHANG  
Hearings Officer

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\_\_\_\_\_ )

SCHEDULE  
(as of February 1, 2008)

All Parties file and serve Prehearing Motion(s) on Scope of Hearing	March 14, 2008 4:00 p.m.
Memorandum in Opposition to Motion on Scope of Hearing	March 28, 2008 4:00 p.m.
Reply to Memorandum in Opposition	April 4, 2008 4:00 p.m.
Hearing (if required)	Week of April 14, 2008
DLNR and KAHEA file and serve: Briefs Witness Lists Witness Statements Exhibit Lists Exhibits	June 13, 2008 4:00 p.m.

Petitioner file and serve: July 25, 2008  
Responsive Brief 4:00 p.m.  
Responsive Witness List  
Responsive Witness Statements  
Responsive Exhibit List  
Responsive Exhibits  
List of DLNR and KAHEA Witnesses that  
will be cross-examined

DLNR and KAHEA to file and serve: August 15, 2008  
Reply Briefs 4:00 p.m.  
Rebuttal Evidence  
List of Petitioner's Witnesses that  
will be cross-examined

Last day for any party to request: August 29, 2008  
Subpoenas 4:00 p.m.

SITE VISIT  
Week of March 3, 2008  
Exact date to be  
determined

CONTESTED CASE HEARING  
Week of Sept. 8, 2008  
9:00 am - 4:00 p.m.



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 \_\_\_\_\_ )

EXHIBIT IDENTIFICATION LETTERS

All exhibits must be marked and indexed. For the purpose of identification of exhibits, the parties will use the following identification letters:

Exhibit Identification Letters	Party
A	Department of Land and Natural Resources
B	KAHEA
C	Dr. Greta Aeby

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 \_\_\_\_\_ )

EXHIBIT LIST FORMAT

PARTY: \_\_\_\_\_

EX. NO.	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
A-1		1. Direct Testimony of XYZ at page # _____.	

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\_\_\_\_\_ )

SUBPOENA

THE STATE OF HAWAII

TO THE SHERIFF of the State of Hawaii or his Deputy, any Police Officer, or any person not less than 18 years of age and not a party in the above cited Contested Case Hearing.

YOU ARE COMMANDED to Subpoena \_\_\_\_\_

\_\_\_\_\_ to appear before the Board of Land and Natural Resources or its designated hearing officer on September 8, 2008, at 9:00 o'clock A.M., at the \_\_\_\_\_

\_\_\_\_\_, to testify as a witness on the part of \_\_\_\_\_ in the above-entitled matter.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Louis Chang, Hearing Officer  
Board of Land and Natural  
Resources

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to appear before the Board of Land and Natural Resources or its designated hearing officer on September 8, 2008, at 9:00 a.m., at \_\_\_\_\_

\_\_\_\_\_, to testify as a witness on the part of \_\_\_\_\_ in the above-entitled matter and to bring with him/her the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Louis Chang, Hearing Officer  
Board of Land and Natural  
Resources

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 \_\_\_\_\_ )

PHONE, FAX AND E-MAIL ADDRESSES

<u>NAME</u>	<u>PHONE</u>	<u>FAX</u>	<u>E-MAIL</u>
Louis Chang, Hearing Officer (Oahu)	384-2468	951-0888	louchang@hula.net
Wade Hargrove, Attorney for DLNR	587-3050	587-3077	wade.h.hargrove@hawaii.gov
Colin A. Yost, Attorney for KAHEA	275-1200	275-8808	colin@cruiseyost.com
David Lonborg, Attorney for Dr. Greta Aeby	956-2211	956-2109	lonborg@hawaii.edu
Linda L.W. Chow, Attorney for the Board (Oahu)	587-2988	587-2999	linda.l.chow@Hawaii.gov
Brian Kanenaka, Staff, DLNR	587-0332	587-0115	brian.k.kanenaka@hawaii.gov

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Hawaiian Islands Permit )  
DLNR.NWHI106R008 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and accurate copy of the foregoing document was duly served upon the following parties by U.S. First-class mail:

DAVID LONBORG, ESQ.  
Bachman Hall 110  
2444 Dole Street  
Honolulu, Hawaii 96822

Attorney for Dr. Greta Aeby


WADE HARGROVE, ESQ.  
465 S. King Street, #200  
Honolulu, Hawaii 96813

Attorney for Dept. of Land and Natural Resources

COLIN A. YOST, ESQ.  
49 S. Hotel Street, Suite 305  
Honolulu, Hawaii 96813

Attorney for Intervenor KAHEA

DATED: Honolulu, Hawaii, February 21, 2008.



\_\_\_\_\_  
LINDA L.W. CHOW  
Deputy Attorney General  
Attorney for the Board of Land  
and Natural Resources