

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

Wednesday, August 17, 2005  
2:00 p.m. - 4:00 p.m.  
Carnation Room  
Ala Moana Hotel  
410 Atkinson Drive  
Honolulu, Hawaii 96814

**MINUTES**

Members Present: Susan Sakai, Roland Sagum III, Ron Terry, James Coon, Donna Brown, Scott Sullivan, Donald Thornburg, and Anne Sturgis

Members Absent: Lawrence Aki and Arnold Lum

OP Staff: Laura Thielen, Douglas Tom, Christina Meller, Dawn Omoto

Members of the Public: Christine Woolaway, UH Sea Grant

**DISTRIBUTED MATERIAL**

- Waianae Ecological Characterization CD
- Committee Report of the Ocean Resources Management Plan (ORMP) Working Group
- Minutes of the April 20, 2005 meeting
- Agenda – August 17, 2005 meeting

**Call to Order**

Chair Susan Sakai called meeting to order at 2:05 p.m. Everyone introduced themselves.

**Public Announcements**

Ron attends the Hilo Bay Watershed Advisory Group (WAG) meetings. Statewide the 7 WAGs participate in the 319 process which involves CZM. The groups assist the State in meeting EPA mandates. The EPA request the advisory groups to come up with BMPs, measurable performance standards to improve water quality. WAG primary focus currently is data collection to understand the sources of the water pollution. It is not fair to go after farmers and force them to adopt these measures when they may have nothing to do with the pollution.

Sue announced that Laura Thielen will be the speaker at the American Planning Association on Wednesday, August 24, from 11:30 a.m. to 1:30 p.m. at the Laniakea YWCA room 307.

## **Approval of the April 20, 2005 MACZAC minutes and the May 9, 2005 ORMP video conference minutes**

Minutes were approved.

### **Budget**

The \$50,000 MACZAC budget requires Request for Project Approval (RPA) by the DBEDT Director to spend the funds. Meller worked on a Request for Project Approval (RPA) with Sue and Arnold for MACZAC travel, hire researchers, meeting facilitation, and administrative support. The Director approved the RPA. The next phase is hiring a contractor. Meller is setting up meeting with RCUH Mike Hamnett, Sue Sakai, Laura Thielen, and Douglas Tom, to work on a project agreement.

MACZAC needs their own administrative support since CZM staff has shrunk and the office is unable to give MACZAC the same support they have had in the past.

### **CZM Hawaii Program Report-** by Douglas Tom

CZM has taken on numerous projects and activities, especially public outreach components. Public outreach while successful in promoting the Program puts a burden on staff and competes for time needed on other projects. We performed some budget changes to maximize the use of three overlapping federal grants and matching State resources without violating legal provisions. This year, we are moving toward administering one federal grant each year with minimum overlap. There will be some overlap because the federal grants covers a 18 month period while State matching resources covers a 12 month periods. We will probably have fewer but more comprehensive projects so that we can complete them on time.

For this coming year, in addition to supporting the Counties in their ongoing SMA administration, we are undertaking some major projects.

*Rural Lands Study:* In response to State legislation, we are assisting with the costs for a rural lands study. The study involves redefining or refining the rural land use district definition. We are developing a new tool kit for the Counties to regulate development, and mapping areas considered for rural redistricting. The new tool kit is a key feature since the Counties present tools are mainly for urban districts, and may not be appropriate for the rural district. This project does have CZM tie-ins.

Ron Terry asked if OP will be doing something similar to a State land use five-year boundary review. Laura responded that under the State land use planning system, there are four categories of land; ag, urban, rural, and conservation. OP, under State law is charged with bringing forward boundary amendments every five years. The concept behind this is that land would be put into these categories and with the State's growth over time, it needed to be managed for that growth. Since the law was enacted in the '60s, a review occurred only three times. The reason it was done was that the Land Use Commission was set up to act as a mini legislature and they would rule on these boundary amendments. There was a change in the '70s due to a case that came up

to the Hawaii Supreme Court. The commission shifted from a legislative type hearing to a parcel by parcel contested case. The '92 boundary review only focused on conservation district.

