

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

September 14, 2007

Board of Land
and Natural Resources
Honolulu, Hawai'i

Request for Authorization to Select and Appoint a Hearing Officer to Conduct Contested Case
Hearing Regarding the Board of Land and Natural Resources' Finding that Dr. Greta Aeby
Violated Northwestern Hawaiian Islands Research, Monitoring, and Education Permit #
DLNR.NWHI06R008

I. BACKGROUND

On July 27, 2007, the Board of Land and Natural Resources (Board) found Dr. Greta Aeby in violation of Northwestern Hawaiian Islands Research, Monitoring, and Education Permit # *DLNR.NWHI06R008* for transporting two pieces of live coral within the Northwestern Hawaiian Islands Marine Refuge. Pursuant to section 187A-12.5, Hawai'i Revised Statutes (HRS), the Board fined Dr. Aeby \$1,000 for this violation.

Following the Board's decision, Dr. Aeby's representative, David Lonborg of the University of Hawai'i Office of General Counsel, orally requested a contested case hearing. On August 6, 2007, the Division of Aquatic Resources received a timely written petition for contested case hearing from Mr. Lonborg on behalf of Dr. Aeby.

II. LEGAL AUTHORITY

Section 13-1-32(d), Hawai'i Administrative Rules (HAR) provides that the Board may conduct the contested case hearing or, at its discretion, may appoint a Hearing Officer to conduct the hearing. In addition, HRS §§ 92-16 and 171-6 provide that the Board may delegate to the Chairperson the authority to select the Hearing Officer.

III. DISCUSSION

Conducting a contested case hearing may involve: giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing.

History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

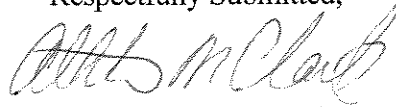
Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. At the conclusion of the case, the Board has the ability to act within its discretion on the Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order.

IV. RECOMMENDATION

Staff recommends that the Board:

1. Authorize the appointment of a Hearing Officer to conduct all the hearings relevant to the subject petition for a contested case hearing; and
2. Delegate the authority for selection of the Hearing Officer to the Chairperson.

Respectfully Submitted,



Dr. Dr. Dan Polhemus, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Interim Chairperson
Department of Land and Natural Resources