

Hawai'i Ocean Resources Management Plan Working Group

Meeting Summary

State Office Tower 4th Floor Conference Room

October 1, 2009; 9 a.m. – 12 noon

Members Present:

Grant Arnold (OHA)
Cindy Barger (USACE)
Jim Buicka via telephone (Planning, Maui)
Steve Frano (NOAA OCRM)
Marnie Meyer (OP/CZM)
Dana Okano via telephone (Planning, Hawaii)
Jessica Stabile, for Jim Coon (MACZAC)
Barry Usagawa (BWS)

Others Present:

Linda Colburn (Facilitator)
Doug Tom (OP/CZM)

Interim Developments

New WG Member Jim Buicka, a CZM planner with the Maui County Planning Department, will serve as the new ORMP Working Group member representing the county. Jim takes over for Thorne Abbott.

MACZAC MACZAC held their latest meeting on September 25th, 2009, in conjunction with the Hawaii Congress of Planning Officials (HCPO) 2009 annual conference at the Sheraton Waikiki Hotel. Of major concern was how the state budget crisis will affect the Office of Planning and CZM Program staff and program functions. ORMP Policy Group member and Director of Maui County's Department of Planning, Jeff Hunt, attended the meeting.

U.S. Interagency Ocean Policy Task Force President Obama's Interagency Ocean Policy Task Force held a public meeting in Honolulu on September 29, 2009, to gather public input on their interim report. Numerous members of the ORMP Policy and Working Groups, as well as MACZAC members, testified. The ORMP or principles of the ORMP were mentioned throughout the meeting as crucial elements of a national ocean policy, specifically the land-sea connection.

Permit Fee Study Maui County has under contract a permit fee study going on that cost Maui County \$50K via a mainland org in Palo Alto. The task is to study potential cost recovery for actual time and effort put into permitting. The county subsidizes permit processing costs by 90%. (current fees only capture 10% of the operating costs). Study principals conducted interviews and may be wrapping up soon. They will share info with the ORMP Working Group if it's available.

Board of Water Supply Update: Rainfall Index UH Professor Pao-Shin Chu recently completed an index of rainfall for state. Multiple departments helped in the effort. Oahu continues to show a decreasing trend from 80's through 2007. When rainfall was compared from the Ko'olau Mountain ridge there appeared to be an approximately 40 inch decrease in rainfall. The full implications for Oahu's water supply and forest growth are not yet known. The Board does not know what the rainfall trends were for other islands, but it would be useful to compare

notes. Less groundwater translates into less surface flows, over time. The trends are going the wrong way. The Board is monitoring the situation and is working with the USGS to better understand the implications of the trends. The State Water Commission is also on board.

The USACE is funding an update to the rainfall atlas, based on Pao-Shin Chu's work. Their goal is to have the information updated by next summer. The atlas is a resource to improve understanding about flood events and/or flow levels.

Benefits of ORMP Collaboration It is difficult to know how badly the staffing and budget situations are and how this will ultimately affect the CZM Program. We would hate to lose the people behind the plan especially if they won't be around when the funding for those positions is restored. The ORMP Working Group may need to consider developing a hibernation plan. If personnel get cut off in the short term, how can the group "hibernate and reemerge" in the spring without serious loss of momentum? Continuity in this work is very important. It would also be important to stem the loss of historical information, content knowledge, and cumulative political insights if at all possible.

Doug: In 35 years of government service, the ORMP has generated more collaboration than any other program. It has galvanized working group member participation across sectors. All of the stakeholders have contributed effort as members have collaborated and worked together across sectors. This project has really been worthwhile. Parties have also leveraged financial resources as further evidence of alignment with the collaborative approach. Collaboration, in theory, is one thing. Collaboration, in practice, requires tremendous cooperation.

The legislative arena is beginning to understand and appreciate much more the importance of this effort. They are beginning to learn about these important issues and challenges. We need to be problem solvers and help legislators and policy makers understand the urgency of some of these issues to convince them to address these problems. The ORMP is the road to the future. Even Ocean Policy Task Force members were talking about the importance of the connection of land to sea and the ahupua'a concepts.

Climate Change Adaptation Framework

This framework effort was initiated because climate change was not currently addressed in the ORMP. The ORMP Working Group wants to insure that the ORMP addresses this. The climate change caucus started 9-10 months ago. The document benefited from input from the UH Center for Island Climate Adaptation and Policy (ICAP). The final draft is complete. The document was intended to serve as a starting point document.

The Climate Change Task Force enacted by the legislature this summer is charged with assessing the impacts of climate change. They were scheduled to meet next week for the first time, but the meeting got postponed. Director Mayer was interested in sharing copies of the framework with this group to see if that would be of interest to its members.

The next step would be for the Working Group to get the ORMP Policy Group to endorse the framework. CZM staff is awaiting a response on this. Is there any timeframe for rescheduling the climate change task force? – Unknown at this time.

ORMP Implementation Project update

CZM is finalizing a contract for \$100,000 with HCDA. CSM staff is also checking on the status of projects ranked #2 and #3 to confirm eligibility for use under other CZM funds. The projects involve Honu‘apu Estuary in Maui County and Maunalua Bay outreach efforts on Oahu. One is approx 25K and the other slightly less.