This past session, the Legislature passed out two very big bills. One requires the State to identify important ag lands. Within the agriculture district, the Counties are supposed to be mapping and identifying the important ag lands. The other bill was mapping the rural areas. The ag lands that are not important some may stay ag, some may go urban, some may go to conservation and some would shift to the rural district.

There are some things that need to be done during this mapping period (2-5 year period). One of the things is proposing recommendations on how the State law should be changed so that if there is more land going into the rural district, the growth could be managed to keep the open space, and don't end up with sprawl. The Counties also need to get their own ordinances ready because they just know urban standards and not country standards. Part of our rural lands project would bring in consultants that the Counties have identified for needed information on wastewater treatment plants, roads without curves and gutters in rural areas, and control runoff. There will probably be changes to County ordinances and rules and proposed changes to State law.

Under the Legislative timetable, the Counties cannot bring forward their proposals to the Land Use Commission until two years after the Legislature has adopted incentives for identifying important ag lands.

The third thing is proposals to change things by which the Land Use Commission reviews the County boundary amendments. We would like OP to be in on the discussions all the way through. We have asked NOAA's permission to give us authority to reprogram some old funds that were going to lapse to support this project on the basis that coastal development and other kinds of development are CZM priorities.

*Section 309 Assessment and Strategy:* We are soliciting bids for a contractor to help us fulfill the federal requirements for preparing the Section 309 Assessment and Strategy. This 5-year cycle program provides grants for enhancing the program relative to objectives stated in the national CZM law. One project which we just completed, under secondary and cumulative impacts, is the Waianae ecological characterization project. This past weekend, we released free CD ROMs to the community. Anne asked if this was going to be distributed to the neighborhood boards. We will also be distributing this to a whole lot of people.

*Performance Measures:* This new federal requirement will track how well the CZM programs are achieving certain CZMA objectives. Data must be collected, managed, and reported in six categories: public access, coastal habitats, coastal hazards, coastal water quality, coastal community development and coastal dependent uses, and government coordination and decision-making. This year we start with public access and government coordination and decision-making because they were prescribed by the OCRM. Next year we take on coastal habitats and coastal water quality, and in the third year, coastal hazards and coastal community development and coastal dependent uses. We will be working with a contractor, Counties, and State agencies to develop the system and collect data. In addition to satisfying federal interests, we hope to come up with something of working value to the State and Counties as well. Sue mentioned that

MACZAC would like to get involved in the process, if possible. This new project will influence how programs are funded by Congress. Monies will shift from programs not showing much performance to those that are.

*ORMP:* MACZAC will provide us recommendations on a framework for the ORMP as well as issues and priorities to address in the plan. The same opportunity has been extended to HOCC, environmental groups, and ocean users. We will compile the input and put together a draft outline for a two-day workshop scheduled for October 26 and 27. After this task is completed, we will prepare a brief report to the Legislature on the status of the ORMP update. We are also in the process of procuring the services of a contractor to help with the writing of the plan.

*Coastal Hazards:* The coastal hazards work will shift from mitigation plans to supporting the State Civil Defense efforts in developing modernized wind design code provisions for Kauai, and some modifications to wind speed modeling for the Big Island, due primarily to the slopes of Mauna Kea and Mauna Loa. These have been rated the highest priorities of unfunded projects by the Hawaii Geographic Information Coordinating Council.

*Coastal Nonpoint Pollution Control Program:* We are trying to finish up management measures for a number of areas for EPA and NOAA review and approval in February 2006. Some of the outstanding ones include urban – onsite disposal systems; urban roads, highways and bridges; urban runoff – watershed protection; wetlands; streambank and shoreline erosion; urban runoff – new development for Maui and the Big Island; site development; and channelization. As indicated earlier, our target date for federal approval is February 2006.

*SMA Implementation Plan:* Based on an earlier federal evaluation, a necessary action was imposed on the Program. The federal government mandated that we work with the Counties to develop a plan to strengthen the Counties' implementation of their SMA permit systems, strengthen the role CZM plays in responding to citizen concerns, increase opportunities for public involvement in the SMA permit process, provide training to Counties and other interested parties, and increase reporting to the Legislature and OCRM on substantive aspects of SMA permit administration in the State.

