

**Marine and Coastal Zone Advocacy Council  
Ke Kahu O Na Kumu Wai**

Wednesday, January 15, 2003  
10:15 a.m. – 3:15 p.m.  
State Office Tower, 6<sup>th</sup> Floor, Large Conference Room  
235 South Beretania Street, Honolulu, Hawaii 96813

**MINUTES**

**Members Present:** Donna Brown, Mary Cabuslay, James E. Coon, Arnold Lum, John Ray, Donald Thornburg, Lawrence Aki, Ron Terry

**Members Absent:** Susan Sakai, Roland Sagum III

**CZM Staff:** Christina Meller, Christopher Chung

**Others Present:** Leimana DaMate, OHA; John Chang, Deputy Attorney General; Davianna McGregor, University of Hawaii; Luciano Minerbi, University of Hawaii; Jerry Rothstein, Pash

**DISTRIBUTED MATERIALS**

- Meeting Agenda
- October 30, 2002 Meeting Minutes
- Report on CZM Water Quality Working Group and Other Water Quality Matters Memo (June Harrigan Lum and Susan Elliot Miller)
- Shoreline Certification Working Group Recommendations
- Email from Jerry Rothstein to Leighton Nakao, Kendall Hee and Wes Thomas & Assoc. regarding Locating Shorelines by State Surveyor's Office
- Budget Allocation & Line Item Budgeting Instructions
- CZM Hawaii Report (Priority Initiatives)
- MACZAC Shoreline Certification Working Group – Meeting Summary December & January
- Phase III Native Hawaiian Access Rights Project, Recommendations for SMA Rules and Process

**Call to Order**

Vice Chair Arnold Lum called the meeting to order at 10:15 a.m. Council members and the general public introduced themselves. There were no public announcements.

**Approval of October 30, 2002 Minutes**

County of Hawaii Councilmember Curtis Tyler by phone requested that the third bulleted item on page 3 line 4 should be revised by striking out “because of the water quality”. Vice Chair Lum moved that the minutes of the October 30, 2002 meeting be approved with the suggested revision. The motion was seconded and the minutes were approved unanimously.

### **CZM Hawaii Program Report – Chris Chung – Brief Summary of Priority Initiatives**

*Ocean Resources Management:* Discussion deferred till the Ocean Resource Management Working Group report.

*Cumulative & Secondary Impacts (CSI):* In 2003, CZM is moving forward with the Waianae community to develop an Ahupua'a/Watershed model. The project was delayed last year due to repatriation of bones in the community. Lea Dizol, CZM staff contacted community leaders to schedule meetings to propose the development of a Waianae Ahupua'a/ Watershed strategy that will benefit the community and share the information with other islands. Two request for proposals were generated for facilitation services and planning services. The hope is to utilize basic principles as well as traditional knowledge and contemporary science.

Other related efforts include \$160,000 from the NOAA Coastal Service Center to develop a Waianae Ecological Characterization study. In November, the CZM program met with community leaders, researcher and the City and County of Honolulu at the East West Conference Center to solidify commitment for the study. NOAA Coastal Services Center also gave a presentation on a proposed Water Quality Analysis Tool for Hawaii at the November meeting.

*Coastal Hazards:* A \$45,500 contract was executed with Kauai County, Civil Defense to develop a Hazard Mitigation Plan. The plan is designed to prepare and protect communities from hazard events and is scheduled for completion in December 2003.

Discussions are underway with Hawaii County to provide \$35,500 for the preparation of a risk and vulnerability assessment and mitigation strategy. The contract should be executed by April/May.

In addition, CZM Hawaii will provide funds to support State Civil Defense Earthquake Workshops aimed at developing information that will be incorporated in a Statewide Hazard Mitigation Strategy. Earthquake information is required for the county to qualify for Federal Emergency Management Agency pre/post disaster mitigation funds.

CZM Hawaii as a member of the State Civil Defense Lava Flow Mitigation Committee helped in the development of a Lava Flow Mitigation Plan for the Island of Hawaii. In November 2002, a final Lava Flow Mitigation Plan was approved and signed by Governor Cayetano.

There also is a discussion with federal partners to sponsor a coastal hazard mitigation workshop.

