

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813



March 10, 2017

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: ADOPTION OF AMENDMENTS TO HAWAII ADMINISTRATIVE
RULES CHAPTER 13-209 "RULES REGULATING ACTIVITIES
WITHIN NATURAL AREA RESERVES"

BACKGROUND

Hawaii Administrative Rules Chapter 13-209 was adopted in 1981 pursuant to Hawaii Revised Statutes Chapter 195-5, which authorized the department, with the approval of the Natural Area Reserves System Commission (NARSC), to make rules governing the use, control and protection of areas included within the Natural Area Reserves System (NARS).

It has become necessary to revise the Rules further to allow the ability to charge parking fees, specifically in 'Āhihi-Kina'u Natural Area Reserve (NAR); as well as to make minor corrections including prohibition on alcohol and illegal narcotics, as well as to waive permit application fees. Parking fees were proposed in the 2012 'Āhihi-Kina'u Natural Area Reserve Management Plan (approved by the Board of Land and Natural Resources) to provide a self-sustaining funding source that supports protection of the Reserve, as well as others within the Natural Area Reserves System.

The proposed amendments were approved by the NARSC at its April 27, 2015 meeting. The Board of Land and Natural Resources at its March 11, 2016 meeting, and the Governor on June 23, 2016, gave approval to hold a public hearing. A hearing notice was published in the *Star Advertiser* and *The Maui News* on October 10, 2016. Because 'Āhihi-Kina'u NAR was the most impacted by this rule change, the public hearing was held on Maui November 10, 2016.

DISCUSSION

The full text of the proposed amendments to HAR 13-209 is included as Attachment A. A summary of the proposed changes, including a brief justification for why a change is considered, follows:

Amendment to 13-209-4 (Prohibited Activities): Alcohol and drug use was left out of the original rules, but added in 2016 to make prohibition consistent across Department lands.

Addition of 13-209-5.5 (Applications for Special-use permits): These revisions waive application fees and provide the flexibility to grant permits to both governmental agencies and others for periods longer than one year. These housekeeping amendments will streamline and simplify permitting.

Addition of 13-209-5.6 (Parking Fees): The proposed changes would specifically authorize the Board or its authorized representative to charge a \$5 per vehicle fee for parking in the 'Āhihi-Kīna'u Natural Area Reserve at the Kanahena lot. Residents would not have a charge. This fee would provide a sustainable source of revenue for management of the Natural Area Reserves System.

Addition of 13-209-5.7-5.9 (Various Parking Amendments): These changes establish parking closure hours, establish the Kanahena parking lot, and provide the Department the ability to move parked vehicles. These amendments are necessary to control traffic in the 'Āhihi-Kīna'u Natural Area Reserve.

Summary of public hearing: Minutes of the public testimony are included as Attachment B. The majority of testimony raised during the public hearing period concerned opposition to charging parking fees, concern that residents would also be charged, and questioning why fees are needed for management. Most of those with concerns had not been involved in the Management Plan preparation or had not attended Advisory Group Meetings or other public meetings, so this rule change hearing was an important venue to receive additional comments, especially for those recently arrived on Maui. When an explanation was provided as to the charging of fees, many were assured that residents would not be charged; but some were unhappy that their non-resident friends and family would be charged. The Department maintains that a fee is necessary for funding improved management in the Reserves. There was also a written comment submitted seeking to clarify the legal language so that residents would not be charged a fee. The Department confirmed that this provision does not need to be clarified.

Tape recordings of the public hearing and copies of all written testimony received are being made part of the administrative file at the Division of Forestry and Wildlife and are available for public review upon request.

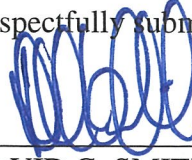
Analysis of Changes to the Rules After Public Hearing: After the public hearing, the rules were further modified to amend the provision prohibiting drug use to reference State and Federal laws. This makes the rules consistent with the recently updated laws that permit prescribed medical marijuana usage, but prohibits usage in a public area. Additionally, the Natural Area Reserve Special Fund was added as the receptacle for revenues from the parking fees. Neither of these changes were substantive enough to require another public hearing to hear comments on the amendments.

RECOMMENDATION

That the Board of Land and Natural Resources:

1. Adopt amendments to Hawaii Administrative Rules Chapter 13-309 "Rules Regulating Activities Within Natural Area Reserves."