Updates from Caucus Groups

Watersheds:

- USACE and DOFAW are working to start a Maui watershed ecosystem and watershed plan. They intend to make the plan a collaborative project as opposed to a single agency plan. Minimally, they expect to incorporate participation from DAR, DOFAW, Seaworm, DOH, and the Coral Reef Working Group. They will focus their watershed plan efforts on the same areas the other entities have identified.
- The group is trying to get the various watershed discussions into synch. The group convened a watershed summit and is trying to determine the optimal size of the group. They will probably go with a smaller group pulled together with cross-the-board experts on watershed planning before pulling in more members with implementation expertise to find ways to make the work a joint effort. West Maui may be a prototype for a broader effort.
- The caucus envisions an adaptive process that they can modify as they go forward based on funding and matches (in kind is an option).
- Watershed ecosystem planning under the original program had to compete for funding. Now it is a specific line item from Congress.
- Aquatic ecosystem restoration can address coral reef restoration as well as look at flood risk management and water supply issues. The Ala Wai has a flood risk management priority and will be working in bioengineering and other related areas.
- An EIS is moving forward regarding Iao stream that may involve concrete modifications. They are trying to fix flood risk management needs at the end of the existing concrete channel. Originally they wanted to address all of West Maui.

Outreach:

A page spread appeared in the Honolulu Advertiser which has statewide distribution. The content was also published in the Star Bulletin in a different format. This special layout was part of the Advertiser’s Man, Land and Sea Project.

MACZAC did a lot of ORMP outreach at last week’s conference. Their display table had SMA brochures, copies of the ORMP, “My Hawaii” children’s stories, and MACZAC brochures. Lots of materials were collected by conference participants. In addition, the Molokai MACZAC representative appeared at a legislative briefing last Tuesday waving a copy of the ORMP and advocating for ORMP.

USACE will have a booth at the annual Palolo Pride event, which is scheduled for 10/24 to inform the public about the Ala Wai Watershed Project and other related matters. They are happy to distribute material for other interested agencies. There is also regional visitors’ center at Fort DeRussy above the battery museum. Two new rangers are doing more public outreach. This can

be venue for distributing materials to visitors and locals. Any range of water resources issues and environment offer a good link.

Climate Change:

The climate change adaptation framework is complete, and Abbey is sending to the Policy Group for comments. He also sent the framework to the members of the Climate Change Task Force, which has yet to convene a meeting.

Policy:

Thorne chaired the policy caucus and indicated he'd try to put something together for a future meeting. Doug offered to provide Jim Buicka with an overview of what Thorne left off with. Toward the end of the caucus sessions the group focused more on helping ORMP through the legislative session as well as looking at cross sector barriers to collaboration.

ORMP Challenges: Non-Conforming Structures Along the Shoreline

An example of a non-conforming structure in Hawaii County was shown to the Working Group that highlighted a shared challenge to successful ORMP implementation: Shoreline area permits are requested in areas where there is high potential of inundation or coastal erosion; however there is often a lack of plans, policies, and regulations to confidently decline problematic permit requests.

The example shown was a house built in 1968 (before CZM rules were in place) that was constructed too close to a cliff. It was necessary to resort to the use of pilings to support the structure as the cliff face continued to erode. Shotcrete was injected into the cliff face to stabilize the area. Everything attached to the injected material began to erode out of the cliff face too. Permit requests are now being reviewed to allow additional work on the cliff to stabilize the structure.

Discussion points:

- Is it reasonable to go to additional measures if the earlier measures have clearly failed? Should we be allowing people to build so close to the shoreline? It's a problem for counties – to save houses asking for expedited reviews. The county wants to look at all elements. (In this case the current owners of the house in question purchased the house in 2000 when it was already in this condition. The non-conforming status stays with the house. Should it, instead, stay with the owner? New people coming in and buying a place should be advised that they would be obligated to address the problem, or, acknowledge that the dwelling is not a safe place to live.
- Do we permit the repairs and take risk that the house will fall into the ocean anyway? Are we responsible if it falls into the ocean because we knew this would occur? If we tell them to leave, we trigger “taking” issues.
- Coastal development issues: How do we protect the counties against the takings? Do we develop policies that protect the people, the permitting county and the ocean resources?
- How do we overcome this quandary? What kinds of legislation or regulatory change would be needed to address this increasingly common issue?

In the case of the specific example: The owners are proposing to drill into the cliff far enough down to hit bedrock and at an angle so it also goes back 50-60 feet on a diagonal. They intend to put in cement and metal pilings to stabilize the cliff more so more rock doesn't fall out. They are going to do all of this on the shoreline. The ocean hits that cliff every day at high tide.

- From a permitting standpoint, they have to demonstrate that the work can be done without supplies or equipment falling into the water.

Comments:

- This is not easy engineering. In this local instance, the permit applications were sent back because they haven't said anything about the type of rock, how the proposed engineering solution will affect that type of rock and what's guaranteed. We don't want to permit this if the structure is likely to fall into the ocean some night while they are sleeping in their house...
- The higher level consideration in a case like this is the protection of the public trust. When our attorney on the ground is looking at this it could simply be viewed that this is someone's house and they want to fix the situation. On the other hand the situation should be removed or demolished because it's not safe. That constitutes a taking.
- If you can engineer it now, but know that it will eventually fail what do you do? An option is to buy them out. Another would be to have their engineer come up with their best engineering solution and certifying that solution for liability purposes. It may also be appropriate to require a disclosure of some kind on the deed.
- What can we change? Is it a change to CZM rules for a non-conforming structure? Is legislation required to free the county from liability if the county is making its decision based on health and safety? In this case, the county doesn't have the resources to buy the house. We need to have the appropriate protections in place. (Because it's not safe, you'll not be allowed to repair – does this avert the taking issue?)
- Permitting rules stick with the property. If you can find something like that where there are regulatory conditions that change with the owner...
- Is there a FEMA approach? If the situation occurs in an unsafe area, you're grandfathered in, but if something happens you're not insured. Federal insurance or equivalent at the state or county level might work. Flood insurance is required if you build in flood zone. The exorbitant rates for coverage would serve as a deterrent.
- A similar situation occurred on an island in North Carolina (Cape Hatteras) - the state's response was to retreat from the eroding shoreline.
- There is a line to be drawn somewhere, but where? You have to start thinking about this when you think about sea level rise, erosion, and other coastal hazards.
- What about using this as example but getting back to mitigation solutions? You'll have an encroachment on marine habitat if they need to build up and restore the bank to its original condition. Washington State had a sea wall with a house on it. The owners wanted to replace the sea wall. They were also required to rebuild the primary dune. This served as a disincentive to others pursuing similar strategies due to the costs involved.
- Interested in developing a draft post disaster policy for dealing with coastal homes. Will look at existing set back line policies. After the immediate response happens, most of these people will be asking how to rebuild. What kind of policies would we like to have in place or already in CZM law that would address rebuilding and reconstruction of severely damaged structures under these circumstances?

- When Hurricane Iwa hit, CZM advised the County of Kauai not to build there. The then mayor decided to give the land back to the owners because that was the only land they owned...What can CZM do?
- Lots of decisions that are made through county zoning that are counter intuitive, yet still occur. The role of SMA permits is to assure that whatever is allowed comports to CZM guidelines.
- The Policy Group should address this.
- Under climate change we can expect increasingly dynamic shorelines. We will have structures that may be in setback areas. How do you adjust your governance strategies to address this?
 - Maui came out with an aggressive set back program. Kauai requires (in some instances) even bigger setbacks. Hawaii County now has a Sea Grant agent to revisit setback issues. This is a matter of interest and is under consideration.
- What's the policy and what rules do we need to have in place on an island-by-island basis to deal with this?
- Could land use law be altered? Amendments to 205A (which was not enacted for land use determinant purposes) might be worth exploring.
 - The Counties and CZM are willing to work on this a bit between meetings. It's possible that some Honolulu County staff have considered this subject. They have been involved at the congressional level to push for ways to address/support relocation. Barry is willing to explore bringing someone from the City and County of Honolulu to the Working Group.
 - Cindy agreed to check with one of her staff regulatory resources. If not handled properly this could end up with the issue ending up in ACE.
- Ka'a'awa started a habitation initiative at the shoreline and moved mauka. There was a push to have some homeowners on the makai side of the highway to consider relocation. Because they did not own land elsewhere it was like proposing that they simply move people out of their homes.
 - Maui County, USACE, and OHA members agreed to reflect on this and to consider whether or not there are cultural sensitivity issues that would need to be considered. We often look at things in the context of a system as opposed to black and white. We have to make decent lands available for this type of relocation if we want it to work.
- The Hilo Bay front makai of the highway is restricted for development. Some of the parties affected were moved to Waiakea house lots. Historical records are probably available on those decisions?
- C & C recently hired Chip Fletcher to conduct shoreline analysis on Oahu. They have provided him with information on shoreline inundation areas. This might be an opportune time to share ideas irrespective of their past absence from the deliberations. Membership in the ORMP Working Group is still extended to C & C of Honolulu.
- Doug has shared email with the counties to note situations re: SMA matters. In that communication, he expressed interest in talking with the counties about how determinations are made re: major and/or minor exemptions, permits, permit condition compliance, the process for or the lack of procedures for reconsideration/revocation of permits. We might also want to anticipate the need to address issues associated with contested case hearings in this area as well. CZM usually has quarterly meetings with planning directors, and will be having one before the end of this year.

Next Steps

It's important to keep Working Group efforts moving forward more now than ever, given the financial and staffing challenges currently facing the state. The Working Group discussed ways to stay focused, such as considering meeting 4-5 hours every other month, with a lunch break in between.

The next meeting will be on Thursday, November 5th, 2009 @ the Office of Planning conference room from 9am-noon. Agenda items will include: a continuation of the discussion on legal, non-conforming structures along the shoreline; the 2009 ORMP annual report; an evaluation of the Working Group's progress and next steps, and a possible "hibernation plan"; and caucus time.