

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

**DATE:** FRIDAY, MARCH 14, 2003  
**TIME:** 9:00 A.M.  
**PLACE:** KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Timothy Johns  
Ms. Kathryn Inouye  
Mr. Toby Martyn

Ms. Lynn McCrory  
Mr. Ted Yamamura  
Mr. Gerald DeMello

**STAFF**

Ms. Charlene Unoki, Land Division  
Ms. Carol She, DOBOR  
Mr. William Devick, Aquatic Resources  
Ms. Linda Shea Flanders, Aquatic Resources

Mr. Mason Young, DOBOR  
Mr. Peter Garcia, DOT  
Mr. Bob Nishimoto, Aquatic Resources

**OTHERS**

Mr. Vince Kanemoto, Deputy Attorney General  
Mr. Michael Yamane, D-8  
Mr. Tom Otake, D-10  
Mr. Wes Hatada, F-1  
Mr. Mark Willman, F-1  
Ms. Jan Anderson, F-1

Ms. Laura Mission, D-7  
Ms. Susan Kihara, D-4  
Mr. Harry Kim, F-1  
Mr. Kirk Flanders, F-1  
Mr. Patrick Tani, F-1

{Note: language for deletion is [bracketed], new/added is underlined}

Chairperson Young introduced Mr. Dan Davidson as the new deputy for the department.

**Item A-1: Minutes February 28, 2002**

The following amendments were made to the minutes:

Page 3 recommendation 1

- “1. That the landowner shall remove all of the boulders placed at the shoreline by [May 1, 2003] August 1, 2003 and restore the shoreline are to [tits] its previous condition.”

Page 8 last line

“misunderstandings by stating GE [in] is not working with GREP but is working and have...”

Page 9, first paragraph

“...Kirkpatrick explained that for [ever] every unit of power generated a company can receive a tax off set by way of a federal production tax credit.....On the other hand HRD can take advantage of this credit and that’s why they’ve partnered with them on this project. GE[‘s] has continued to maintain their interest in the project.”

Second Paragraph

“Richard [of] Horn, representing HRD told the Board the wind turbine they have selected....”

Third Paragraph, tenth line

“the experience of its principle [‘]s but being a new entity.....”

Third Paragraph, last line

“... Mr. Sumida asked the Board to look beyond the paper credits when making the correct decision.

The Board asked Mr. Sumida to elaborate on the comment that HWE is currently collecting on-site wind data and how were they doing it. Mr. Sumida noted they were placing an electronic wind-testing machine (sonar) at the back of a truck at the premises. He believed pursuant to DLNR regulations as long as the collection of data was for a short period of time and the equipment does not touch the ground (i.e. fastened to the ground) they are able to conduct this study. By running this test, Mr. Sumida hope to test if this machine worked and if it would be the best machine for this particular site. Mr. Sumida went on to say they have received verbal approval from Mr. Matthew Meyers for the testing. Ms. Mamiya along with Mr. Meyers made it known the DLNR has not given approval to GREP.

Page 10 first paragraph

“...Prior to certification Mitsubishi [will provide] is willing to provided a warranty on the turbines if required ...”

**Unanimously approved as amended (McCrorry/Johns).**

**Item D-8: Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes, and Issuance of Immediate Construction and Management Right-of-Entry, Waimea, Kauai, TMK: (4) 1-2-2: portion 1; 1-2-1: portions 3 and 4; 1-5-1: portion 2.**

Ms. Charlene Unoki, Acting Assistant Administrator for the Land Division informed the Board this land was previously leased to Kekaha Sugar Company since October 1, 1923. During that time Kekaha Sugar Company constructed and operated electrical lines from Kekaha Sugar Mill to the Kauai Electric switchyard at Kokee and built two hydroelectric plants on the site. Upon the departure of Kekaha Sugar Company, Kauai Island Utility Coop (KIUC) requested the State grant them an easement for utility purposes. In it's letter dated October 30, 2001, Kauai Electric voiced its need to continue with the project of repairing the existing distribution line from Makaha Ridge to the Kokee area in order to insure continued service. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement for utility purposes and the issuance of an immediate construction and management right-of-entry to Kauai Island Utility Cooperative covering the subject area.