Respectfully submitted,



DAVID G. SMITH, Administrator,
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne Case, Chairperson
Board of Land and Natural Resources

Attachments:

- A. Hawaii Administrative Rules 13-209, proposed amendments in Ramseyer and Exhibits
- B. Minutes from public hearing November 10, 2016

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

Amendments to Chapter 13-209
Hawaii Administrative Rules

DATE

1. Section 13-209-4, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-4 Prohibited activities. The following activities are prohibited within a natural area reserve:

(1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;

(2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;

(3) To remove, damage, or disturb any geological or paleontological features or substances;

(4) To remove, damage, or disturb any historic or prehistoric remains;

(5) To remove, damage, or disturb any notice, marker, or structure;

(6) To engage in any construction or improvement;

(7) To engage in any camping activity or to establish a temporary or permanent residence;

(8) To start or maintain a fire;

(9) To litter, or to deposit refuse or any other substance;

(10) To operate any motorized or unmotorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use;

(11) To operate any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, or marine waters, except as otherwise provided in the boating rules of the department;

(12) To enter into, place any vessel or material in or on, or otherwise disturb a lake or pond;

(13) To engage in commercial activities of any kind in a natural area reserve without a written special-use permit from the board or its authorized representative;

(14) To have or possess the following tools, equipment, or implements: fishing gear or devices within Ahihi-Kinai natural area reserve, including but not limited to any hook-and-line, rod, reel, spear, trap, net, crowbar, or other device that may be used for the taking, injuring, or killing of marine life; cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life; and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department;

(15) To hike, conduct nature study, or conduct any activity with a group larger than ten in size;

(16) To be present in an area closed pursuant to section 13-209-4.5 or after visiting hours established pursuant to section 13-209-4.6;

(17) To anchor any motorized or nonmotorized water vehicle of any shape or form in the marine waters of Ahihi-Kinai natural area reserve;

(18) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;

(19) To conduct any other activity inconsistent with the purpose and intent of the natural area reserves system.

(20) To use or possess narcotics or drugs except as provided by Federal or State laws. No person shall enter or remain within

the premises when under the influence of alcohol or illegal narcotics or drugs.

(21) To use or possess alcohol, except with the written permission of the board or its authorized representative. [Eff 6/29/81; am 12/9/02; am 7/3/03; am 1/26/07; am] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

2. Section 13-209-5, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-5 Special-use permits. (a) The board or its authorized representative, with the approval of the commission or its authorized representative, may issue permits to conduct activities otherwise prohibited by section 13-209-4 for research, education, management, or for any other purpose consistent with chapter 195, Hawaii Revised Statutes.

(b) No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits ~~[issued to other governmental agencies]~~ where the board determines such a waiver to be in the best interest of the State.

(c) All special-use permits shall be subject to standard conditions, as approved by the board, including but not limited to the following:

- (1) The permittee shall adhere to specifications given in the permit application;
- (2) Disturbance of vegetation and wildlife shall be avoided as much as possible;
- (3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants' clothes, equipment, and vehicles are free of seeds or dirt to lessen the chance of introducing any non-native plants or soil animals. Should an infestation develop attributable to permittee, the permittee is responsible for eradication by methods specified by the department;

(4) This permit is not transferable;

(5) This permit does not exempt the permittee from complying with any other applicable rule or statute;

(6) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.

(d) The board or its authorized representative may attach special conditions on the special-use permit, including but not limited to reporting requirements, limitations on the size of groups or the length of time for which the permit is valid. Failure to comply with any of these conditions shall render a permit void.

(e) All permittees shall carry the permit with them at all times while in the reserve and shall, upon request, show the permit to any law enforcement officer or the board or its authorized representative.

(f) Permits are not transferable. If the permittee is a partnership, joint venture, or corporation, the sale or transfer of 25 percent or more of ownership interest or stocks by dissolution, merger, or any other means, shall be deemed a transfer for purposes of this subsection and subject to the right of the department to terminate this permit effective the date of the sale or transfer.

(g) The board or its authorized representative may revoke or cancel a permit without prior notice when an emergency is declared by the department or other proper authority or when the special-use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the reserve.

(h) The board or its authorized representative may revoke or cancel any permit with thirty days written notice:

(1) For any infraction of the terms and conditions of the permit;

(2) Upon a finding that the special-use threatens to damage the integrity or condition of the natural, geological, or

cultural resources in the reserve;

(3) Upon a finding that the special-use poses a threat to the health, safety, or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the reserve; or

(4) Upon closure of a reserve pursuant to section 13-209-4.5.

(i) The provisions of this section shall not exempt the applicant from complying with any other applicable rule or statute. [Eff 6/29/81; am 1/26/07; am] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

3. Section 13-209-5.5, Hawaii Administrative Rules, is amended to read as follows:

§ 13-209-5.5 Applications for special-use permits. (a) All applications for special-use permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

- (1) Name of applicant, and if relevant, affiliation and title;
- (2) Contact information, including name of primary contact, mailing address, phone number, and if available, email address;
- (3) The period of time for which the permit is requested, not to exceed one year unless seeking a waiver pursuant to section 13-209-5(b);
- (4) The reserve(s) involved;
- (5) A map illustrating the reserve and the location within the reserve of the proposed special-use;
- (6) A description of the proposed special-use;
- (7) A discussion of how the proposed special-use satisfies subsections (b) (1) through (b) (6);

(8) An assessment of the potential environmental impact the special-use may have on the reserve or the surrounding area;

(9) Signature of the applicant;

~~[(10) An application fee of \$50, however, the board or its authorized representative may waive the application fee if, in their opinion, the waiver is in the public interest or benefits the State; and~~

~~(11)]~~ (10) Any other information as determined by the department.

