

March 12, 2008

Transmittal via facsimile 587-0390 and U.S. Mail

Chairperson Laura H. Thielen
Hawai'i Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawai'i 96813

RE: Dr. Greta Aeby Withdrawal Of Rquest For Contested Case
DLNR File No. DAR-NWHI-07-01 (CC)

Dear Chairperson Thielen and Members of the Board:

On behalf of Intervenor KAHEA: The Hawaiian-Environmental Alliance ("KAHEA"), this letter responds to the March 10, 2008 request from Mr. Lonborg to withdraw the petition for a contested case hearing filed by Dr. Greta Aeby and the Hawai'i Institute of Marine Biology. While this request may result in the termination of the contested case, KAHEA remains concerned about the final disposition of the unresolved issues discussed in the Board's July 27, 2007 Meeting Minutes and acknowledged in Hearing Officer Louis Chang's Minute Order No. 3.

The only allegation resolved by the Board's prior action is Dr. Aeby's permit violation relating to the transportation of live coral samples from the French Frigate Shoals to Gardner Pinnacles. No final determination has been reached for other allegations regarding the handling of live coral specimens and the cultivation, transport and handling of coral disease bacteria, which are noted in Mr. Chang's Minute Order No. 3 at page 5. On page 10 of the Board's July 27, 2007 Meeting Minutes, an exchange between Board members and the Board's counsel, Linda Chow, regarding those other allegations is recorded as follows:

Member Johns asked whether there were any allegations which surfaced during the investigation? Ms. Chow reported yes, there were other allegations that surfaced, but conclusions on those allegations have not yet been reached by the investigators or the department. But DAR felt confident in going forward with this violation at this time based on its own investigation. Member Johns asked then there are other allegations being

investigated which are pending and not for the Board to act on today? Ms. Chow replied correct. Member Schuman asked if the Board acts on this today will it impact on the additional violations later should it be decided that there might be additional violations? Ms. Chow replied correct. Member Johns asked we are not foreclosed? Ms. Chow added she doesn't believe so. Member Edlao asked we will visit those additional violations later on? Ms. Chow replied once the conclusions have been made and if the department wants to go forward. The department needs to conclude its investigation.

This exchange is the last public word regarding the process for resolving the remaining allegations. It is KAHEA's understanding that a DOCARE report addressing the other allegations was completed several months ago, but this report has not been presented to the Board for review or released to the public. Even if the Aeby/HIMB contested case does not proceed, Board action is still necessary on the unresolved allegations, and KAHEA urges the Board to ensure that such action occurs in a timely, thorough, open and transparent manner.

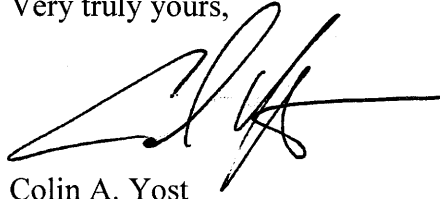
KAHEA respectfully disagrees with Mr. Lonborg's characterization of the current contested case as "an open-ended, costly and contentious forum for a citizen group to assume enforcement and oversight authority that properly belongs to the Land Board." The Hearing Officer's recommendation to allow KAHEA to participate in the contested case did not endow KAHEA with enforcement or oversight authority – that, clearly, still belongs to the Board alone. KAHEA's only role in the contested case is to provide its unique perspective and knowledge to the Hearing Officer and the Board so that the Board may ultimately make informed decisions based on a complete record.

The Northwestern Hawaiian Islands ("NWHI") marine refuge ("Refuge") is a public trust resource, and the enforcement of the rules and regulations protecting the Refuge has implications far beyond Dr. Aeby's conduct. Unless protections are properly enforced, research activities – such as coral disease transport – pose the risk of real and irreparable harm to the fragile environment of the Refuge. KAHEA has and will continue to support responsible, conservation-driven science for the NWHI, and will also continue to advocate for the implementation and enforcement of the entire framework of legal protections. KAHEA seeks to ensure that human activity does no further harm to this unique ecosystem.

KAHEA is grateful for the Board's past commitment to the wellbeing and preservation of the Refuge and looks forward to working toward these ends with the Board, HIMB and other interested parties.

Chairperson Laura H. Thielen, Board Members
March 12, 2008
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Very truly yours,

A handwritten signature in black ink, appearing to read 'Colin A. Yost', with a long horizontal flourish extending to the right.

Colin A. Yost
Attorney for KAHEA

Cc: Lou Chang, Esq., Hearing Officer
Linda Chow, Esq.
Wade Hargrove, Esq.
David W. Lonborg, Esq.