

Marine and Coastal Zone Advocacy Council (MACZAC)
Ke Kahu O Na Kumu Wai

December 6, 2007
10:00 a.m. to 1:45 p.m.
Hawaii Office of Planning, Conference Room
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

MINUTES

ATTENDANCE

- Members Present: Donna Brown, James Coon, Pua Ishibashi, Makaala Kaaumoana, Rhoda Libre, Arnold Lum, Walter Ritte, Susan Sakai, Ron Terry, Kanoa Withington, Donna Wong
- Members Absent: Henry Lau
- OP/CZM Staff Present: Susan Feeney, Melissa Iwamoto, Mary Lou Kobayashi, Marnie Meyer, Abe Mitsuda, Melanie Saucier, Douglas Tom
- Others Present: Jessica Stabile (MACZAC), Brian Hunter (DOH), Charles Kaaiai (NOAA)

DISTRIBUTED MATERIAL

- Meeting Agenda
- Minutes of the September 28, 2007 Meeting
- Hawaii Revised Statutes §205A-3.5, MACZAC
- Hawaii Revised Statutes, Chapter 205A, Coastal Zone Management
- CZM Hawaii Program Report
- Act 212
- “Gov. Names ‘Aha Kiolo Advisory Committee Members”
- “Lingle Names Eight to ‘Aha Kiolo Committee”
- “Nine Named to Aid Lawmakers on BLNR Advisory Panel Effort”
- Hilo Bayfront Trails Phase 1: Planning, Project Area User Survey
- “County Council to Vote on Standards for Flood Control”
- Hanalei Watershed Hui
- SGER: Human Contributions to Microbial Pollution in Hanalei Bay, Kauai
- Hanalei Bay (Island of Kauai) Focus Site Report
- “New Council Seeks Consensus on Protecting Ocean Resources”
- “Not Enough to Protect Nature”
- “Reef Woes, Injuries Tied to Fish Feeding”

- DLNR-DOBOR Proposed Amendment to HAR Title 13, Motor Vehicle and Parking Rules
- DLNR, NOAA Workshops Promote Whale-Friendly Boating
- United States Coral Reef Task Force: Hawaii Local Action Strategy
- Marine Protected Areas in Coral Reef Ecosystems of the United States, Chapter 5: Hawaii
- A Comparison of Marine Protected Areas and Alternative Approaches to Coral Reef Management
- “Council Moves to Block Kau Hotel Project”
- “Living Machine: Four Seasons Pond Wins Environmental Protection Agency Award”
- Punawai Lake Restorers: The Four Seasons Resort, Kona, Hawaii, USA
- History of Johkasous
- Solutions to Coastal Disasters Conference (Turtle Bay Resort, Oahu, April 13-16, 2008)

Call to Order

Chair Arnold Lum called the meeting to order at 10:15 a.m. Everyone introduced themselves.

Approval of the September 28, 2007 Meeting Minutes

Jim Coon had one minor suggested change to the minutes: on page 4, the Maui legislator will revisit the proposed haul out facilities at Kahului Harbor by tying them into the future improvement projects associated with the Maui/Molokai/Lanai interisland ferry (not the Super Ferry).

Minutes were approved, as amended.

MACZAC Members’ “Hot Topic” Reports

Ron Terry reported on the proposed strict flood control regulations currently before the Hawaii County Council for a vote, on the County of Hawaii’s Hilo Bay trails planning process, and on the controversial Kau resort development. Ron also discussed the efforts of the Mauna Kea Management Board to develop and integrate natural and cultural resource management plans, a process which is getting subsumed into a comprehensive management plan being undertaken by the UH system in response to litigation challenging the construction of new observatories on the mountain. Lastly, Ron highlighted the link between the increased visitor use of Champagne Pond in Kapoho (where there are no public bathrooms) and the increased coliform levels due to human pollution, and the fact that the lack of infrastructure is obviously not acting as a limiting factor on recreational activities.

Pua Ishibashi further addressed the Royal Order of Kamehameha I Hilo Chapter’s involvement in the legal action to stop any further development on Mauna Kea.

