

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

February 24, 2010
9:00 am – 4:30 pm
Hawaii Office of Planning, Conference Room
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

MINUTES

ATTENDANCE

- Members Present: Donna Brown, James Coon, Makaala Kaaumoana, Robin Kaye, Henry Lau, Walter Ritte, Susan Sakai, Kanoa Withington, Donna Wong
- Members Absent: Michael Gleason, Rhoda Makanani Libre
- OP/CZM Staff Present: Melissa Iwamoto, Mary Lou Kobayashi, Abbey Mayer, Marnie Meyer
- Others Present: Steve Frano (NOAA), Brian Hunter (DOH Clean Water Branch), Charles Kaaiai (WPRFMC), Frank Rice (public), Michael Sheehan (Hanalei Kalihiwai River Fisheries), Jessica Stabile (OP/CZM-MACZAC)

DISTRIBUTED MATERIAL

- Meeting Agenda for February 24, 2010
- Minutes from December 3, 2009 Meeting (draft)
- MACZAC Letter to Abbey Seth Mayer, Office of Planning (12/9/09)
- MACZAC Letter to Stephen Prokop, Kalaupapa National Historic Park (1/13/10)
- MACZAC Letter to Emma Yuen & Bill Evanson, Natural Area Reserve System (NARS), DLNR (1/13/10)
- NARS-DLNR Response Letter to MACZAC (2/3/10)
- SB2552: Relating to Coastal Areas; Public Access
- HB939 HD1: Relating to Coastal Zone Management; SMA Permits
- ORMP Policy Group 2/3/10 Meeting Agenda
- Hawaii Ocean Resources Management Plan: 2009 Report to the ORMP Policy Group (1/10)
- Coastal Programs: Partnering With States to Manage Our Coastline (NOAA-OCRM, 1/13/10)
- “Lawmakers Blast DBEDT, Director” (Honolulu Advertiser, 12/23/09)
- “LUC Ruling Allows Golf Course to Use High-Level Aquifer Water” (Environment Hawaii, 2/8/10)

- “Kewalo Marine Lab Closing Opposed” (Honolulu Star-Bulletin, 2/1/10)
- Regional Highlights from Global Climate Change Impacts in the United States: Islands
- “Hawaii’s Proposed Climate Change Task Force Will Waste Precious Taxpayer Resources” (Hawaii Reporter, 4/16/09)
- Hawaii Clean Energy Initiative: Interisland Cable Project (12/31/09)
- Interisland Wind Project (11/4/09)
- Governor Lingle Announces Agreement to Advance ‘Big Wind’ Projects (3/17/09)
- “Giant Wind Project Will Damage Lanai” (Honolulu Advertiser, 1/28/10)
- “West Maui Reefs Cleaned Through Blue ‘Aina Campaign” (Lahaina News, 2/18/10)
- Legal Issues in Zappacosta Matter

Limited Meeting

Prior to the public meeting of MACZAC convening on February 24, 2010, MACZAC members held a limited meeting to conduct site visits to the UH-Manoa’s Hawaii Institute of Marine Biology Research Laboratory located on Coconut Island, Kaneohe, Oahu (9:00-11:15am) and UH-Manoa’s Pacific Biosciences Research Center/Kewalo Marine Laboratory located in Kakaako, Honolulu, Oahu (12:00-1:00pm). The group toured the two research facilities. MACZAC members present included Donna Brown, James Coon, Makaala Kaaumoana, Robin Kaye, Henry Lau, Susan Sakai, Kanoa Withington, and Donna Wong. MACZAC members absent included Michael Gleason, Rhoda Makanani Libre, and Walter Ritte. Others present included Melissa Iwamoto (OP/CZM), and Jessica Stabile (OP/CZM-MACZAC).

Public Meeting Call to Order

Chair Donna Brown called the public meeting to order at 1:20 p.m. Everyone in attendance introduced themselves.

MACZAC Project Assistant, Jessica Stabile, noted that the agenda item addressing the adoption of the State Building Code with wind speed amendments would have to be deferred until a future MACZAC meeting as the presenter was unexpectedly unable to attend the day’s meeting. Apologies.

Approval of the December 3, 2009 Meeting Minutes

Minutes were unanimously approved.