Michael Yamane, KIUC's Manager of Strategic Planning was present to answer questions.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item D-7: Cancellation of Revocable Permit No. S-7206 to Richard P. Corr and Francis P. Mission, and Issuance of Revocable Permit to Francis P. and Laura Mission, Lots 12-A-2 and 13-A, Hanapepe Rice & Kula Lots, Hanapepe, Waimea (Kona), Kauai, TMK: 1-9-3: 10.**

Ms. Unoki told the Board Richard Corr has another State lease (S-5397), which is a 35-year intensive agriculture lease, and he would like to dedicate more of his time to this lease. Mr. Mission has managed the property for the past three years and has been responsible for the monthly rent, security deposit and annual liability insurance requirements. Mr. Corr and the Mission family are agreeable to this action. Ms. Unoki recommended the Board authorize the cancellation of Revocable Permit No. S-7206 and the issuance of a revocable permit to Francis P. and Laura Mission covering the subject area for intensive agriculture purposes.

Laura Mission was present to answer questions. She explained to the Board presently they are farming taro but they are also looking to venture out into other areas.

The Board asked Mrs. Mission if she was aware the lease is a revocable permit and in the future it will be offered as a long-term lease, which if she is interested, could bid for. Ms. Mission responded yes.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item D-10: Request to Authorize the Housing and Community Development Corporation of Hawaii to Negotiate and Enter Into Agreements for the Kapolei Interceptor Sewer Projects on Department's Behalf, Honouliuli, Ewa, Oahu, Various Tax Map Keys.**

Ms. Unoki pointed out this submittal would give authority to the Housing and Community Development Corporation of Hawaii (HCDCH) to act on the department's behalf in negotiating agreements with participating landowners for the purpose of increasing the sewer capacity in Kapolei. Ms. Unoki recommended the Board authorize HCDCH to act on the Department's behalf in negotiating agreements with participating landowners and the City for the Kapolei Interceptor Sewer project and delegate to the Chairperson the authority to negotiate and enter into agreements with HCDCH.

Tom Otake project manager for HCDCH told the Board they are presently working on two agreements; one with area developers and the other with the City. Because the City has no funds to build the new sewer line he is working with the developers to get the job completed. HCDCH and the Department of Hawaiian Home Lands (DHHL) would provide the funding for the construction and upon completion they would like a guarantee, which would allow them to sell sewer credits if they do not receive funds from the Department of Land and Natural Resources (DLNR) and the University of Hawaii (UH).

**Unanimously approved as submitted (Inouye/Johns).**

**Item D-4: Consent to Lease of Private Property Agreement Between Wallace Chow and Eleanor Chow, Lessor, and the State of Hawaii, by its Board of Land and Natural Resources, on behalf of and for the Department of Health, Lessee, Covering a Geothermal Monitoring Station Site at Keahialaka, Puna, Island of Hawaii, TMK: 3<sup>rd</sup>/1-4-01: portion of 44.**

Ms. Unoki indicated the Department of Health (DOH) is requesting permission to enter into and agreement between Wallace and Eleanor Chow. The agreement would be for the continued operation of a geothermal air monitoring station at their private property. The air-monitoring station site would consist of a 1,600 square foot plot. The term of the proposed lease renewal shall be for five years commencing July 1, 2003 until June 30, 2008 unless sooner terminated. Ms. Unoki recommended the Board consent to the Lease of Private Property Agreement between Wallace Chow and Eleanor Chow and the State of Hawaii on behalf of the Department of Health.

Susan Kihara from the Department of Health, Clean Air Branch was present to answer any questions.