(b) In evaluating the merits of an application for a special-use permit, the board or its authorized representative shall apply the following criteria:

(1) The proposed special-use cannot be conducted elsewhere;

(2) The proposed special-use is consistent with the purpose and objectives of the natural area reserve system;

(3) The proposed special-use is consistent with the management plan developed for the reserve;

(4) The proposed special-use provides a benefit (direct or indirect) to the natural area reserve system or to the individual reserve(s) or both;

(5) The proposed special-use will not damage or threaten to damage the integrity or condition of the natural, geological, or cultural resources in the natural area reserve and adjacent area or region;

(6) The proposed special-use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled "Coastal Zone Management", where applicable; and

(7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.

(c) The applicant shall have the burden of demonstrating that the proposed special-use is consistent with the criteria in subsection (b).

(d) The board or its authorized representative may hold a public hearing on an application where determined by the chairperson that the scope of the proposed special-use or the public interest requires a public hearing on the application. Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper in the county where the natural area reserve is located.

(e) If within two hundred seventy days after the department's acceptance of a completed application, the board or its authorized representative shall fail to render a decision thereon, the application for a special-use permit shall be automatically approved with the standard conditions outlined in section 13-209-5(c), provided that the board may revoke this approval pursuant to section 13-209-5(g) and (h). The two-hundred-seventy-day time period provided shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance. The two-hundred-seventy-day time period for decision may be extended for another one hundred eighty days at the request of the applicant to give the board additional time to review and make a decision on the application. [Eff 1/26/07; am] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

4. Chapter 13-209, Hawaii Administrative Rules, is amended by adding new sections to read as follows:

§ 13-209-5.6 Parking fees.

(a) The fee for parking a vehicle in the Ahihi-Kinau natural area reserve at the Kanahena lot, shown in

Exhibit "1", in a space designated for such use shall be:

<u>Nonresidents:</u>	<u>\$5.00 per vehicle</u>
<u>Residents:</u>	<u>No charge</u>

(b) For purposes of this section, the term "resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license.

(c) All fees collected shall be deposited into the Natural Area Reserve Special Fund. [Eff _____] (Auth: HRS §§ 195-5, 195-9) (Imp: HRS §§ 195-5, 195-9)

13-209-5.7 Public parking closure hours. Ahihi-Kinau natural area reserve parking areas will be closed daily between 8:00 p.m. and 5:00 a.m., including holidays. [Eff _____] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

13-209-5.8 Public parking. As may be prescribed from time to time by the department, no person shall use the Kanahena lot, shown in Exhibit "1", without payment of parking fees and charges and may only park in areas designated by the department. No person shall use a parking area within the Ahihi-Kinau natural area reserve when the parking area is closed, except as expressly permitted in writing by the department. [Eff _____] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

§ 13-209-5.9 Removal of vehicles. (a) The department may detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

(1) For nonpayment of parking charges when a vehicle is parked in a vehicular parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve; or

(2) Which has been parked continuously anywhere in a parking area operated by the department or authorized representative in the Ahihi-Kinau natural area reserve for a period exceeding the posted time limits, except where prior arrangements have been made therefor.

(b) The department shall have the authority to detain, tow, move, or cause to be moved any vehicle when the position or location of the vehicle in a parking lot creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department or authorized

representative, of any vehicle legally parked, shall not be at the owner's risk and expense.

[Eff] (Auth: HRS §§ 195-5) (Imp: HRS §§ 195-5)

5. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

6. Additions to update source notes to reflect this amendment is not underscored.

7. The amendments to chapter 13-209, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

*

Chairperson

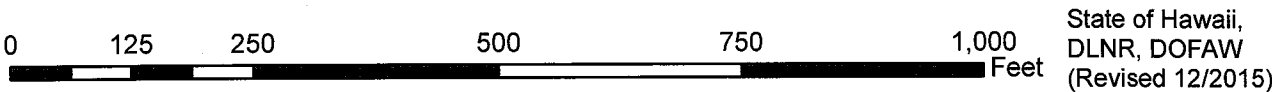
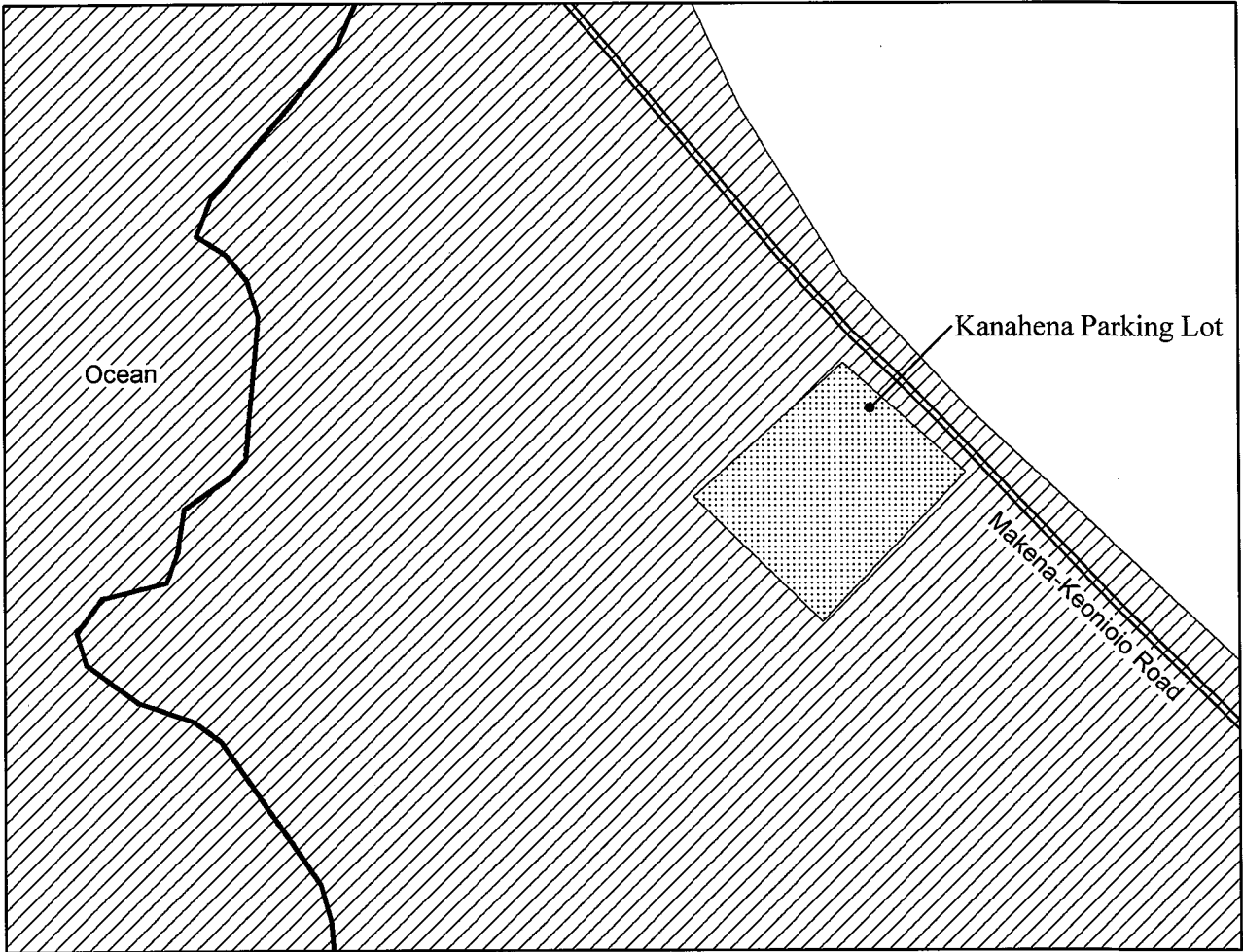
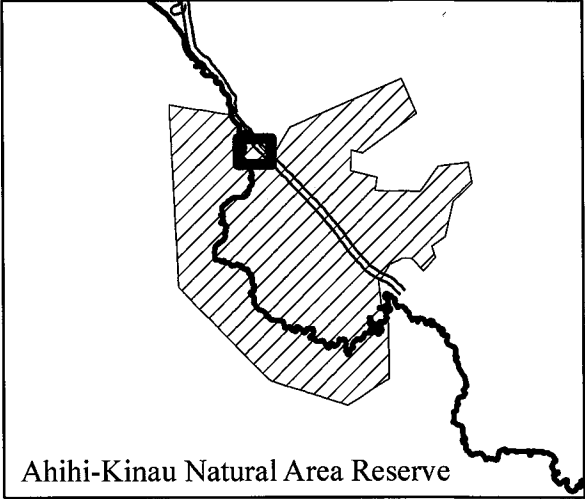
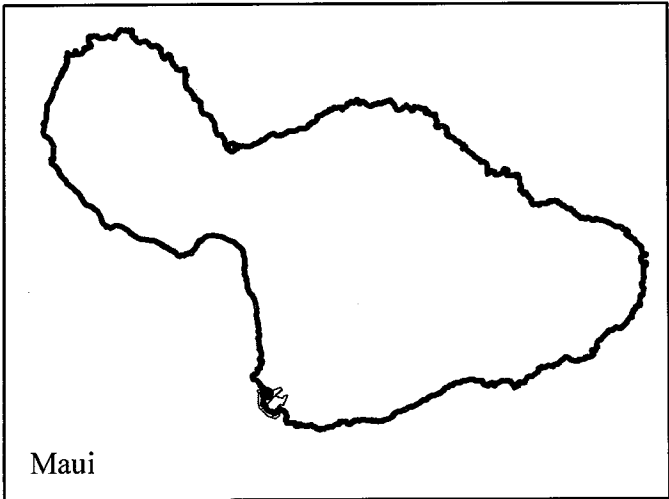
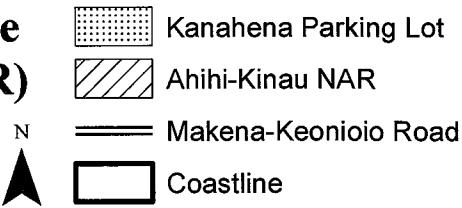
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Maui: Kanahena Parking Area within the Ahihi-Kinai Natural Area Reserve (NAR)