Hawaii Coastal Zone Management (CZM) Program Report & Legislative Update

Abbey Mayer, OP’s Director, gave an update on the CZM Program. As there was no hardcopy CZM Program Report made available to them, MACZAC members requested that hardcopies of the Report be distributed at every future meeting. Members stressed the importance of receiving both an oral and written CZM Program Report, being of consequence not only for the MACZAC members and those attending their meetings but also for those on the MACZAC mailing list and those who visit the MACZAC

website since the CZM Program Report is typically an attachment to the MACZAC meeting minutes. In this way, the CZM Program Report is able to have a significant distribution statewide.

Special Management Area (SMA)

Abbey reported that the main SMA issue currently before OP/CZM is the SMA use approval application for the piano lot in the Kakaako Community Development District, an area where it is the OP Director who is the issuing authority for the SMA pursuant to HRS §205A. So although the vast majority of SMAs come under the authority of the various county planning departments, Kakaako comes under the authority of OP. The Kakaako SMA use approval application received three contested case hearing requests from the public (two from individuals and one from an organization). The Kakaako developer, Hawaii Community Development Authority (HCDA), is challenging their legal right to request a contested case. MACZAC member Donna Wong raised the issue of OP's lack of rules governing contested case hearings on SMAs, indicating that it is a matter of having an open and fair process, and complaining that OP's process is not transparent. All other government agencies have rules so why doesn't OP? Abbey responded that while OP does not currently have rules governing contested cases (only a one line rule), the State's Department of the Attorney General and a hearings officer are trying to rectify that very issue right now. It is not only the public, but also HCDA that is disturbed by the lack of rules, and this is something that OP is working to address. MACZAC member Kanoa Withington asked why OP would be qualified to be the authority for SMAs in Kakaako if it had no rules. Abbey clarified that OP rules exist for everything SMA-related, except for contested case hearings, and this is actually the first time ever that a contested case has come up, thus bringing the lack of contested case rules to the fore. MACZAC member Makaala Kaaumoana of Kauai mentioned that the Kauai Planning Commission has clear rules, thus allowing the public to know what exactly they have to do and the timeline to follow. In contrast, OP's lack of rules keep the public in the dark, and also problematic is the fact that a single person, the OP Director, has such discretionary power. MACZAC member Kanoa Withington concurred that discretionary power always looks bad in the public's eyes. MACZAC member Walter Ritte of Molokai opined that the Molokai Planning Commission rules disadvantage the public, so for OP to have no rules must be an even bigger disadvantage to the public. MACZAC member Henry Lau reminded the other members that MACZAC's role is to be an advocate for the public as well as an advocate for OP/CZM, and thus they should concentrate their energies on problem resolution rather than castigate the OP Director. MACZAC member Robin Kaye suggested that Donna Wong give some thought as to what MACZAC as a group can do about this issue.

Abbey also highlighted another SMA-related item, that of Lapakahi State Historical Park on the Big Island. There are some sensitive lands adjacent to the Park, as well as a marine life conservation district. This area received the national top ranked funding priority for coastal land acquisition by NOAA, with the adjacent sensitive lands therefore being added to the Lapakahi Park and so coming under DLNR jurisdiction. OP's role was as the lead entity for the State to help guide applicants to submit to NOAA for consideration in the funding ranking. MACZAC member Sue Sakai noted that this is wonderful news since the Lapakahi area has lots of archaeology from an ancient Hawaiian fishing village as well as lots of other State lands. MACZAC member Kanoa Withington of the Big Island indicated that he has personally been involved in this initiative for over 10 years, and several other local advocates have been trying to protect the coastal land for the past 30 years. That land is recognized by Hawaii County as critical open space. Kudos.

Coastal Hazards

Abbey noted that along with the Hawaii State Civil Defense, the Hawaii CZM Program is also actively involved in coastal hazard issues and mitigation planning, with the recent wind speed studies and amended county building codes a big achievement.