**Unanimously approved as submitted (Johns/Inouye).**

**Item D-1: Fee Conveyance of Road Widening Lot to the County of Kauai, Kapaa, Kauai, TMK: (4) 4-3-3: portion 20.**

Ms. Unoki briefed the Board and made it known included in the construction of the new Kapaa Middle School was a widening of the road which included improvements to the roadway, curbs, gutters, sidewalks, driveways, signage and striping. Upon completion of the project DNLR was

to process a deed for the dedication and recordation of the road widening to the County of Kauai but this never transpired. Therefore Ms. Unoki is recommending the Board authorize the fee conveyance in the subject road widening lot to the County of Kauai covering the subject area.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item D-2: Set Aside to Department of Accounting and General Services for Landscaping Purposes, Honolulu, Oahu, TMK: (1) 2-1-026: 002.**

Ms. Unoki noted the Department of Accounting and General Services (DAGS) has been taking care of the area since it was returned to the State of Hawaii from the U.S.A. She noted this action is merely a transfer of management jurisdiction. Ms. Unoki recommended the Board approve and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Accounting and General Services.

**Unanimously approved as submitted (Inouye/McCrory).**

**Item D-3: Amend Prior Board Action of October 22, 1999 under Agenda Item D-21, for Grant of Perpetual, Non-Exclusive Easement to AT&T Corp. for Submarine Fiber Optic Cable Line Purposes, Makaha, Waianae, Oahu, TMK: 8-4-01; seaward of 12.**

Ms Unoki briefed the Board and recommended the Board amend its prior action of October 22, 1999, under agenda item D-21 by deleting recommendation number 6 and not require publication of a legal notice.

**Unanimously approved as submitted (Inouye/McCrory).**

**Item D-5: Amend Prior Board Action of April 11, 1980, Agenda Item F-2, Grant of Easement, to Hawaii Electric Light Company, Inc. and GTE Hawaiian Telephone, for Transmission Line Purposes, Kapehu, North Hilo, Hawaii, TMK: (3) 3-5-02: portion of 06 & 21.**

Ms. Unoki reminded the Board in April 11, 1980 under agenda item F-2 the Board approved the direct sale of a perpetual, non-exclusive easement and construction right-of-entry to the Hawaii Electric Light Company (HELCO), Inc. and GTE Hawaiian Telephone for utility transmission line purposes. When staff went out to the site for an appraisal inspection it was noted there were no utility pole or lines. When contacted by staff, HELCO informed them the pole and lines were relocated. Because HELCO utilized the easement for 11 years and eight months staff is requesting a one-time payment of \$1,825. Ms. Unoki recommended the Board amend its prior action by deleting all references relating to the issuance of a perpetual, non-exclusive utility easement and inserting approval of an after-the-fact, 12-year term, non-exclusive utility easement and a one time payment of \$1825 by HELCO/Verizon.

**Unanimously approved as submitted (Johns/Yamamura).**

**Item D-6: Issuance of Revocable Permit to Antone Reis, Por of Wailua, Lihue, Kauai, TMK: 3-9-2: por. 20.**

Ms. Unoki informed the Board Antone Reis is interested in this parcel and will be using it for agricultural purposes. Mr. Reis qualifications in this area includes thirty years of raising cattle. He also has over seventeen years of experience in doing excavation. Ms. Unoki recommended the Board authorize the issuance of a revocable permit covering the subject area for pasture purposes.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item D-9: After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Kauai Island Cooperative and Verizon Hawaii Inc. for Utility Purposes, Wailua, Kauai, TMK: (4) 3-9-2: portion 34.**

Ms. Unoki briefed the Board and recommended the authorization and issuance of a perpetual non-exclusive easement to Kauai Island Utility Cooperative and Verizon Hawaii, Inc. covering the subject area for utility purposes.