Chapter 209, Exhibit 1



Public Hearing Minutes

Adopting Amendments to Hawaii Administrative Rules

TITLE 13 CHAPTER13-209

Rules Regulating Activities Within Natural Area Reserves

Hearing Location: Kihei Community Center, Kihei, Maui

Hearing Date: November 10, 2016

I. Introduction

A. Opening

- i. It is now 6:23 p.m. and this public hearing is called to order.
- ii. This is a formal public hearing on proposed Rule Amendments to Chapter 13-209, Hawaii Administrative Rules.
- iii. My name is Peter Landon and I am the Manager for 'Āhihi-Kina'u Natural Reserve (A-K NAR), Maui Branch, Division of Forestry and Wildlife (DOFAW), Department of Land and Natural Resources (DLNR).
- iv. The Board of Land and Natural Resources (BLNR) has appointed me as the Hearings Officer of this public hearing on their behalf.
- v. At this time, I would like to introduce other DLNR employees: Emma Yuen, Program Manager, Native Ecosystem Protection and Management, Administrative Office, DOFAW, Honolulu; Fern Duvall III, Manager, Native Ecosystem Protection and Management, Maui DOFAW; Joe Fell-MacDonald, A-K NAR Field Tech and Interpretation, Maui DOFAW; Jeff Bagshaw (late arrival), Outreach and Volunteer Coordinator for A-K NAR and Maui DOFAW; Betsy Gagne, Executive Secretary, Natural Area Reserves System Commission, DOFAW Honolulu; Erik Vuong, Maui Branch of the Division of Conservation and Resource Enforcement (DOCARE); Brooks Tamae, Maui DOCARE; Jefferey Kinorea, Maui DOCARE; and Howard Rodrigues, Maui DOCARE.
- vi. As a reminder, I hope you have all signed in (please print). If not, please do so on the sign-in sheets so we will have a complete record of the persons attending this hearing. There is a separate column for those who wish to present testimony on the proposed amendments. Please check your name on the testimony column if you would like to speak. I will call the names in the order in which they are listed to hear the testimonies.
- vii. Public attending the meeting (as per sign-in sheet): Rosemary Robbins, concerned citizen; Jason Reyna, Kelli Lundgren, A-K Volunteer; Rita Scanlan, Bette Belanger, Kihei; Chris Finly, Brad Kolbo, Concerned Citizen; Shawn Jezerinac, A-K Volunteer; Brian Nae'ole and 'Ohana; Carl Pokipala, The Vares 'Ohana, concerned for future land; Lisa Beck, Citizen; Lisa Husch, Citizen; Donna Sterling, Kahikinui; Sharon Woloshen, Citizen. (NOTE: This is all of the Public that signed in on the sign-in sheet after repeated requests to sign in as a record of attendance.)

II. Purpose

- A. The purpose of this hearing is to provide the Public with the opportunity to present comments on the proposed rule amendments.

- i. The proposed amendments were approved by the Natural Area reserves System Commission at its April 27, 2015 meeting and The Board of Land and Natural Resources Approvals March 11, 2016 and final approval by the Governor on June 23, 2016.
- ii. Notice of the public hearing appeared in the October 10, 2016 issue of The Maui News (newspaper of the subject area) and the October 10, 2016 issue of the Honolulu Star-Advertiser (state-wide circulation), meeting the legal requirement of publication of notice in advance of the public hearing. A notice of the public hearing was also sent to various agencies and organizations identified as having an interest in the subject area.