*Section 6217 Coastal Nonpoint Pollution Control Program (CNPCP):* November 2002 EPA/NOAA review team visited CZM and DOH to evaluate the program. A June 30, 2003, deadline was established for Hawaii to submit all necessary materials to EPA and NOAA to demonstrate that Hawaii has met the conditions placed upon the program and therefore should receive full federal agency approval. CZM Hawaii may not be able to meet the June deadline and is trying to develop a strategy to avoid a 30% reduction in CZM federal funding. Susan

Miller in our program is assigned to this. Chris Chung conveyed that the deadlines are unrealistic. Sanctions imposed if conditions are not met are self-defeating if Hawaii ends up receiving less money to comply with the federal mandates. The Coastal States Organization has held heated discussions to extend the deadlines, amend the law, or develop other strategies. Arnold Lum commented how will this effect DOH in regards to the new Director of Health Deputy who has not been appointed yet. Discussion ensued regarding movement to recruit a Deputy for Environmental Programs. The Water Quality Working Group should discuss and advise MACZAC on what the group can do about the pending sanctions and the vacant deputy position.

### **Coastal Lands Acquisition**

Congress appropriated \$60 million for coastal land acquisition and only CZM programs are eligible to apply for the funds. CZM Hawaii was approached by the Trust for Public Land, Maui Coastal Land Trust and Maui Nature Conservancy to apply for Coastal Estuary and Land Program funds. The private non-profit organizations are interested in purchasing sensitive coastal area that need protection and are willing to develop a proposal. The partners may ask for MACZAC support. Chris Chung will report back to MACZAC.

### **MACZAC Budget**

\$25,000 was established as the MACZAC budget for FY 2002-03. The monies come from Section 306 administrative funds which require a 50% match. This makes it important for MACZMAC members to document time at the meetings. The group was given volunteer time forms. MACZAC must also report how the funds were spent to NOAA. Funds are also subject to state procurement regulations. The budget could be spent as follows: MACZAC \$5,000 ORMP \$8,000 and about \$3,000 each for Coastal Erosion, Water Quality, Shoreline Certification, and Parking Access. The Coastal Erosion Working Group is discussing a speaker series, and the Parking Access Working Group is considering GIS mapping. If everyone is comfortable with the allocations please discuss the allocation with your working groups and determine how you want to spend these funds. There is a separate budget for MACZAC travel. You can also use the money for community grants.

### **Working Group Reports**

#### *Ocean Resources Management Plan Implementation – Jim Coon & Chris Chang*

The working group was formed over 3 years ago under MACZMAG. The ORMP was adopted by the legislature in 1995, but at that time there was very little community support to implement the ORMP. CZM Hawaii hired consultants to update the ORMP. Statewide community and government agency meetings were completed late last year as part of the update to understand community coastal concerns and prepare for the Summit scheduled for May. Issues that arose in the meetings last year included: coastal erosion, coastal hazards, fishery management (especially

near shore water), aquaculture, energy, technology, tourism, and cultural/traditional resources. Cultural and traditional resources barely mentioned in the previous ORMP have gained recognition because of increasing host culture awareness and the PASH decision. As a result of last years meetings ORMP update was redirected to a focus on outreach and education aimed at developing constituency support, political will, and government commitment that would establish measurable goals prior to a plan update and implementation. CZM Hawaii terminated the original consultant and redirected the funds to hire new consultants to help with public relations, outreach, education, and performance measures for the next three years before jumping into an update.

CZM Hawaii is scheduling committee meetings with Senator Inouye and Representative Kanoho in the State legislature on ORMP. CZM Hawaii will request the passage of a resolution regarding ORMP and the Summit. The ORMP Working Group in the next three weeks will request for support from Governor Lingle and Mayor Harris involved.

The Ocean Summit previously scheduled for May is rescheduled to October 2003 and refocused from update to outreach and education. Partners that have joined with CZM include: Sea Grant, Office of Hawaiian Affairs, DBEDT-Ocean Resource Branch, City and County of Honolulu, Coast Guard, Western Pacific Regional Fishery Management Council, Nature Conservancy, Hawaii County Planning Department, DLNR, and Department of Education. Five subcommittees were formed: political, administrative, educational, conference planning, and island committees. Four summit themes include:

- (1) Research and Education
- (2) Ocean Industry and Tourism (economic evaluation)
- (3) Traditional and Cultural Resources
- (4) Ecosystem Resource Management (coastal hazards, water management, and watershed management.)

Don Thornburg requested information on corporate sponsorships. Ron Terry asked about the call for papers. Chris Chung indicated that the working group is developing the sponsorship “package” and determining the date on call for papers in the coming weeks.

Chris Chung’s Conference trip to Santa Barbara, California was helpful. Chris Chung learned about tools on how to manage/govern coastal and ocean resources. Financial support for Hawaii’s ORMP was offered by Orville McGoon, owner of Guenoc Wineries. A Conference in Canada addressed traditional knowledge in managing coastal and ocean resources.