**Unanimously approved as submitted (McCrorry/Johns).**

**Item J-2: Request for adoption of amendments to Hawaii Administrative Rules, Section 13-131-72, as it relates to small inter-island passenger vessels.**

**Motion to Withdraw**

**Unanimously approved to withdraw (Johns/Yamamura).**

**Item J-1: Request for Adoption of amendments to Hawaii Administrative Rules, Sections 13-230-8, 13-231-58, 13-241-8, 13-244-36, 13-251-31, 13-251-58, 13-251-76, Chapter 13-235, Section 13-256-13 and 13-256-109 as they relate to Kaanapali beach and ocean waters, Lahaina harbor, technical clarification to section 13-241-8, offshore mooring areas in the ocean waters around Maui and mooring of rafts and platforms and thrill craft operations within the Kaanapali Ocean Recreation Management Area.**

Member Martyn entered the meeting at 9:35 a.m. and Member DeMello entered at 9:40 a.m.

Carol She, Acting District Manager for Maui briefed the Board on the events relating to this submittal. She noted the public hearing was held on January 11, 2003 on Hawaii and Maui. Ms. She informed the Board there was support for designated off shore mooring areas because residents were tired of vessels breaking of their mooring and it ending up on the beach. By designating off shore mooring area the Division of Boating and Ocean Recreation would have the authority to make sure the moorings are properly installed and vessels would be required to go through an inspection. The rules would also designate where thrill crafts can operate. Ms. She recommended the Board adopt the rules as amended, including any further amendments approved by the Board subject to final review and approval by the Attorney General and authorize the forwarding of the final rules to the Governor for signature.

The Board asked Ms. She to respond to Bill Mossman's comment " It concerns us greatly that this amendment to Section 13-231-58 proposes that the total number of slips/moorings set-aside

for commercial permit vessels be increased from 299 to 363, a 21.4 % increase. This effectively reduces the number of slips/moorings available to the recreational sector by 64.”

Mr. Mason Young Acting Administrator for the Division of Boating and Ocean Recreation (DOBOR) pointed out Mr. Mossman’s comment refers to the Boat Harbors. To clarify this matter , Mr. Young stated DOBOR is not increasing the number of commercial users of a particular slip at the expense of recreational users.

The Board questioned why DOBOR conducted public hearings only on Maui and Hawaii.

Ms. She informed the Board these rules in front of them today went to public hearings the same time as the small cruise ship proposed rules. The small cruise ship proposed rules affected Hawaii and Maui so since staff was on Hawaii they heard the public’s comments on the rules before the Board today. Mr. Young also noted the administrative rules do not call for public hearings on all islands but it is the privilege of the Board and the policy of the Department to hold public hearings where the impacted areas are.

Fred Mataler a boater from the Ala Wai and a member of the Makai Society spoke of the gradual displacement of recreation boaters by commercial operators. He noted they are not against commercial operators but as they need for more slips for commercial operators arise it will be at the expense of recreational boaters. He told the Board the purpose of small boat harbors is for the access of Hawaiian citizens to the ocean. So if the number of slips (for recreational users) decreases the access for the citizens decrease.

**The Board amended Section 13-251-76 (b) to read as follows:**

“ (b) “Kaanapali Beach” means the area within Kaanapali ocean waters that is situated between the shoreline [(the upper reaches of the wash of the waves as evidenced by the vegetation line),] and the mean high tide mark along the shores. Exhibits E (2A) through E (2D), dated February 22, 2002, located at the end of this chapter, are provided for reference, and depict the shoreline location of Kaanapali Beach as of September 12, 2001.”

**Unanimously approved as amended (Yamamura/Johns).**

**Item J-3: Cancellation of Revocable Permit No. B-01-02 and Issuance of Permit to GKM, Inc., Kealakehe, Honokohau, North Kona, Hawaii, TMK: 7-4-8:36 (por.)**

Mr. Young briefed the Board and recommended the Board authorize the cancellation of Revocable Permit B-01-2 to Gentry Properties and authorize the issuance of a revocable permit to GKM, Inc. covering the subject areas.