B. Procedures During Hearing

- i. First, there will be a short informational presentation on the proposed rule changes.
- ii. After the informational presentation, I will call on those who signed the list to testify.
- iii. After these persons have presented their testimonies, I will open the floor to anyone else who wishes to speak.
- iv. Please keep your statement as brief and succinct as possible on the subject to allow others the opportunity to testify.
- v. Please raise your hand to be recognized, if you have a question or comment on the amendments, and the floor is open.
- vi. When given the floor, please present your name and comments clearly. We ask you to do this because we are tape recording the hearing to prepare the minutes.
- vii. It is important that you identify yourself; otherwise, we may not be able to identify who is speaking when we prepare the minutes.
- viii. I would also like to remind everyone that this is not a courtroom or adversarial type of proceeding, but a public hearing to gather testimonies on the rule amendments.
- ix. If you have a question, please direct your questions to me, and I will either answer your question or re-direct the question to the appropriate person.
- x. We expect that there may be differing opinions and we respect them. We want to hear them so that we can understand everyone's concerns and viewpoints. We also ask that members of the public and other participants respect the potential differing opinions and show respect.
- xi. Are there any questions about the format for this evening? There were none.

C. DOFAW Presentation

- i. The proposed rule amendments are available at the door. Please feel free to take a copy.

Presentation: Peter Landon gave a power point presentation showing the locations by island of current Natural Area Reserves, as well as the parking lot for A-K NAR, followed by an outline of the proposed rule amendments, which are underlined in your handout. These rules (Chapter 209, HAR) refer ONLY to the areas shaded in green on the maps, and you can see how small a footprint A-K NAR is. The rule revisions include

prohibiting alcohol and drugs from any Natural Area Reserve; eliminating permit application fees; the ability to charge parking fees for A-K NAR (residents will not be charged); the ability to ticket and enforce parking regulations and to tow vehicles parked improperly are not paying the fee (unless a resident).

Following the presentation, Peter Landon asked if there were any questions on the changes. There were no further questions at this time.

Please send the written testimonies by e-mail to: Betsy.H.Gagne@hawaii.gov, which is the preferred method of correspondence. If you are unable to access a computer with internet, you mail testimony to: Division of Forestry and Wildlife, Attn: Betsy Gagne, 1151 Punchbowl Street, Room 325, Honolulu, HI 96813.

Public comments may be received in writing by November 30, 2016 and may be e-mailed to: betsy.h.gagne@hawaii.gov (preferred) or by mail to: Betsy Gagne, Division of Forestry and Wild life, 1151 Punchbowl Street Rom 325, Honolulu, HI 96813.

ii. Peter Landon: Testimony on Proposed Rule Amendments

Public input. I have the sign-in sheet and no one signed checked the box to testify. Does anyone want to offer testimony that did not check the box?

Lisa Beck: Wonder about charging about parking, that's not right. Everything else is now blocked off. It makes me nervous, does not sit right for me. It's a special spot; it's a reserve; can't wrap head around this and all the other changes.

Jason Reyna: What happens if lot is full? **Peter replied:** stalls are limited to 50 cars; but we can re-arrange/accommodate i.e. for a big surf event.

Jason Reyna: Not that great a snorkel place; been going there 30 years. Making people go there (bay) not the cove is wrong; there is better snorkeling at the cove. When there is a swell, 50 spots filled immediately; tight space; had you put any thought into this? **Peter replied:** We are focusing on centralized parking. There is a now trail from the parking lot to the cove; parking along the road was becoming too congested and dangerous. The paved lot will accommodate more vehicles than the present rough lot. We will not turn people away; can re-stripe lines at an angle.

Jason Reyna: Kiawe trees are being cut down, that is our shade; cutting all of them down and we are there all day sometimes waiting for waves. Know they are not indigenous, but cutting all of them down is not a good idea. **Peter replied:** It is not determined yet.

Jason Reyna: Just did you think about it? **Peter replied:** This hearing is to focus on the rule changes only; then we can re-visit such concerns.

Rosemary Robbins: Will you pave the path to the beach? **Peter replied:** There are differing ideas about this; ADA (Americans with Disabilities Act) says to pave for access.

Rosemary Robbins: Immediate? **Peter replied:** No.

Bette Belanger: Fifty percent still go to the cove; have been a volunteer over the years and there are more people there now. Don't cut more trails; very uncomfortable.

Shawn Jezerinac: Volunteers down there too; curious as to the purpose of the changes; will it make enough money to make sense (parking fees) and where they will go. **Peter replied:** The parking lot and fees are in the Reserve Management Plan; possibly a few hundred thousand dollars annually. Emma Yuen can elaborate.

Emma Yuen: Parking fees may go to a specific trust fund (or others), but the money will go back into management of the Natural Area Reserve.