Jim Coon likewise lamented the increased number of tourists accessing previously hidden local areas, and linked this in part due to the popularity of guide books that aim to reveal off the beaten path recreation locales. Jim also mentioned how the Super Ferry has both positives and negatives for the neighbor islands: Maui farmers want to be able to export their produce via boat, but locals are against outsiders coming over and stealing their private surf and fishing spots. Jim worries that the number of vessel-whale incidents is bound to increase within the Humpback Whale National Marine Sanctuary.

In addition, Jim addressed the issue of boats without Public Utilities Commission (PUC) licenses coming into Manele Harbor to drop off day trippers to wander the beaches of Lanai unaccompanied. Many local Lanai residents are frustrated because DLNR has not yet closed this licensing loophole.

Makaala Kaaumoana reported there was never a carrying capacity established for Hanelei Bay and Hanalei River, which are now becoming over-pressured. She noted how it has become common for movies to use the Hanalei Pier without ever having to provide any maintenance. Makaala revealed how Hanalei Bay suffered acidification for the first time last year, and how scientific studies are being conducted to identify the specific pollution sources (e.g. humans, pigs, ducks, etc.).

Donna Wong discussed the growing problem of the commercial use of waters and offshore islands in Hawaii, something that is very common near her home in Kailua Beach and elsewhere in windward Oahu. Donna feels that there is a disconnect between the systems governing Coastal Zone Management and Special Management Areas, and that these are not working to protect Hawaii's coastal zone as well as they should.

Rhoda Libre is worried about the growing problem of pollution (point source and nonpoint source) of Kauai's coastal waters. She believes that there needs to be a sewage improvement project, perhaps as a partnership initiative with the military. There are too many new homes being built in the coastal areas of Poipu and Eleele. Rhoda also would like to see more protection of biodiversity and intellectual property rights of cultural resources such as seaweeds.

Donna Brown presented the results from the human use surveys at Haunama Bay. Donna also discussed the problem of fish feeding and fish biting swimmers/divers, and how DLNR had so far only banned fish feeding at Haunama Bay (Oahu) and Molokini Island (Maui). An additional approach is to educate swimmers and dive shop employees. Another issue Donna addressed was the major volume of muddy runoff (due to significant amounts of new development construction) experienced recently on Maui. She estimated that the dirty water extended out about 1 mile off West Maui. Ron Terry suggested that Donna take some photos of the runoff so that there is hard documentation beyond just anecdotal which could then be forwarded to the Sierra Club's Blue Water Response Team Task Force.

New member Walter Ritte briefly introduced himself. Walter indicated that he was still trying to figure out where MACZAC fit into the State's apparatus because he was concerned that given the hierarchy of MACZAC – CZM Program – Office of Planning – DBEDT, the general public is under the impression that economic interests take preference over environmental interests. That is a stance that Walter and many others on Molokai are very much against. Natural resources do not simply exist for humans to use them; they have a right to exist and need to be preserved. After reading through the ORMP, Walter had some lingering questions about what the plan's priorities are (e.g. recreation, commercial activities, conservation, etc.), and he is also concerned that there is no clear statement in the plan that resources will in fact be protected. Walter warned that concerned citizens will feel frustrated by things that they believe to be broken when they do not have anyone who will listen when they give advice about how to go about fixing it. He is hopeful that MACZAC can help play that role.

Kanoa Withington addressed land use and public access issues on the Big Island. He reported that there is a strong sentiment for keeping the North Kohala Coast free from any further development, and that this is feasible because the remaining vacant parcels are primarily state owned land. The few

privately owned parcels are all in purchase negotiations with land trusts. Kanoa also noted that the guide books that reveal the local recreation spots have allowed large numbers of tourists to access secret sites and so now private landowners are fed up with all the traffic and are worried about liability issues and so the owners are closing off access to everyone which then harms locals and tourists alike.

Sue Sakai discussed the issue of Na Ala Hele trails traversing over private lands, and the landowners' fear of liability. DLNR can indemnify against any private landowners so that their fear of liability is not a barrier to keeping trail access open. Sue further noted that the Hawaii Supreme Court has ruled that under HRS §343, any action on state land (such as a public right of way) triggers an EIS, and that this heavy requirement is burdening counties' planning departments that are understaffed.

