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March 13, 2008

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Division of Aquatic Resources  
1151 Punchbowl Street, Room 330  
Honolulu, Hawaii 96813

Re: Withdrawal of Dr. Aeby's Request for Contested Case Hearing in  
DLNR File No. DAR-NWHI-07-01(CC)

Dear Chair Thielen, Deputy Chow, Sirs and Members of the Board,

Pursuant to Mr. Longborg's letter dated March 10, 2008, whereby Dr. Aeby has formally withdrawn her request for a contested case hearing in the above-referenced matter, there being no other matters before the Hearings Officer, and there being no objection to Dr. Aeby's withdrawal by any of the parties remaining, the penalty assessed by recommendation to the Board by the Division of Aquatic Resources ("DAR") letter dated July 27, 2007 is due and payable immediately. Dr. Aeby's withdrawal is a unilateral action that removes this matter from the contested case proceeding and, therefore, this matter is closed for further consideration.

However, in acknowledgement of Mr. Yost's letter dated March 12, 2008, there are other concerns that have been raised during the development of this contested case. Specifically, it has

been asked by KAHEA and certain Board members (see Minutes for the Meeting of the Board, dated Friday, July 27, 2007) whether other violations occurred during the research expedition at the heart of this case. It is my understanding that the investigation is on-going and, as is always the case with enforcement, will be acted upon only when and if the evidence and regulations justify it. Also, Dr. Aeby currently has a permit application for year 2007 which was deferred by the Board and which, technically, remains before the Board pending final determination. I encourage Mr. Longborg and the Board to revisit Dr. Aeby's permit at the Board's earliest convenience so that this matter may be removed from the Board's agenda (since this application has obviously become moot). Finally, there remains the question of future permits. Though KAHEA originally sought to have this question answered in the current proceeding, this is something that cannot be addressed until an application is presented to the Board for its consideration. At that time, the Board will have to exercise its discretion in conformity with the regulations and in light of the applicant's previous record of compliance.

With regard to Mr. Longborg's letter dated March 10, 2008, and on the subject of Dr. Aeby's record of compliance, it should be noted that, though the facts are still being investigated, it remains debatable whether or not Dr. Aeby's actions on board the *Hi`ialakai* in May of 2006 reflect the work of a "careful and responsible researcher." See Longborg letter at page 1. Nor do I accept the proposition that the Board's action "reflected an unreasonable and unnecessarily punitive interpretation of Dr. Aeby's permit." *Id.* During the May 2006 expedition, Dr. Aeby, contrary to the representations she made to DAR and the Board in her permit application, transported live coral within the NWHI refuge ("Refuge"), clearly violating condition #29 of her permit. Though it is abundantly clear that Dr. Aeby's research of coral disease is of the greatest importance, that research cannot be performed in a manner that endangers the very Refuge this research is designed to protect. It is the regulatory community, with the advice and assistance of any and all interested parties, who must determine the appropriate balance between vital research and preservation, not those who perform the research. When studying disease, the highest priority in public health, environmental science or any other research discipline, is to prevent its spread into previously unaffected populations. This is exactly what condition #29 was designed to protect against and is the condition which should be most highly guarded. Consequently, the maximum penalty is entirely appropriate.

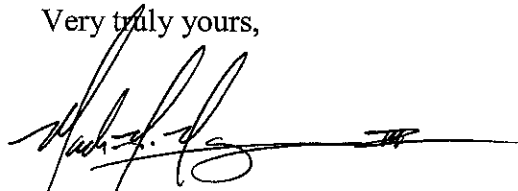
I would like to briefly take a moment to thank Mr. Longborg and Mr. Yost for their cooperation and professionalism. This case involves sensitive questions concerning the public trust and resource management and numerous areas of disagreement and controversy remain. I appreciate their efforts, and those of their clients, to work with DAR and the Board to develop a better understanding of the permitting process, improve upon that process and encourage communication among a variety of interested parties. I know that I am not the only one that hopes these efforts will continue for the good of the Refuge.

DLNR File No. DAR-NWHI-07-01(CC) will be closed immediately upon receipt of Dr. Aeby's payment. Payment of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) should be made to DAR by check or money order payable to "STATE OF HAWAII" and submitted to the following address no later than THIRTY (30) days from receipt of this letter:

**State of Hawaii**  
**Division of Aquatic Resources**  
**Department of Land & Natural Resources**  
**1151 Punchbowl Street, Room 330**  
**Honolulu, Hawaii 96813**

If there are any questions or concerns, or if there are matters which I have neglected to address, please contact me at 587-3050.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Wade H. Hargrove III', written over a horizontal line.

Wade H. Hargrove III  
Deputy Attorney General