Brian Nae'ole: Concerned; Kanaio Association community members walk down to the coast; lot of historic artifacts and if we that come from the area – concerned about people walking in, not knowing how dangerous (lots of injury). Are you going to have an education program? Game area and parking lot – lot of concerns/history in the place. Think makes sense to make an EIS for the area, maybe GMA too; more education/understanding in this area; hope successful to understand these issues; a very nice place to be.

Carl Pokepala: I am retired from the Division of Aquatic Resources. A-K commercial NARS proposing \$5 dollar fee for non-residents, residents free; I assume someone will be there to collect fees?

Peter replied: Yes, the plan is to hire a vendor to be there until can get auto-pay.

Carl Pokepala: Couple thousand per year will go to General Fund? **Peter replied:** The intent is to have it go into one of our own funds; then have to go to the Legislature for permission to spend.

Carl Pokepala: Support that. Is anyone here from Hotel Industry? It they do not know about this they may get turned away. **Peter replied:** Yes, they know and are working with us through the Advisory Group.

Did not identify self: Same way as Iao Valley? **Peter replied:** Yes, model sort of following; but with State Parks, vendor made the Proposal; we want to solicit for the vendor with a specific fee; we pay for the service up front and end up keeping more of the funds. There will be a booth to collect fees from cars.

Did not identify self: Will there be an EIS for this? **Peter replied:** for A-K, an EA (Environment Assessment) was prepared as well as County Special Management Permit; all published via the Environmental Notice, as well as the CDUA/CDUP (Conservation District Use Application and Permit through the Office of Coastal and Conservation Lands – OCCL) and approved by the BLNR.

Did not identify self: EIS for other area? **Peter replied:** Do you mean Kanaio? Yes, but the BLNR only approved the set-aside to DOFAW; it will have to go through same public notice process.

Did not identify self: Wondered about public notification. **Peter replied:** The BLNR approves management plans and actions multiple times in the EA process, including public hearings.

Jeff Bagshaw: Introduced himself as arriving late; is employed by Maui DOFAW at A-K as Educational Outreach and Volunteer Coordinator and explained that he and others are working with the Visitor Industry on this issue, to create a map that shows the A-K NAR on one side, and on the other side, other

adjacent areas along the Makena area, and identifies what visitors can expect down there, a long way from food and water; so they arrive better prepared.

Bette Belanger: Not opposed to parking fee, but will money go to a trust fund or funds; which trust?

Emma Yuen replied: Multiple funds could go into; but the purpose would be for the NARS.

Sawn Jezerinac: Asked Emma about the fee charge; will it go to A-K or O'ahu or Big Island?

Emma Yuen replied: Depends on how much money; if a large amount; can have a conversation; however funding A-K is the priority; if A-K needs are met, then could help other reserves.

Jason Reyna: What exactly is the management of the reserve? **Peter replied:** Mauka to makai.

Jason Reyna: How long managing it? Previously no one managed it, it managed itself. **Peter replied:** In particular, the anchialine pools are globally unique; dryland forest are still present (which are helped by kiawe control); staff has planted over 2,000 plants on the lava flow, and managed illegal marine harvests in the area.

Jason Reyna: Thirty years not managing and it was okay; and why now managing and parking lot; do not understand why. **Peter replied:** A-K is the third most visited place on Maui with 3,000 cars per year. The large amount of human use has affected the Reserve; in 2012 the Management Plan was finalized after years of community discussions and participation in writing of the plan, and approved by the BLNR, and this is a step in that direction to regulate parking and charge a fee, to control ungulates through fencing, and to stabilize cultural resources.

Unable to identify speaker: Will there be restrooms, showers, etc? **Peter replied:** We are limited on water; last meter is at the Prince Hotel; meantime have porta-potties in the current Reserve parking lot and at Keoni'ō'io (under jurisdiction of the Land Division)); and we pay for all of them plus trash pick-up. As the third most visited place on Maui, it is anticipated that up to 100 K per year and \$5 per vehicle would go to managing the Reserve.

Unable to identify speaker: What is there to manage there? **Peter replied:** The anchialine pools in particular; when they were open they were starting to get trampled in, and rubbish; so the management plan especially focuses on them. We are not mitigating human activities such as kayaking and commercial activities. The coral reef is also important to manage; it was decided to focus impact in one area.

Unable to identify speaker: Are you going to pave Keoni'ō'io next? **Peter replied:** We provide porta-potties there, but it is not part of the NAR; it is under the jurisdiction of the Land Division.

Brian Nae'ole: How much kind of parking facilities; your first? **Peter replied:** Yes, the first for the whole NARS; which is why we are amending the rules; but not the first for DOFAW; State Parks does more.