MACZAC project assistant Jessica Stabile directed attendees to the three handouts that absent member Henry Lau had provided. Handouts addressed the topics of the creation of the new group Maui Nui Marine Resource Council, the need for more DOCARE enforcement officers, and the coral reef problems associated with fish feeding.

CZM Hawaii Program Report and Legislative Update

See attached report for December 6, 2007 prepared by Douglas Tom, CZM Program Manager.

MACZAC Budget Status Update

CZM employee Susan Feeny informed the members that MACZAC's project agreement with RCUH will expire in December 2008, so it will have to be extended at that time. The project began in March 2006 with funding of \$50,000, and approximately \$18,000 of that still remains. An additional \$3,000 has been set aside by the CZM Program for MACZAC to use for moku management purposes. The CZM program oversees MACZAC's funds to ensure that they are spent according to the rules. Expenditures must be reasonable and must support CZM policies and MACZAC's statutory mandate.

Hawaii Ocean Resources Management Plan (ORMP) Overview

Marnie Meyer, CZM employee, reported that the ORMP is segmented into phases, with the plan being updated every 5 years. An online version of the ORMP is posted on the CZM Program's website and is constantly being updated as a living document, but print copies of the ORMP will only be produced and distributed every 5 years. The ORMP is prescriptive in that it provides a sense of purpose, place and direction. MACZAC has a role to play in assisting to advise the Office of Planning how to update the ORMP. The ORMP Policy Group is comprised of State and County agency directors, along with the Chair of MACZAC (Arnold Lum), and meets semi-annually. The ORMP Working Group is comprised of staff representatives from State and County agencies, other groups who will implement the ORMP, and MACZAC (Jim Coon), and it meets monthly.

Investigative Working Group Reports

Boating Working Group:

Boating Working Group Chair Jim Coon thanked CZM employee Marnie Meyer for coming over to Maui to make a presentation about the ORMP to boaters. Jim is helping to try to get buy-in on the ORMP by the local boating industry. Jim reported that he also recently collaborated with DLNR and NOAA on their efforts to educate vessel owners about safe boating practices during humpback whale season. Jim further noted that his company, Trilogy Excursions, has a code of diving conduct which it requires tourists to sign before they can participate on any boat tour.

Marine Managed Areas Working Group:

Working Group Chair Donna Brown indicated that, at this point in time, group members were still doing background research and have been reading publications relating to marine managed areas. Donna anticipates that more concrete action will be taken by the group in 2008.

Shoreline Access & Coastal Parking Working Group:

Shoreline Access & Coastal Parking Working Group Chair Arnold Lum indicated that he has been collaborating with the grassroots groups Common Ground Hawaii and Oahu Surfrider Foundation on the Ala Wai Small Boat Harbor parking situation. The Ala Wai was the last free parking lot utilized by surfers and paddlers for access to engage in coastal recreation activities in that area of Honolulu. HAR Rule §13-233-26 “Charges For Parking” was amended so that parking is metered at the current City & County rate of forty cents per hour. Arnold advocates that under the public trust doctrine, DLNR can not simply delegate through an administrative rule change without any oversight of the process. DLNR-DOBOR will be hosting a public hearing about the Ala Wai Small Boat Harbor parking situation on December 19 at Jefferson Elementary School in Waikiki, which Arnold will attend. He will submit testimony that the public needs more coastal parking and will request a contested case hearing to ask DLNR why it is not reserving any free parking spaces under its new plan.

Wastewater Working Group:

Wastewater Working Group Chair Ron Terry explained that the aim of the group is to help identify areas where wastewater is actually directly impacting water quality and coastal resources in Hawaii. Ron has contacted a South Carolina CZM employee who is working on the same issue there and has inquired as to the regulations governing the installation and maintenance of septic systems in coastal areas. Makaala Kaaumoana informed Ron that it cost the EPA approximately \$1,000,000 to construct 275 cesspools in the riparian areas bordering the Hanalei River.