**Unanimously approved as submitted (DeMello/Johns).**

**Item M-1: Issuance of Leases to the Federal Aviation Administration, United States of America, Honolulu International Airport, Oahu, TMK: (1) 1-1-03-1P.**

Peter Garcia of the Department of Transportation informed the Board the Federal Aviation Administration (FAA) will utilize the areas by installing and operating an Instrument Landing System Facility. He recommended the Board approve the leases as outlined in the submittal.

**Unanimously approved as submitted (Inouye/McCrory).**

**Item M-2: Issuance of Amendments to Lease Nos. DOT-A-80-13 and DOT A-95-0038, to the Federal Aviation Administration, United States of America, Honolulu International Airport, Oahu, TMK (1) 1-1-03-1P.**

Mr. Garcia noted the applicant is the FAA and they are planning for the relocation of the Moving Target Indicator at the Honolulu International Airport and the Relocation of the Runway End Identifier Lighting System. Mr. Garcia is recommending the Board approve the amendments to the leases.

**Unanimously approved as submitted (Inouye/Johns).**

**Item M-3: Report on Revocable Permits Issued or Renewed by the Department of Transportation for Consistent Uses.**

**No Action.**

**Item M-4: Extension of Lease – Issuance of Supplemental Lease No. DOT A-89-6, Honolulu International Airport, Oahu, TMK (1) 1-1-03-45P.**

Mr. Garcia mentioned this is an extension of a lease for an administration Building, Bldg 336, Room 318 at the Honolulu International Airport. The office is for the drug enforcement and control purposes at the Airport. Mr. Garcia recommended the Board approve Supplemental Agreement No. 11 to Lease No. DOT-A-89-6.

**Unanimously approved as submitted (Inouye/Martyn).**

**Item F-1: Adoption of Administrative Rules, Chapter 13-38, Waiopae Tidepools Marine Life Conservation District, Hawaii.**

Mr. William Devick Administrator of the Division of Aquatic Resources (DAR) told the Board a public hearing on the proposed rules was held in the Pahoehoe High School Cafeteria on January 28, 2003. Mr. Devick emphasized two things; the process has been going on for many years and it contained considerable scientific study that attest to the biological significance of this area. Mr. Devick recommended the Board adopt Chapter 13-38, Wai Opae Tidepools Marine Life Conservation District (MLCD), Hawaii as proposed.

Dr. Robert Nishimoto, Aquatic Biologist for DAR conveyed this area is a tidepool therefore the area of the water will vary with the tide. He asked the Board to keep in mind this submittal is to protect a very fragile and critical fish nursery habitat. Dr. Nishimoto handed out a Chronology of the Establishment of the Proposed Wai Opae MLCD. He noted the process of establishing an MCLD has taken over 16 years. In this time the Vacationland Community Association (VCA) has sponsored 16 community meetings and 3 facilitated meetings in the Puna area. Dr.



Nishimoto feels the area is sacred and should be treated as such, which means no taking and no commercial dive/snorkel operations.

Linda Shea Flanders, Marine Protect Area Coordinator for the DAR pointed out there is data that shows the effect of trampling in shallow areas from both recreational users as well as commercial users. The community is concerned with the large number of people coming to Wai Opae due to the condition of the roads, trash and lack of sanitation facilities. On low tide you must walk on top of the tubeworms and little coral to get to a deep area and at high tide people are rubbing their bodies against the coral trying to get to a deeper area to swim. In her opinion the area cannot handle very many people.

The Board had concerns about drawing the line between commercial and recreational users and questioned whether there exists an appropriate line that will provide the right number of users for this area.

Mr. Devick addressed the Board by noting if the Board classified the area as an MLCD it might become a tourist attraction thereby bringing in more people. He feels it is hard to draw any correlation between current activity and any potential damage to the resource. But it is relatively easy to use data collected from elsewhere to show the impact of any activity on the resource. He feels this area is unique and the State needs to put the highest level of protection on it.

