

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

July 14, 2017

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO THE ADMINISTRATOR OF THE DIVISION OF FORESTRY AND WILDLIFE TO ISSUE PERMITS LISTED IN EXHIBIT 1 FOR HAWAII ADMINISTRATIVE RULES CHAPTER 13-209, RULES REGULATING NATURAL AREA RESERVES

AND

AUTHORIZE THE ADMINISTRATOR TO DETERMINE AND APPROVE CHAPTER 343, HAWAII REVISED STATUTES (HRS) ENVIRONMENTAL COMPLIANCE REQUIREMENTS, INCLUDING APPROVAL OF DECLARATIONS OF EXEMPTIONS, AS APPLICABLE, FOR PERMITS ISSUED UNDER HAWAII ADMINISTRATIVE RULES CHAPTER 13-209, RULES REGULATING NATURAL AREA RESERVES

BACKGROUND & DISCUSSION:

Authority to establish rules for Natural Area Reserves are given to the Department of Land and Natural Resources ("Department") by HRS Chapter 195. Under this authority, Hawaii Administrative Rule (HAR) Chapter 13-209 was created to regulate activities in the Natural Area Reserves. The Division, upon examination of its HARs, has made an effort to review the related permits and propose ways to improve the issuing process.

Hawaii Administrative Rule § 13-209-5 (a) states that "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." Because the approval of the Commission is required to issue permits, the Commission used to meet every time a permit was applied for, which was time-consuming and expensive, particularly for certain types of routine permits like hiking groups or low-impact research activities. On May 21, 2007, the Commission voted to delegate their authority to approve permits to the Natural Area Reserves System Executive Secretary, after discussion and approval by Branch staff, for activities listed in Exhibit 1.

On April 8, 1983, the Board delegated the Chairman as the Board's authorized representative in the

issuing of special use permits for Natural Area Reserves.

The Division requests that the Board instead delegate its authority to issue permits listed in Exhibit 1 to the Administrator of the Division of Forestry and Wildlife. By delegating its authority, the Board will: 1) expedite the permits to the public by reducing turn-around time, and 2) relieve the Chairperson of a large quantity of routine paperwork. Types of special use permits that are not listed in Exhibit 1 will continue to go to the Chairperson for approval.

The Division notes that the delegation of authorities to issue permits represent potential procedures that may be followed based on a case-by-case review of permit requests. In some cases, however, such as those dealing with new or unforeseen issues, based on that review the delegated authority may conclude that a higher authority should review a permit request and determine whether it should be approved or denied. In those cases the request will be forwarded to the appropriate authority for decision.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Division requests that the Board authorize the Administrator (authorized representative) to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for the activities authorized under permits issued pursuant to Chapter 13-209, HAR.

Permit requests will be reviewed by the authorized representative for potential impacts resulting from the requested activities. The authorized representative will make a determination as to whether the activities require preparation of an Environmental Assessment, or, as provided by Ch. 343, HRS, and Chapter 11-200 HAR, determine whether the activities are exempt from the preparation of an Environmental Assessment in accordance with the current Exemption List for the Department.

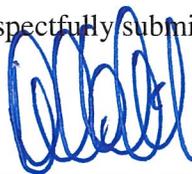
For projects that are eligible for a declaration of exemption, the authorized representative will consult with agencies and individuals having expertise before seeking a project exemption as required under Chapter 11-200, HAR. For projects that require the preparation of an environmental assessment, and environmental assessment for the project will be developed and published.

RECOMMENDATION:

That the Board:

1. Delegate the authority to issue permits listed in Exhibit 1 under Hawaii Administrative Rules Chapter 13-209 to the Administrator of the Division of Forestry and Wildlife.
2. Authorize the Administrator to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for permits issued under Hawaii Administrative Rules Chapter 13-209, Rules Regulating Natural Area Reserves.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachment

EXHIBIT 1

Delegation of Selected Permitting Approval Authority for
Activities Undertaken in Natural Area Reserves

The authority of the Natural Area Reserves Commission to recommend approval of special use permits is hereby delegated to the NARS Executive Secretary, after discussion and approval by Branch staff, for the following activities conducted in Natural Area Reserves:

1. Hikes or visits by educational groups larger than ten (10);
2. Incidental traditional and customary practices (e.g., collection of maile, mokihana)
3. The following research activities:
 - a. Non-destructive inventory, measurements, censuses, and monitoring of trees, ferns, understory plants, birds, mammals, insects, and aquatic organisms where there is no harm to the organisms (includes both ground-based and remotely sensed measures).
 - b. Non-destructive inventory, measurements, and monitoring of the forest floor, dead and downed wood, and soils.
 - c. Non-destructive inventory, measurements, and monitoring of streams, ponds, and other aquatic ecosystems.
 - d. Non-destructive hydrological and geomorphic studies which do not involve the erection of structures or long term placement of equipment.
 - e. Erection of small protective fences and barriers ≤ 10 acre in area (and the removal of exotic species within such plots).
 - f. Construction of temporary blinds and field observation structures.
 - g. Soil and plant nutrient cycling research.
 - h. Biocontrol research to control invasive plants and animals - manipulate densities of state and federally permitted biocontrol agents through redistribution and experimental methods, including caging plants or parts of plants.
 - i. Sampling air and gasses (plant and soil respiration) within the experimental forest.
 - j. Placement of temporary electronic devices for environmental monitoring or sampling (for periods ≤ 36 months).

- k. Non-destructive collection of plant material (excluding all listed T&E plants), soils, and water samples for laboratory analysis.
- l. Collection of plant and insect samples that are from common, exotic, and abundant taxa for laboratory, greenhouse, or herbarium sampling (excluding all listed T&E species).
- m. Maintenance of a trail system for access.

For purposes of this delegation, "non-destructive" means an activity that does not destroy or harm the object of analysis.

STATE OF HAWAII
Natural Area Reserves Commission

By: /s/ Dale Bonar, Chairperson
Natural Area Reserves System Commission

Date: May 21, 2007

Approved by the Natural Area Reserves System Commission
at its meeting held on May 21, 2007.