*Shoreline Certification Working Group – Donna Brown*

Two meetings were held as videoconferences since the MACZAC October meeting. Because of improper shoreline certifications people build houses too close to the water. When the waves came up, the owner puts a seawall up and we lose our beach. Under current law a shoreline

certification must be done by a licensed land surveyor. Working group members were concerned that many licensed surveyors are not familiar with the ocean and waves process. If shoreline certifications are determined only by public surveyors, there was concern about work lost to private surveyors. Jerry Rothstein proposed that the state surveyor set the pins and the private land surveyor would still do the whole survey; they just wouldn't be responsible for determining the shoreline. Jim Coon asked if private surveyors can be trained to determine shoreline. Donna Brown raised a working group concern that the private surveyor is hired by the individual landowner which might influence the final shoreline determination. Discussion continued that maybe the applicant could pay DLNR as part of the shoreline certification process fee enough money to hire a public and/or private surveyor to determine the applicant's shoreline.

There is a need for more state surveyors because there is a five-year backlog in DAGS just to survey public lands of which 5% is shoreline certification. Last year the legislature appropriated \$300,000 to hire five surveyors. Jerry Rothstein indicated that Randy Hashimoto in DAGS would devote one of the five surveyors to work on shoreline certification. According to Jerry the positions remain unfilled because the paperwork stalled in the Attorney General's Office. Jim Coon moved a letter be written to Governor Lingle to release the funds to the State Surveyor's Office. Motion was seconded by Arnold Lum and discussion ensued. Donna Brown asked Jerry Rothstein to write the letter. The group will approve and it will be signed by the Chair Susan Sakai. Chris Meller will call Randy Hashimoto to find out current status of the \$300,000.

Ron Terry had several questions about assigning all shoreline determinations to State Surveyors including: Is this practical for the State carry it out? How much travel is involved? What would be the cost and fee structure? Would fees be used solely for survey? Do we need a special fund? Is \$300,000 enough? Charge the landowner? There is already a fee to get a shoreline certification, where does that fee go? He thinks the private sector can be trained to do the shoreline certifications. Chris Meller indicated fees go into the state general coffer and Lingle is eliminating special funds. Ron Terry thinks it is more a case of surveyors not understanding coastal process, rather than deliberately bending to the landowners' will. Lawrence Aki commented that since we are dealing with public lands, we need to keep in mind the public interest when private landowners irrigate shoreline vegetation to extend their property line. Jerry Rothstein believes the State Surveyor's Office should do the job and the \$300,000 would allow the state to hire 5 people to handle the 1<sup>st</sup> year of a 5-year backlog. John Ray asked is the backlog in the private sector or public sector? Jerry Rothstein indicated it is the public sector. Jim Coon wanted to know if anything was being done at the present and is the backlog cumulative or static. Rothstein indicated that Randy Hashimoto has told him his staff has been cut. The state funding is lapsing on projects because there aren't enough public surveyors to do the jobs. Coon suggested hiring a private surveyor to do the job. Terry and Rothstein discussed the number of surveys coming in per month. Rothstein believes there is about 6 – 10 surveys every two weeks. Lawrence Aki questioned whether or not the money is there and what effect the Governor's 5% cut would have on the \$300,000. Terry questions if the State can handle all shoreline determinations with only three surveyors. Rothstein believes it is doable through the

State Surveyor's Office and they will do a better job than the private sector. Rothstein said he spoke with an official of the Surveyor's Association who indicated they would prefer not to locate the shoreline and just do the surveys. Jim Coon would like to hear from the Surveyor's Association prior to making a decision to have only public surveyors determine the shoreline. Don Thornburg agrees to vote for the motion to write a letter to release the funds. Rothstein recommends asking for \$300,000 for 2003 as well. Lawrence Aki voiced a concern about the content of the letter. The content of the letter will say, "Please release the \$300,000 funds to the State Surveyor's Office, allocated by the last legislature to fund the hiring of 5 surveyors to handle the first year of a 5 year backlog of state construction jobs." Arnold Lum put to a vote in favor of drafting a letter to the State Survey Office. Motion voted on and approved with no opposition. Chris will include in the letter general information on MACZAC.

Leimana DaMate had a separate concern regarding the definition of shoreline for fish pond to include submerged land. Donna Brown wanted to continue discussion about the definition of a fish pond. Don Thornburg motioned that the State be the only entity to locate the shoreline. Donna Brown seconded motion and the motion opened for discussion. Lawrence Aki asked for clarification of motion. Arnold Lum explained the group would like a state employee to locate the shoreline. Arnold Lum believes it would need to become a legislative amendment. John Ray's raised a concern over the states capability to perform the task. People working there now don't have the qualifications. Ron Terry raised the question of the type of training these people will receive. Jim Coon moved that this issue be sent back to the working group and member voted 5-2 to send it back. Mary Cabuslay even though present by phone was unable to vote since we could not see her. It was decided a letter would be sent to the president of the State Surveyor's Association inviting them to participate. Don Thornburg believes this is a critical issue. Everyone needs to become more familiar with the issues of coastal erosion and public access. John Ray's concern is that the solution be quick, effective and cheap process. Rothstein brought up that at the State Land Surveyor's meeting on 1/16/03, if they approve the issue, it could be a non-issue. Rothstein brought up the fact delaying a decision until the next MACZAC meeting in April would prevent MACZAC from taking a stand in this legislative session. Arnold reassured Rothstein that the group could meet before April if necessary. Ron Terry said that he would be willing to testify as an individual to certain points on the bill.