The Board asked Mr. Devick to address the issue of carrying capacity-what is the number of people we should not exceed and the types of uses that should take place at Wai Opae.

The Board pointed out the "Hierarchy of Use" is to first protect the resources, recreational use is second and any excess resource capacity shall go to commercial use.

Wes Hatada, a property owner testified before the Board and noted he is against the MLCD. He said the area to the left of Kapoho Bay is not the same as the area proposed for the MLCD. The MLCD area is the most beautiful area, it is the prime area. He made it known the location where people enter the tidepools there are no coral. He noted DLNR concern is with the land but it should also be with the people. He said the MLCD is insensitive to the social issue and only takes into consideration the marine issues. He told the Board when commercial tours come to the tidepools they are instructed on the preservation of the tidal pools as well as community issues. He feels the word "commercial" needs to be defined. Currently the commercial operator at the tidepool only use snorkels, no heavy scuba gears. He feels in the prohibited area there needs to be some compromises-some limited uses that protects the people who previously and those currently using the area, they need to be grandfathered in. He spoke of how children fish out of the tide ponds and this is where they learn about the marine life. People also learn how to take only what they need so there will be more in the future. He feels if the Board goes through with the MLCD we will be holding the sea a prisoner to itself. He feels the sea needs to help the culture therefore it needs to be shared with the people. If you take the sea away you will be taking the people away. The sea and the people need to be one.

Harry Kim a property owner was present to provide testimony. He told the Board they appealed to the State for help to protect and prevent further deteriorating conditions at Wai Opae tidepools. He feels we need to do what we can to preserved this special place. Mr. Kim noted

in the past there was an abundance of marine life in the tidepools and today there is very little. In conclusion Mr. Kim asked the Board to approve these rules before them today.

Mark Willman owner of Planet Ocean Watersports (POW) provided written testimony from himself and Thane Milhoan. His company runs a snorkel tour that visits the Wai Opae tidepools. His tour uses trained guides and dive master for supervision in the water. He noted his tours do not go into the champagne area of the tidepools, they stop at the mouth of the channel. He told the Board his company has supported the rules from the beginning. He has provided free air to the University and subsidized equipment for the research work being done at the tidepools. Mr. Willman stated he is not against the MLCD but he is against the wording as it pertains to commercial operations. He says the rules regarding commercial operations were added on in the last minute. Regarding the issue of alternative sites, Mr. Willman stated there are none. He mentioned there is no other site that offers accessibility, reliably calm conditions and easy entry. As far as Kapoho Beach Lots its access is a rough road and rocky entry into the water, which is not suitable for their customers. Mr. Willman stated if this bill is passed including the language of subsection 3(4) regarding dive tours it will devastate him financially. He asked the Board to work with him on a compromise solution and to delay today's vote until the Board is sure that they are in possession of all information necessary to make a wise decision. Mr. William brought up the issue whether Chairperson Young should recuse himself from the vote because of his close association with Harry Kim.

Chairperson Young indicated he clearly believed there was no conflict of interest on his part but because he wanted testimony to focus on the issue before the Board rather than the appearance of conflict he recused himself. The Board cleared up any misconceptions by stating before making his testimony Mr. Kim qualified himself as a private landowner. Before leaving the meeting Chairperson Young asked everyone in attendance if they had any objections to the way this issue has been conducted. There were no objections and Chairperson left the meeting at 11:38 a.m.

The Board asked Mr. Willman questions regarding his commercial operation. Mr. Willman told the Board he typically brings in 2 vans each with a capacity of twelve and they average 2 tours a week. On busy days they might operate 2 tours on each of the two days. The Board also asked Mr. Willman if he would be in opposition if the Board looked at the issue of carrying capacity. To which he answered no.

Member McCrory called a recess at 11:47 a.m. The meeting resumed at 12:00 noon.