The genesis of the federal mandate was a handful of citizen complaints at a public meeting during the federal evaluation process. A review of the complaints revealed that those who complained apparently did not understand the SMA process. We believe the system is not broken but could be improved, and that a primary need is public education. A product of the project is a users guide for permit administrators, decision-makers, and the general public.

We are also working with the Counties to seek ways we can improve the administration of the CZM Program and how they can better administer their SMA permit systems. In Kakaako, where we administer the SMA permit system, we have been coordinating with HCDA to better link our programs. We are trying to better understand the kinds of projects that will be submitted for SMA permits, and how we can be better prepared to administer the permit system as they are filed. We are also working with HCDA to explore ways to consolidate projects for SMA permits, and to identify areas for possible exclusion from the SMA. This year, we processed two major and three minor SMA permits.

We are providing financial support to DLNR for two projects: (1) ballast water fouling and (2) ocean recreation user conflicts. On Kauai, we are continuing support of its coastal erosion project. Sea Grant is being funded for ocean debris ghost net mitigation as well as for translating indigenous information. The Kahoolawe Island Reserve Commission is getting some monies for a Kahoolawe cultural restoration program.

*All Islands Meeting:* The All Islands Meeting involving Hawaii, American Samoa, Guam, the CNMI, Puerto Rico, and the Virgin Islands will be held November 8-10, 2005 in Kona. The first two days are open to the public, but the third is reserved for the island program managers and select federal representatives. The first day will begin with island updates, followed by federal updates. After lunch, a Federal person will provide a look ahead at national plans, initiatives, and events that may impact island coastal planning and management. After a discussion with the island program managers, there will be a presentation on the CSO survey of state needs in which each state polled indicated that land use was among the top two needs for technical assistance. The final session of the day will involve a discussion on the U.S. Ocean Commission report and the issues and concerns facing the islands. The second day will deal with important federal requirements. The morning will be devoted to a presentation and discussion on performance measures, and the first half of the afternoon will be on the various islands' Section 309 Assessment and Strategy projects. The final session will be either a presentation of the services NOAA's Pacific services Center can provide to the Pacific islands, a presentation on the integrated ocean observing system – what it is and how it will benefit the island CZM programs, or a presentation by EPA on information networking.

*Personnel:* Rachael Edinger joined us in May. She is responsible for the ORMP update project and the Section 309 Assessment and Strategy project, among others. We are also expecting another staff person to begin in early September. In addition to some legal work involving the Kakaako community development district and amendments to the CZM statute and rulemaking, the additional staff will take on various project oversight responsibilities as well as SMA permit administration assignments.

*Arnold Lum and the Environmental Law Clinic:* Thanks to Arnold Lum and the Environmental Law Clinic, we will be getting some additional valuable help this fall. The law students will be delving into the SMA arena to research and analyze five important questions:

1. Is it possible to base the SMA major/minor permit criteria solely on the significance of environmental effects and eliminate the cost criterion? If so, what legal problems or challenges could that raise?
2. What criteria or types of criteria for determining significant environmental effect are legally sound?
3. Are there other models for establishing criteria based solely on significance of environmental effect, e.g., Chapter 343, Hawaii Revised Statutes (HRS), on environmental impact statements and Chapter 11-200, Hawaii Administrative Rules, the environmental impact statement rules?

4. Should the definition of “valuation” (Section 205A-22, HRS) be amended to better reflect and legally define the relative scale of development as an indication of potential impact? For example, valuation based on the cost of site preparation and infrastructure may be more indicative of scale of development than costs associated with building materials and labor.
5. How have other states’ CZM programs dealt with this issue?

Finally, we are exploring possible internships with the UH planning students. We are hopeful that a mutually beneficial program can be established before the Spring term.

Ron Terry mentioned that evaluation is an important indicator. The use of significant environmental effect can be totally subjective, that’s what 343 is, very subjective. You will then have people challenging it right and left and every single SMA minor is going to turn into a major after two years of litigation if somebody doesn’t like it. That means that you will have to give the applicants an option of going for an SMA major so they can avoid two years of litigation to prove themselves. You open a can of worms when you take something from an objective measure to a subjective one. Don’t get rid of the objective part of it.