#### *Water Quality Working Group-*

Susan Miller and June Harrington prepared a written report since they could not attend the MACZAC meeting. The Water Quality Working Group met in December and continued to prioritize the top 10 issues. Priority discussion will continue when the group meets on Jan. 31, 2003. June Harrington wanted to inform MACZAC that in a letter dated December 24, 2002, EPA Region IX approved Hawaii's 2002 Clean Water Act Section 303(d) List of Impaired Waters, containing 133 waterbodies requiring TMDLs. The next list is due to EPA on April 1, 2004.

*Coastal Access Working Group – Arnold Lum*

The working group met in December and a number of private citizens assisted in locating difficult coastal parking access on Oahu. Paul Lucas from Kamehameha Schools with small property owner identified windward side locations. State Representative Maile Shimabukuo identified locations from Kaena to Kawaihoa. John Cater identified locations just after Ewa Beach to Mokapu. No representative was present from the North Shore. Copies of the Bryants maps were divided up and people used markers to identify the locations. After the meeting, Daryl Eha from the Oneula Surf Club agreed to do Ewa Beach. The north shore has been deferred for Blake Mchelhaney. These maps will be digitized and put on a CD-ROM for distribution to public agencies that monitor the coastline. Chris Chung will find out if MACZAC should pay the OP GIS staff for time and material cost to digitize the information on to the State GIS system. The zoomed view can be made showing the beach parking available and sent to the City and County to notify them that the public is aware and they have been put on notice. The question was raised by Ron Terry and Donna Brown whether or not these maps are available for the outer islands or what was available to show the level of detail along the beach. Ron Terry suggested using USGS maps with similar detail. Arnold Lum indicated there is \$3,000 budget for all islands. Arnold thanked Scott Derrickson and Chris Chung for attending the working group meeting.

**Old Business**

*Coastal Water Quality – DOH Sewage Line-* Ron Terry reported there is no new news and advised the community they are welcomed to use MACZAC as a resource. There is no money to build the sewage line but as an issue we need to keep track. Kauai is facing a crisis with an outmoded DHHL sewer system. Arnold Lum brought up the point that as more raw land awards accrue, many other issues will be brought up as well.

Marine Patrol Program-Don Thornburg wants to table the issue and he needs more time for research. This should remain as old business. Arnold brought up a concern over a sewage spill in the ocean by a catamaran. DLNR enforcement showed up and wondered how this issue should be handled.

**Presentations**

Native Hawaiian Access Rights Report – Phase III – Presented by Davianna McGregor and Luciano Minerbi

A summary of recommendations was prepared and handed out to MACZAC. Phase III also took into consideration the recent court ruling that the Land Use Commission should: 1) identification of scope and value of cultural and natural resources; 2) how resources are affected and impaired; and 3) feasible action by the LUC. Davianna McGregor went over the recommendations in the handout which included:

- Proposed Process to Assess Impacts Upon Native Hawaiian Cultural Resources and Rights:
- Form to Identify Native Hawaiian Cultural Resources
- Proposed Changes to Special Management Area Rules and Regulations
- Recommendations Relating to Resources, Workshops and Coordination Among Agencies.

The project has generated some County movement. Hawaii County is working on adding a Cultural and Native Hawaiian Rights definition in the SMA process. Kauai is working on their SMA process with John Van Dyke. Maui and Kauai attempted to identify cultural practitioners on the islands. OHA has established themselves as a partner to the CZM Program to advocate, identify, and protect Native Hawaiian Access Rights. The Phase III draft report went through county review and is waiting final approval from the Office of Planning.

### **New Business**

*Kevin Seiter letter of resignation* was submitted after the MACZAC meeting ended in October. MACZAC chair Sue Sakai and David Blane from the Office of Planning wrote letters thanking him for his service. The Office of Planning will be recruiting from the Big Island to fill his position.

*Role of Advisory Council* – This item will be taken up at the next meeting where we plan to extend it to two days.

### **April Meeting Date – Schedule**

Tentative meeting date set for April 9 and 10 in Honolulu. Please submit agenda items to CZM staff.

**Meeting Adjourned – 3:15 p.m.**