Kirk Flanders, president of the Vacationland Hawaii Community Association (VHCA) spoke on behalf of 279 property owners. Mr. Flanders noted in March of 1998 VHCA provided a petition with approximately 300 signatures encouraging DLNR/DAR to help protect the Wai Opae reef. He told the Board his community is in full support of the Wai Opae Tidepools MLCD as proposed and the future expansion of the protected area to include the entire Wai Opae reef. Mr. Flander's spoke on how the VHCA has spent money to haul garbage away, maintenance of the road, display of signage and the purchase of tax map key 68-16 in order to show the aloha spirit by allowing people access to the tidepools. He also told the Board his organization needs the designation of a MLCD in order to enhance their ability to obtain grant funds from private and charitable sources to assist with the maintenance, management, public education and monitoring necessary for the MLCD to be effective. Mr. Flanders noted his organization has filed a zoning violation with the County of Hawaii for the commercial activity happening at the Watada

residence. Mr. Flanders made it known that there was not any last minute changes to add no commercial tours. It was in the draft for the last four years. In conclusion he asked the Board to support the MLCD for Wai Opae tidepools and approve the rules before them today.

Jim Blakey, a 20-year resident of the Wai Opae area testified. He noted the rules in front of the Board today is a compromise of the input received at the public meetings. He stated at these various meetings people were asked to fill out a sign up sheet and also indicated they were willing to involve themselves in this process. He pointed out that POW did not want to sign the sign up sheet. He conveyed to the Board they are asking for 2800 linear feet to establish a nursery, and a marine science laboratory. He mentioned the northern boundary was proposed by a aquarium collector and a dive tour operator, the southern by a local fisherman. The shore break and the interior area were proposed by a family whose origins are in that area. As a compromise with POW and the local fisherman, Mr. Blakey suggested they conduct their activities in the area north of the boundary as the area would be out of the Marine Conservation District Area. He also noted another alternate site is located to the right of the lighthouse at Cape Kumukahi. Mr. Blakely also stated that there was no last minute additions of no commercial use in the draft rules.

Jan Anderson a property owner living in the Kapoho Vacation Land area since 1980 provided verbal testimony to the Board. She told the Board she has seen the resources significantly diminish. She felt the only way to measure the impact people are having on the Wai Opae tidepools would be to completely shut down the area for a specific time period (5 years) to determine what impact is taking place. She also provided testimony and signatures from the students at Pahoehoe High School Marine Science Program in support of adopting the proposal before the Board today.

Patrick Tani appeared before the Board. He mentioned how he has been fishing in the Wai Opae tidepool since the 1960's. He told the Board he was very disappointed with Dr. Nishimoto's talk at the public hearings. He said he would have preferred it if Dr. Nishimoto identified the fish and tagged them to identify which fishes occupy which areas (the fishes in the Kopoho Bay area are very different then the fishes in Wai Opae). With regards to coral he stated, it is not being damaged by the people and the nets, he states most of the damage is done by the waves. He told the Board if this MLCD is passed we will not be showing aloha to the people and visitors. In terms of a certain type of fish population being depleted in Kopoho and Wai Opae, Mr. Tani noted it is true for the entire island. He feels the only true way to assess a certain fish population would be to prohibit the catching of a specific species for a specific time frame. In conclusion he believes the old time fisherman should be allowed to fish in Wai Opae tidepools for food and if the Board chooses to pass the MLCD we won't be showing aloha to our visitors.

**The Board realized the Wai Opae tidepools area is a valuable resource that needs protection immediately. The Board asked staff to return to the Board in 6 months with a report if limited commercial use can be accommodated.**

**Approved as submitted by the remaining members (DeMello/Yamamura).**

**Member DeMello voted no.**

There being no further business, Chairperson Young adjourned the meeting at 2:18 p.m.


Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

*Terry Crowell*

Terry Crowell

Approved for submittal:

  
\_\_\_\_\_  
PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources