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OFFICE OF THE VICE PRESIDENT FOR LEGAL AFFAIRS
AND UNIVERSITY GENERAL COUNSEL

March 10, 2008

Via Fax (587-0390) and Mail

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

Re: Withdrawal of Request for Contested Case Hearing
Dr. Greta Aeby/Northwestern Hawaiian Islands Permit
DLNR File No. DAR-NWHI-07-01(CC)

Dear Chairperson Thielen and Members of the Board:

By letter and petition dated August 2, 2007, Dr. Greta Aeby of the Hawai'i Institute of Marine Biology, University of Hawai'i, requested a contested case hearing with respect to the July 27, 2007, determination by the Board of Land and Natural Resources ("Land Board") finding Dr. Aeby in violation of Northwestern Hawaiian Islands Research, Monitoring, and Education Permit #DLNR.NWHI06R008 and imposing an administrative fine of \$1,000 pursuant to section 187A-12.5, Hawai'i Revised Statutes.

While Dr. Aeby and the University continue to believe that the Land Board's decision reflected an unreasonable and unnecessarily punitive interpretation of Dr. Aeby's permit, we have concluded that contesting the matter further would be counterproductive for the reasons discussed below. Accordingly, Dr. Aeby's request for a contested case hearing is hereby withdrawn. Dr. Aeby will accept the Land Board's July 27, 2007, determination and pay the administrative fine imposed by the Land Board.

As the University has emphasized since the inception of this matter, Dr. Aeby is a careful and responsible researcher, and her work to identify and control coral disease in the Papahānaumokuākea Marine National Monument is of great importance to the management and protection of the Monument. Dr. Aeby has already lost one season's work because of this matter, and she and the University are deeply concerned that any further curtailment will lead to irreversible damage to the very resources that the

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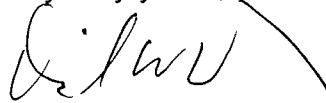
Monument was created to protect, particularly *Acropora* table corals at French Frigate Shoals. Dr. Aeby has already documented these corals to be impacted by two different diseases: *Acropora* white syndrome, which has killed numerous large table corals, and *Acropora* growth anomalies, which cause partial coral mortality and suppress the reproduction of affected corals. These diseases were found to be spreading in 2006, when Dr. Aeby was last able to survey them, and will irreparably harm the reefs of the Monument if Dr. Aeby's work is not diligently pursued. The University's primary objective in contesting this matter has been to ensure that Dr. Aeby's future work is not further imperiled by the Land Board's July 27, 2007 action. Unfortunately, it will not be possible to accomplish that through the contested case process prior to the 2008 permit season.

Nor is an extended contested case conducive to the positive working relationship that the University seeks to foster with the Department of Land and Natural Resources, the Monument's federal co-trustees, and other interested parties. The Hearing Officer has recommended that KAHEA be permitted to intervene in the contested case and has broadened the scope of the hearing significantly beyond the limited issues that were referred to the Hearing Officer by the Land Board. While Dr. Aeby requested a contested case for the limited purpose of determining whether the Land Board's finding of a permit violation and imposition of a \$1,000 fine was appropriate, the Hearing Officer has now opened the issues at the hearing to include factual and legal matters never brought before the Land Board, and KAHEA has argued that the Hearing Officer has authority to impose additional fines and a prohibition on future work in the Northwestern Hawaiian Islands by Dr. Aeby. We do not believe it is appropriate to transform the contested case from a limited inquiry into the appropriateness of the Land Board's decision into an open-ended, costly, and contentious forum for a citizen group to assume enforcement and oversight authority that properly belongs to the Land Board.

Therefore, the University and Dr. Aeby will accept the Land Board's decision in this matter and work with all parties to apply the lessons learned from this process in a constructive manner as we move ahead in our mutual efforts to protect the Northwestern Hawaiian Islands. Dr. Aeby's work is important to those efforts, and we look forward to working with all parties to address issues relating to the continuation of that work as they may arise during the review of future research permit applications.

If you have any questions or need anything further from Dr. Aeby or the University in this matter, please do not hesitate to contact the undersigned.

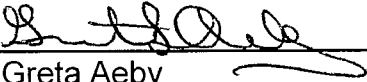
Very truly yours,



David W. Lonborg
Associate General Counsel

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REVIEWED AND APPROVED:



Dr. Greta Aeby

cc: Lou Chang, Esq., Hearing Officer
Linda Chow, Esq.
Wade Hargrove, Esq.
Colin Yost, Esq.
Dr. Greta Aeby
Dr. Jo-Ann Leong