Donna Brown mentioned that one of the things that the Counties are interested in is that they want to keep objective measures because a lot of the staff people are not comfortable making subjective decisions and it slows down the process too.

Doug Tom brought up the fact that there were other options that were discussed, for instance the concept of categorical exemptions. Some examples would be restroom facilities in parks, small pumping stations, etc., where everyone can agree there would not have adverse environmental impacts.

### **Working Group Reports**

*Coastal Erosion Working Group:* - Scott Sullivan: The Working Group terminated and the last meeting cancelled. CZM is unable to provide logistical support and thought DLNR should take on the responsibility. Scott doesn’t know if there will be any continuation, but have talked to Sam Lemmo about reorganizing a group under his office.

The Coastal Erosion Working Group has existed for 5 or 6 years. A lot of people have spent a lot of time and energy to provide a forum to exchange ideas, and issues among County, State and members of the public.

Sue suggested that Scott could do a coastal erosion position paper and come up with some recommendations as part of the ORMP. One recommendation would be to establish a new, reborn coastal erosion group.

*Ocean Resources Management Plan Implementation:* - Jim Coon: Sue Sakai gave an update on HOCC. In the beginning, there have been several meetings with nothing going on, but we finally

put the issues into 3 large categories. These are: (1) resource protection, (2) coastal development, and (3) balance of resources and resource protection. There will be 3 more meetings before the October workshop. They are scheduled for August 30, September 15, and September 27. Sue won't be able to make those meetings but Arnold will attend in her place. The August 30 meeting will be going over resource protection proposals the other 2 meetings will cover the other topics.

Regarding the next MACZAC meeting date, we should coincide the meeting with the October workshop date so members can attend it. The ORMP workshop would be more relevant than the All Islands which is a in-house kind of pacific regional conference and less relevant to MACZAC. However, depending on the agenda, MACZAC may send a representative to the All Islands.

The MACZAC ORMP Working Group ended up with 8 issue papers which is a 1 or 2 pages in length. The position papers contain a problem statement then recommendations. We wanted to recommend change in the law, change in the rules, and change in policy.

Chris Woolaway talked about a 9<sup>th</sup> issue paper regarding commercial harbor infrastructure. Sea Grant has worked with a non-profit organization of maritime and recreational users. It focused on environment as well as safety. Commercial operators as well as ocean users are involved with recreational boating. Commercial harbors is really important in the ORMP. We have been discussing at HOST where the CZM and ORMP process is. This discussion was on the impact of commercial harbors infrastructure issues. The opportunity on getting the information and channeling it all back to MACZAC would help with the discussion with the commercial waterfront. This is huge and it has a major impact on Hawaii and the economy. The interfacing between the commercial and recreational users is on-going and very problematic. The information was gathered from the HOST meetings that had a panel of users as well as DOT Harbors, DLNR, and boating which was also represented. There is no position paper yet, but Chris Woolaway has promised to help write one.

It was moved and seconded to accept the Committee report that summarizes the nine issues discussed and placed in draft form. Responding to the final will be by e-mail. Sue asked if there should be a 10<sup>th</sup> topic for coastal erosion. Scott will think on it.

*Shoreline Certification Working Group:* - Donna Brown: Donald Thornburg has been filling in for Donna in representing MACZAC. There is a website where the progress is all displayed. Since he did not have the information on-hand, Chris Meller will e-mail it to members.  
<http://www.hawaii.gov/dlnr/occl/shoreline.php>

Thanks to Donna, caren Diamond, and the late Jerry Rothstein much of the improvements are in place. There is awareness of a shoreline locator, not by that title. There is also awareness that the surveyors can be influenced by vegetation and there was discussion about how the vegetation may or not be good for the erosion.

The group met twice and meets again on September 7. The first two meetings have been very educational. The resolution itself addresses the shoreline certification process with respect to

setbacks. That sort of confuses things a bit. The main purpose was to determine that the line was being established as the law required. It probably will focus back to correcting the wording and understanding with respect to what does vegetation debris mean. There will probably be four more meetings before the recommendations of the Group are presented.

Ron had a question about what Dolan Eversol is now doing, in shoreline locating. How many shorelines is he looking at? Is it just critical ones, or every one? Is he still involved in the process? Donald thought that Dolan is not the actual shoreline locator, but he is active in this group and he set up the website.