Lua/Kauai Compost Toilet Facilities Working Group:

Lua/Kauai Compost Toilet Facilities Working Group Chair Rhoda Libre reported that she has participated in three meetings of the Kauai Westside Watershed Council focusing on the need for compost toilets at the Hanapepe Salt Pond Beach Park, the PRMF Barking Sands area, and at Kekaha. The Kauai County planners are in agreement and there is plenty of volunteer labor available, so all that is still needed are the funds. Rhoda has contacted compost toilet companies in Oregon and Florida. Special considerations include that the toilets will have to abide by flood zone regulations (be on stilts and mobile) and also be ADA ramp compliant.

Moku Management Working Group:

Moku Management Working Group Chair Pua Ishibashi indicated that many questions still remained regarding the various players in moku management issues in Hawaii. One item of concern is that the MACZAC Working Group does not want there to be any unnecessary overlap between its work and that of DLNR's Aha Moku Council and the consulting firm Tetra Tech. A first task of the Working Group will be to identify the moku boundaries.

Regulatory Review Working Group:

Regulatory Review Working Group Chair Sue Sakai had nothing to report at this time but expected that the group would become more active in 2008.

New Business

Legislative Working Group:

Members decided to form another investigative working group – one focusing on legislation – that would be headed up by Makaala Kaaumoana and Donna Wong.

MACZAC Webpage Updates:

All members were willing to have their names and home islands published on the MACZAC website. It was also suggested that photos and links to group documents be added to the website.

Agenda Items for the Next MACZAC Meeting:

Members would like an update on MACZAC's budget at the next meeting. MACZAC members would also like a legislative update, focusing on the bills that the CZM Program will be pushing for. MACZAC is interested in looking into the commercialization of coastal resources.

Solutions to Coastal Disasters Conference:

The Solutions to Coastal Disasters Conference will be held from April 13-16, 2008 at the Turtle Bay Resort on the North Shore of Oahu. This Conference is held only once every three years. MACZAC members may later decide whether to attend or not.

Adjournment and Next Meeting Date

Chair Arnold Lum adjourned the meeting at 1:55 p.m. Next meeting will be scheduled for sometime in February or March 2008.

December 6, 2007

To: MACZAC Members

From: Doug Tom 

Subject: CZM Report

National CZM Act. Discussions on reauthorization of the CZM Act continue. Unfortunately, there still are differences between NOAA and the states on several fronts, namely funding, competition, and the reliance on quantification such as the performance measures requirement. These were discussed in my previous report. At the national CZM program managers' meeting slated for late February, deliberations will continue and hopefully a unified federal-state position on the reauthorization proposal will emerge. All agree that a unified position is important since it will be an influencing factor in congressional deliberations.

Due to major national budget shortfalls as a result of the war in Iraq and other budget draining federal initiatives, NOAA is concerned about heavy budget cuts that would impact the Office of Ocean and Coastal Resource Management. In federal administration discussions, an option under consideration is the zeroing out of all or most of CZM funds, which would include Sections 306 and 309, our primary funding sources. While this would not be likely, it illustrates the difficulty the national CZM program is experiencing at this time and the importance of having a unified federal-state position on meaningful CZMA reauthorizing amendments. At the same time, since a foregone conclusion is that Congress will task the CZM programs to deal with global climate change based on previous congressional staff reports, NOAA must strongly support state needs for additional financial and technical resources to accomplish the major challenges.

Ocean Resources Management Plan (ORMP). Our dual tasks are to coordinate the implementation of the ORMP and further develop it. The ORMP Policy Group directed the ORMP Working Group to identify and prioritize the management goals and strategic actions that agencies will carry out over this and next fiscal year through work plans. The agencies have also been asked to describe the annual results indicators that will be employed to measure progress for each strategic action. The recommendations will be considered by the ORMP Policy Group at its March, 2008 meeting.

The ORMP Working Group experience has been experiencing working pains in working on the assignment. However, progress has been achieved, and work plans specifying the actions to be taken, partners involved, timeframes, results indicators, and budgets are expected to be completed and submitted by the due date. In addition to being a member of the ORMP Working Group, Marnie Meyer is also coordinating the overall implementation of the ORMP.

In addition, we overhauled our CZM grant budget to provide financial support for ORMP implementation activities. We solicited proposals via statewide newspapers and

other media. Proposals were required to be partnerships between government and communities and directly relate to specified management goals or strategic actions in the ORMP. Four projects have been selected and two others are under review.

Selected:

1. Hilo Bay Watershed Advisory Group web site project, a partnership of the County of Hawaii Planning Department, the Hilo Bay Watershed Advisory Group, and the Big Island Resource Conservation & Development Council. The project will design, develop, and implement a professional-quality interactive website for use by the larger community to address the Hilo Bay Watershed Advisory Group mission to "bring the community together to understand and protect the ecology of the Hilo Bay Watershed." The award is \$5,000.
2. Hilo Bay Watershed Advisory Group water quality monitoring program, a partnership of the County of Hawaii Planning Department, Hilo Bay Watershed Advisory Group, Department of Health Clean Water Branch, Pacific Aquaculture & Coastal Resources Center, and the Big Island Resource Conservation & Development Council. A water quality monitoring program to identify pollutants that may need application of best management practices to bring suspect waters into compliance with current water quality standards will be developed. The award is \$5,020.
3. Tsunami Education, Preparation & Recovery Plan for Downtown Hilo, a partnership of the County of Hawaii Planning Department and the Pacific Tsunami Museum. The plan will address the risks the Downtown Hilo business community faces from tsunami inundation, including storm surge and coastal flooding. The award is \$24,700.
4. Baseline Monitoring at High-yield Watershed Units C and D, a partnership of the Department of Land and Natural Resources' Division of Forestry and Wildlife and the Kohala Watershed Partnership. This project is part of a larger project to prevent degradation of streams and coastal waters from sediment loads from disturbed upland forest habitats at watershed units C and D in the Pu'u O Umi Natural Area Reserve and the Kohala Forest Reserve on the Island of Hawaii. Since construction activities are not permitted with federal CZM funds, the necessary preparatory work for fencing the area will be underwritten with the \$50,000 CZM grant.

Under consideration:

1. Honolua Bay Watershed, a partnership of the Department of Land and Natural Resources' Division of Aquatic Resources and the Malama Kai Foundation Project S.E.A.-Link. Expanded stewardship efforts at Honolua Bay, Maui, to increase water quality monitoring efforts, work with

stakeholders to mitigate resource use conflicts, and educate residents and visitors about regulations and best practices in the bay is proposed at a cost of \$27,743. Technical details for compliance with federal provisions are being coordinated.

2. Prioritizing Beach & Shoreline Resource Conservation on the Island of Maui, Hawaii, a partnership of the County of Maui Planning Department, Maui Coastal Land Trust, Sea Grant, and the University of Hawaii School of Ocean & Earth Science and Technology. The proposal is a Shoreline Analysis of potential Natural Hazards and Development Alternatives (SAND-Alternatives) model to identify priority shoreline areas for conservation, permit decisions, land use and future planning, and guidance to decision-makers. The proposal is for \$87,500. Similarly, there are technical and legal points for clarification and revision before approval can be issued.

In further developing the ORMP, emphasis is on the moku management framework project which Melissa Iwamoto is spearheading. The outcome of this initial project phase is a framework and set of principles on how to move toward an integrated, place-based approach to natural and cultural resource management.

The first step is a survey to identify community and place-based efforts, develop a directory of them, and solicit public input on experiences, values, needs, and other information. A copy is appended for your information. Its results will be presented for deliberation at a workshop on how to address the key issues and concerns raised. Funds to transport about 25 neighbor island individuals are available. There will also be opportunities for broader public review after the draft framework and principles are prepared. This project is a departure from traditional approaches and involves a complex topic. So, we are trying our best and expect controversies and issues.

We are excited that the ORMP is receiving a lot of national attention. For the February, 2008 national CZM program managers' meeting in Washington, D.C., we have been requested to make a presentation on it. In addition to federal and state CZM representatives, the meeting is usually attended by other high level federal officials, congressmen, and key congressional staffers. Marnie is expected to make the presentation.

Coastal Nonpoint Pollution Control Program (CNPCP). Collaboration with the Department of Health's Polluted Runoff Control Program continues toward satisfying federal CNPCP requirements. We are in the process of finalizing a strategy document to submit to EPA and NOAA to clarify the tasks to be undertaken to attain overall CNPCP approval.

A major element is the preparation of a watershed planning process and guidance document to steer the development of watershed plans and incorporate the section 6217 (g) measures. State are required to implement the management measures developed by DPA and outlined in Section 6217 of the CZM Act reauthorizing amendments of 1990.

This element is predicated on the sheer number of watersheds and the lack of time and human and fiscal resources to develop plans for each of them. The guidance document will also provide the framework to assure consistency among the various plans.

There is federal interest or concern about how the network of agencies will bind together to assure the various responsibilities will be adequately carried out in consonance with each other. EPA and NOAA believe that an executive order tying the agencies under the CNPCP umbrella would suffice. This exercise has recently been initiated and will be collaborated with all agencies affected, including the Department of Land and Natural Resources, the Department of Agriculture, the Board of Water Supply, the counties, and other important entities.

A possible outcome is a watershed coordinating committee, an activity which would implement a strategic action of Perspective 1 of the ORMP: *Improve interagency coordination, effectiveness and efficiency in watershed management through the creation of a watershed coordinating committee to ensure ecological function is maintained to the greatest extent practicable.* The committee may be tasked to develop the guidance document.

Coastal Hazards. In partnership with the Structural Engineers Association, CZM held a training session in October, 2007, for over a hundred structural engineers and industry professionals on the structural provisions of the 2003 International Building Code (IBC). An agenda item was a special session on the local wind speed amendments adopted by the City and County of Honolulu in September. For the year, CZM cosponsored eight workshops on various aspects of the IBC, attended by over 860 building industry professionals in the public and private sectors. These are CZM milestones toward building resilient coastal communities.

In October, 2007, the Federal Emergency Management Agency approved Hawaii's Multi-Hazard Mitigation Plan, 2007 Update. Hawaii is now in full compliance with the Disaster Mitigation Act of 2000 and is eligible for pre- and post-disaster mitigation grant funding, flood mitigation assistance, fire management assistance, and public assistance. CZM and the Geographic Information System Program provided planning, CZM, and geographic information assistance.

Performance Measures. The national performance measures project is intended to track how well the CZM programs are achieving certain national CZM Act objectives. The phase II report was submitted on schedule and addressed public access and government coordination, coastal water quality, and coastal habitats. The final phase 3 development dealing with coastal hazards and coastal community development and coastal dependent uses has been initiated. The neighbor island counties continue participating in this effort. We are also exploring with them possible offshoot products that might have beneficial management uses for them.

Special Management Area (SMA) Permit System. CZM has been making presentations to the various planning commissions and conducting training classes with

county planning staff on CZM and the SMA permit system. The dialogue with planning commissioners and county staff will help determine the need for statutory or regulatory amendments and possible administrative remedies. A presentation to the Kauai Planning Commission is scheduled for next week and a final one to the Molokai Planning Commission in January. Upon completion, the outstanding federal mandate stemming from the federal evaluation of the State's CZM Program will have been satisfied.

As part of our lead agency duties, we are assessing the administration of the SMA permit system. We are examining the extent to which county SMA authorities are considering CZM objectives and policies in their decision-making deliberations. Of particular interest is coastal hazards, polluted runoff, and conformance with or support of the ORMP since it provides context for most of the objectives and policies. We are also examining the nexus of SMA permit conditions to the substantive and legal scope of the authorizing CZM statute. We will collaborate our findings with the counties and possibly pursue appropriate legislative and/or administrative remedies.

In community development districts, such as Kakaako, the Office of Planning is responsible for administering the SMA permit and shoreline setback variance approval programs. An interesting proposal for an SMA permit is the Honolulu Seawater Air Conditioning project. As the accepting authority, we are awaiting submittal of the required environmental impact statement as a prerequisite to accepting a formal SMA permit application. The project involves installing intake and return pipes to draw cold ocean waters to a landward pumping station for distribution to buildings for air conditioning and to return processed water to the ocean in a manner that will not adversely impact the receiving ecology. The project is being closely coordinated with the DLNR.

Federal Consistency. Two federal consistency activities are worth noting. The first is the Navy Undersea Warfare Exercise (USWEX). USWEX is an anti-submarine warfare exercise by the U.S. Navy's Carrier Strike Groups and Expeditionary Strike Groups while in transit from the west coast to the western Pacific Ocean. Our expressed concern was the use of mid-frequency sonar and its effects on whales and monk seals. We also expressed concern about effects on endangered birds and coastal uses such as whale watching. In addition, we also explained that humpback whales, sperm whales, and monk seals are culturally significant to native Hawaiians, and that adverse impacts on these species should be assured.

The Navy initially submitted a negative determination, for which we filed a disagreement. A negative determination is a finding by a federal agency that its activity will not affect any coastal use or resource and, therefore, is not subject to review by the CZM program. Subsequent to our rendering of the disagreement, a series of follow up meetings were held. Based on information from the Navy and independent sources, we maintained that only a received level of 145 dB or less within three nautical miles from shore would be acceptable. The Navy subsequently revised its plan and negative determination by proposing to hold only one USWEX event before the end of the calendar year. All other USWEX events would be submitted for CZM federal

consistency review along with all other Navy activities analyzed in its Hawaii Range Complex EIS in a single coastal consistency determination. The Navy also committed to a received level calculated at no greater than 143.8 dB within three nautical miles from shore and would use sonar no closer than 20 nautical miles from shore. This outcome was a win-win decision for CZM, the Navy, and the environmental groups involved, which included Earthjustice, Kahea, and the Animal Welfare Institute.

The other is the Hawaii Superferry security zones. In October, 2007, CZM issued its federal consistency concurrence to the U.S. Coast Guard for the establishment of a security zone within Nawiliwili Harbor, Kauai. The zone would be in effect 60 minutes prior to the arrival of the Superferry and end 10 minutes after its departure, typically encompassing about 2 hours and 10 minutes. A condition to our concurrence was that canoe and boating clubs, small commercial businesses, and native Hawaiian cultural practitioners be given consideration for access to resources during activation of the security zone. We also stipulated that when the security zone is inactive, public access to and use of established public areas in and around Nawiliwili Harbor be allowed.

The U.S. Coast Guard also recently filed a coastal consistency determination for a security zone at Kahului Harbor, Maui. Public notice of this action will be published on December 8, 2007, and the public comment period will extend to December 24, 2007.

Kahala Beach Vegetation Encroachment Issue. A site inspection of Kahala Beach from the beach park townward to two residences immediately past the Hunakai beach public accessway was held with community members and State and County officials having functional responsibilities relative to beach issues. The focus was encroaching vegetation into the beach, which interferes with public transit along the beach corridor. Traversing certain sections without having to wade in the ocean could be accomplished only during the lowest tide periods as a result of the vegetative encroachment.

The inspection revealed extensive vegetative growth of hau, naupaka, and other plant species that are choking the beach corridor. Evidence of induced vegetative growth was observed, as well as tidal influence inland of the vegetation. Because of the apparent induced growth, the vegetation did not demarcate the legal shoreline as if often does at other beaches. Evidently, much of the vegetation growth had been and still is being induced by neighboring property owners. There were a number of sprinklers installed both seaward of walls and fences and landward of them facing seaward to irrigate the vegetation beyond private property boundaries. Water leaking from some of them onto the vegetation was also observed.

While metes and bounds are used to describe land ownership, they do not relate to or define individual real property rights or the public trust. It is important to note that lands seaward of the shoreline are public trust resources, and government has an inalienable responsibility to protect and preserve them for public use and enjoyment. The fundamental question for the case at hand is – what are the specific responsibilities of government agencies in protecting and preserving public trust resources and what actions should they take?

A draft strategy was sent the City Department of Planning and Permitting and the Department of Land and Natural Resources to stimulate thought and discussion toward developing a solution and determining the adequacy of the State's and County's existing policy and regulatory framework for beach resources.