Brian Nae'ole: Opens the door for future when we will have to pay; want to keep it as natural as possible; now fighting lot of use in this area. Taking care of our own people needs to be considered, understood.

Lisa Beck: Curious in the difference of an EIS and EA; one (EIS) takes years; is EA a fast-track?

Peter replied: Yes, an EA is a faster process, but NOT a fast track; they are conservation areas so can use an EA.

Emma Yuen: An EA is the first step in the process; to assess if it is a significant impact; then if significant then an EIS; if not then an EA; it is a two-step process. The Accepting Agency determines if it is a significant impact.

Jason Reyna: EIS for parking lot? **Emma replied:** No need (for an EIS); **Peter:** parking lot existed already; a pre-existing use and focus in the area, and because it was a use of the area, an EA was prepared (by Peter).

Jason Reyna: If parking lot more people more use. **Emma replied:** There was a public comment period for the EA; it went through a long process and incorporated many comments. This hearing is NOT about paving the parking lot; it is to create ability to charge a fee; it is about rule changes ONLY: to determine whether to charge a fee or not.

Lisa Beck: Missed first part of process and wonder if it is too late, the area will be affected in a big way. Who determines this? Good? Bad? **Emma replied:** Multiple factors, multiple studies and public comments went into making the determination for an EA. The Draft EA (DEA) is published and goes through review (challenge period); and completed this with the Final EA (FEA) over a year ago.

Peter Landon: To Lisa: you can voice concerns by calling 984-8100, the Maui DOFAW Branch Office. Peter then asked if there was any further testimony.

Lisa Beck: I am against it. Do we want it to be like that? Five dollars, I don't like it. My relatives are tourists and not for paving and chopping kiawe trees. We need the shade; who will save the tourists when they get heat stroke?

Not sure of identity: At first not in favor; but because of the masses of people pulling out all over the place; better to contain fluids from cars including oils and overheating from hitting the rocks (in current surface of the lot); got to have a way to contain the fluids; paving a good idea; have concern about vehicles near the cove too.

Shawn Jezerinac: In favor of parking but question of use of a NAR, and its overuse. It's different; it's preservation first, so need to let the area rest, be protected. No vendors selling tacos or coconuts. Hard to lose easy access. The kind of support to staff is helping keep sunscreens that are harmful out of the area. It's for plants and animals first NOT recreation. Somewhere in moderate balance. If have to, charge to park and keep it preserved; historic sites, etc. NARs are different; not just a State Park. They are small places; if I have to go somewhere else, I'd be willing to.

Jason Reyna: Not really for paying for it, pay to use. For 3-4 years ago when blocked off, every 3 years (actually 2 years at a time) rule: old Hawaiian man said he used to fish there and in 2 years going to assess it, and 30 years later still can't fish there; sort of in favor of parking lot.

Peter Landon: Have a bit more to summarize before ending the hearing; if you want to provide written testimony, best contact information.

Betsy Gagne: November 30, 2016 is the deadline for her to receive comments either via e-mail or written for the rule amendments ONLY for Chapter 209 (NOT Kanaio or other areas). She also asked testifiers to identify themselves to be sure she got proper names associated with comments; or would have to indicate them as unidentified, but have their statements.

Brooks Tamaye: DOCARE requests staff look at parking rules of other Divisions in DLNR to be sure DOCARE officers can enforce parking (State Parks: SP, and Division of Boating and Outdoor Recreation: DOBOR).

Peter Landon: There was one last chance for more comments.

Bette Belanger: So, parking lot will be paved regardless? **Peter replied:** Yes; lot will start next week.

Mary Vares: Will there be a drop off area? Can I be dropped off? **Peter replied:** Have not decided yet; but yes, in the emergency staging area can get dropped off and picked up. Need to work out the details, so we would welcome comments to Maui DOFAW: phone 984-8100. I am the A-K Reserve Manager, so you can also contact me directly. Drop offs should not be an issue.

Brooks Tamaye: Rules: one more item: 209-4-20 general statement; like DOFAW to have drugs and alcohol to align with the Hawaii Revised Statutes (HRS).

- vi. Peter asked if there was anyone else desiring to give testimony. There were none.
- vii. Decision-making Proposal
After considering your comments and other testimonies, should it be decided to go forward, the Division will submit the proposed designation to the Board of Land and Natural Resources for adoption.
Should the Board decide to adopt the proposed amendments, we will send them to the Governor for his final approval and signature.
- viii. Assuming the Governor approves the amendments, certified copies will be filed with the Lieutenant Governor.
- ix. Adjournment of Pubic Hearing
On behalf of the Board of Land and Natural Resources and the Division of Forestry and Wildlife, I want to thank you for attending this public hearing.
The public hearing is adjourned. Time: 7:24 p.m.

Hearing Minutes prepared by Betsy Gagne, November 11, 2016.