They do have a shoreline locator and Scott expressed concern that they got somebody young and inexperienced. There are agendas that various groups have and doesn't know which group he is associated with. It is an important issue and Scott is not sure that it's getting all the best attention with the various agendas by different people.

At the second meeting, it was revealed that there is a lawsuit against DLNR relative to shoreline certification, the process itself. There is so few natural shorelines in areas where there is great concern about because of public access. It makes the whole process subject to wondering how you could ever determine the shoreline.

It was suggested that Dolan and the locator to come and talk to MACZAC and become educated by everyone there. Instead of having to attend all the other meetings, it would benefit whom ever it is to be educated on the concerns and observations this group has. Ron has asked Dolan to come to our meetings a couple of times. Maybe we should send him an official letter. Ron said that he would write him a letter. We may also ask Dolan to give a report on the progress, problems, conflicts, etc.

*Watershed Advisory Group:* - Ron Terry: We were sort of piggy backing with some of what Sue Miller was doing. We never had much of a group, we had big large video conference meetings which were more focused on Sue's issues. Things kind of stopped and he didn't know if the group got axed. As far as Ron is concerned, we don't have that working group anymore.

## **Old Business**

Jim Coon spoke about Lanai Harbor. The effort we had on Lanai did result in incorporating a pump out facility. When the request first went in, the administrator said it absolutely could not be done which slowed a lot of the process, and if we get more money we'll consider it. Within 5 minutes of that response, the head engineer responded by saying that the timing was no problem and why didn't they think of that. It is just indicative of management.

On Maalaea, where they are spending well over \$7 million on this project, where they are putting a sewer line down to where the ferry terminal is going to be. They are putting in a sewage treatment facility at Maalaea and have come out formally that the \$7 million is not enough to put in a tertiary access for the vessels to utilize. It is just going to be in the ground and there's going to be no access to it.



Jim was involved with the group that got the money originally and that was part of the original deal. As an industry they went in and increased the tax against them by 50%. That is a big hit for them as an industry. This was to help them have money to do these things and it is not fair. The community is just outraged about it. Every day they talk about the tour boats pumping out 3 miles off shore.

Trilogy was the first company, probably in the State of Hawaii, surely the first on Maui to have all of the vessels commercially pumped out. Nothing goes into the ocean. That was after spending a lot of money on sophisticated treatment systems and processes.

The State has 2 choices. Either spend the in-line cost of several hundred thousand dollars, we have heard the numbers significantly less, but at a \$7 million buy it is still reasonable. They should put in the lines that the boats have access to, not just one single pump, or they participate in paying for a commercial pump truck to systematically pump out these vessels.

Chris Woolaway mentioned that EPA has low interest loans that are available and they are at the Department of Health (DOH), CIP money for this very thing of working with pump out facilities. She talked with DOH and they have been working with the County but they did not know that they could work with the State. Send the information to DOT Harbors and DLNR DOBOR about the low interest loans. There is \$7 million that comes into that fund every year. It is a revolving fund but the problem is they don't have a dedicated funding source that they could put up against a loan.

Two things asked for were very inexpensive. We asked that they widen the ramp at Maalaea Harbor so that we can haul our boats out there and have access to that. It would have been approximately \$100,000. The second thing was getting access to the sewer system they were putting in.

There are 15,000 trailer boats in Hawaii. They are grumbling about paying \$25 a year for the access, not a month. Would having it at \$25 a month be reasonable? The problem is having a very small user group paying for everyone else. This just isn't working.

Laura mentioned that it would be difficult for State agencies like DLNR to say that we are going to increase the fees on this boat ramp because of what they have to face. As a State function, we cannot charge these fees. It is easier if you privatize. You can say this is how much it costs to maintain the boat ramp and if you want to use it, this is how much you would have to pay. Maybe there are some categories of these harbors that can be privatized.

## **New Business**

None

## **October Meeting Date**

The next meeting is scheduled for October 26-27, 2005 at the Convention Center. The next meeting can be scheduled sometime during the ORMP Workshop.

## **Adjournment**

The meeting was adjourned at 4:00 p.m.