

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

March 23, 2018

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

Land Board Members:

**SUBJECT: REQUEST TO DELEGATE AUTHORITY TO THE DIVISION OF FORESTRY AND WILDLIFE BRANCH MANAGERS TO ACT AS THE AUTHORIZED REPRESENTATIVES PURSUANT TO CHAPTER 13-209-5, SPECIAL USE PERMITS, HAWAII ADMINISTRATIVE RULES, RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES**

**AND**

**AUTHORIZE THE DIVISION OF FORESTRY AND WILDLIFE BRANCH MANAGERS TO DETERMINE AND APPROVE CHAPTER 343, HAWAII REVISED STATUTES ENVIRONMENTAL COMPLIANCE REQUIREMENTS, INCLUDING APPROVAL OF DECLARATIONS OF EXEMPTIONS, AS APPLICABLE, FOR PERMITS ISSUED UNDER CHAPTER 13-209-5, HAWAII ADMINISTRATIVE RULES, RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES.**

**BACKGROUND:**

Pursuant to Hawaii Revised Statutes (HRS) §195, the Natural Area Reserves System (NARS), was established to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii. Hawaii Administrative Rule (HAR) §13-209 was adopted to carry out the purposes of § 195, HRS. NARS have restrictive and protective statutes and rules to make activities consistent with the purpose of §195, HRS, including oversight by a NARS Commission.

HRS §195-5 establishes the authority of the Commission by indicating that "...no use of any such area shall be permitted unless such rule or regulation or permitted use shall have been specifically approved by the natural area reserves system commission." HAR § 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.” Thus, a NARS special use permit is a two-step process that needs approval by both the NARS Commission and the Board.

*Current NARS Commission Delegation*

On February 12, 2018, the Commission gave approval authority to the Branch Managers of DOFAW to approve activities listed in Exhibit 1. Those types of activities were identified to have less significant and shorter-term impacts that would not need full Commission approval.

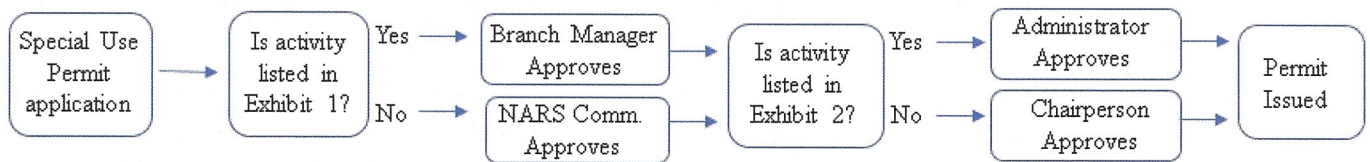
*Current Board of Land and Natural Resources Delegation*

On April 8, 1983, the Board delegated the Chair as the Board’s authorized representative to issue special use permits. On July 14, 2017, the Board delegated to the Division of Forestry and Wildlife (DOFAW) Administrator authority to approve items listed in Exhibit 2.

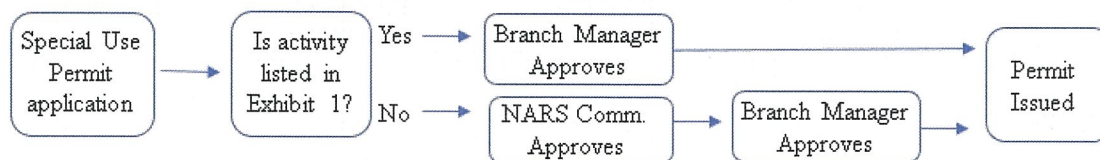
DISCUSSION:

This submittal requests that the Branch Managers of DOFAW be designated as the Board’s authorized representatives to approve special use permits for all activities.

The current workflow for approving a special use permit application is below:



If this submittal is approved, the process will be:



The effect of this would be a more streamlined process, while keeping a high level of public and Commission review for activities that have long-term or potentially significant impacts.

The new process allows staff most involved with the on-the-ground conditions of the Reserve to be signatories on the permits. The Branch Manager has close direct contact with the islands’ status – for instance, the logistics for conducting the activities or the most appropriate conditions needed for the activity to be safe and have the least impact to the Reserve. The Branch Manager is highly knowledgeable regarding the geographic region in which the permits are being issued. They are also in direct contact with the NARS specialist and other resource specialists on that island and can readily check the status and standing of permittees.

Branch Manager involvement in this process will also better ensure consistency within the island, as many permits for NARS also involve activities on adjacent Forest Reserves or other DOFAW lands which the Branch Manager is overseeing. Allowing the Branch Manager to be the signatory is consistent with the process for other permits, and will simplify the permit approval process. If the Branch Manager would like a higher level of review for an application, they can seek Administrator, Chairperson, or Board approval.

CHAPTER 343, HAWAII REVISED STATUTES – ENVIRONMENTAL ASSESSMENT:

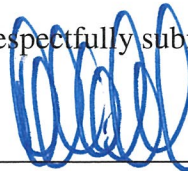
Each permit request will be reviewed by the department staff it has been delegated to for potential impacts resulting from the requested activities. The delegated staff will make a determination as to whether the activities require preparation of an Environmental Assessment, or, as provided by Ch. 343, HRS, and Ch. 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.

RECOMMENDATION

The Department recommends that the Board:

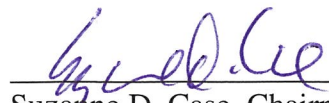
1. Designate Division of Forestry and Wildlife Branch Managers as the Authorized Representatives for issuing special use permits, pursuant to Chapter 13-209, HAR, rules regulating activities within Natural Area Reserves.
2. Authorize the Division of Forestry and Wildlife Branch Managers to determine and approve Chapter 343, HRS environmental compliance requirements, including approval of declarations of exemptions, as applicable, for permits issued under the rules regulating activities within 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

Attachments

## Exhibit 1

### **Types of permit activities currently delegated to the DOFAW Branch Managers as the authorized representative for the Natural Area Reserves System Commission**

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 activities:
  - a. Non-destructive inventory, measurements, research, censuses, and monitoring where there is no harm to natural, historic, or cultural features.
  - b. Erection of protective fences and barriers.
  - c. Removal of non-native species, native species restoration (reintroduction of native species or population enhancement within historic range by planting, translocation or social attraction methods), monitoring, fire control, litter removal, and other activities that comply with the Management Policies for the State of Hawaii, Natural Area Reserves System (1997).
  - d. Biocontrol research and introduction of approved biocontrol agents and labeled toxicants to control invasive plants and animals – manipulate densities of state and federally permitted biocontrol agents through redistribution and experimental methods.
  - e. Placement of temporary devices, equipment, or structures for periods less than 36 months.
  - f. Collection of organism, soil and water samples.
  - g. Collection of small amounts of inorganic material for research purposes. Note prohibitions in Chapter 205A-44, Hawaii Revised Statutes.
  - h. Maintenance of a trail system for access.
  - i. Entry into closed areas or outside of established visiting hours.

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

## Exhibit 2

### **Types of permit activities currently delegated to the DOFAW Administrator as the authorized representative for the Board of Land and Natural Resources**

1. Hikes or visits by educational groups larger than ten
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, invertebrates, 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 less than or equal to ten acres 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 of less than or equal to 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.