Federal Consistency

Abbey mentioned that there are two potentially controversial endeavors currently being reviewed by the Hawaii CZM Program. The first endeavor is the proposed mariculture ahi cages located about 2.5 miles off the Big Island, where the water depth is 1300 feet. Capable of producing 1000 tons of fish per year, these would be the largest open ocean aquaculture operations in the US. MACZAC member Kanoa Withington of the Big Island noted that the proposed location is in a very wild area but local public sentiment is that the company desiring to operate the ahi cages is more environmental and technologically advanced than other operations whose mariculture projects have failed in Hawaii. Abbey explained that the ahi cages are of the floating variety and are tracked using GIS. Abbey noted that OP/CZM's comments on the project are due by March 9, so they are currently looking for public and government agency comments, with the public notice having opened on February 23. MACZAC member Robin Kaye inquired how the public would know about the public comment period. Abbey noted that the State Office of Environmental Quality Control (OEQC) publishes the "Environmental Notice" which announces the various EA and EIS under public review. Robin responded that if public notice is only through the OEQC then this is not sufficient given that most members of the public would not be aware of the OEQC or have access to the "Environmental Notice." Concurring, MACZAC member Walter Ritte stated that the twin issues are how to tell the public and also when. Walter opined that the government's general attitude is to keep the public uninformed and so it should be MACZAC's role to help the public be more informed, and that is why it is imperative that MACZAC receive its budget request from OP/CZM so that it can engage in more outreach.

The second endeavor is the Pacific Missile Range Facility (PMRF) located at Barking Sands on west Kauai. PMRF is not seeking to add any additional missile launches but rather to internally reallocate the number already approved. Abbey noted that OP/CZM's comments on this are due by March 22, with public notice opening on March 8. MACZAC member Makaala Kaaumoana of Kauai mentioned that the public is worried about the debris and particulate matter that falls back into the ocean off the missiles, especially as technology gets more sophisticated. Abbey responded that OP/CZM closely reviews all EIS.

Legislative Update

Abbey mentioned that this year's legislative session had been slower for OP than in the past, as the State Legislature's focus was primarily on bills relating to the economy. Hence, most of the bills that OP had been tracking were never heard. The four bills of most relevance to the CZM Program that are still alive are HB939 HD1 ("Relating to Coastal Zone Management; Permits") addressing SMAs, HB1808 HD2 ("Relating to Coastal Areas") addressing irrigated vegetative growth and the definition of shoreline, HB 1882 ("Relating to Shoreline Setback") addressing accreted lands along the shoreline, and HB 2217 ("Relating to the Office of Planning") addressing the creation of a special fund for OP's operations including personnel costs of staff positions eliminated during the RIF process. Regarding HB939 HD1, MACZAC members inquired as to the position that OP took on the bill's proposed changes to the valuation threshold for SMA minor permits. Abbey indicated that OP supports the bill since it explains that inflation has increased construction costs such that most development projects are disqualified from SMA minor permits (whose current maximum valuation is \$125,000). HB939 HD1 therefore proposes to raise the valuation threshold to \$250,000. However, OP testified that any cost trigger is inappropriate since the focus should be on adverse environmental or ecological impact, rather than cost. Nonetheless, OP feels that if there must be a valuation threshold for SMA permitting, then a new cap of \$250,000 for minor permits is preferable to the current cap of \$125,000. As several MACZAC members expressed displeasure with OP's position, Abbey explained that they are coming from a different perspective since he trusts that government agencies will make a determination based on environmental or ecological impacts, including cumulative effects. In contrast, MACZAC members Donna Wong and Kanoa Withington opined that they most certainly do not trust government, whether OP or the individual county planning departments, to make such

a determination. It is the members of the public that know local areas the best and who can anticipate adverse environmental or ecological impacts. Several MACZAC members despaired that HB939 HD1 will result in increased development and will reduce the role of public hearings in SMA permitting.

Climate Change Task Force

Abbey reported that the Climate Change Task Force will not be meeting. Abbey indicated that this was due to staff losses at State agencies during the RIF process as well the fact that no funding was released by the government. The Climate Change Task Force will sunset in December 2010 and in the meantime, OP is supporting the efforts of the UH Sea Grant and the ORMP groups to address climate change issues. OP authored the Climate Change Task Force's interim report to the Legislature that was due in December 2009 pursuant to Act 20 "Relating to Global Warming." MACZAC members noted that the Report was not available online so they would need to see a hardcopy from OP, which was promised. MACZAC member Makaala Kaaumoana opined that rather than sunsetting in December 2010 before having ever met, the timeline for the Climate Change Task Force should be extended because the members who were appointed to the Task Force by the Legislature would have good collaboration and enthusiasm for the climate change research which is important and needs government support. Abbey noted that this is a politically charged issue on both sides. MACZAC asked Abbey if it is for political reasons that he, as chair of the Climate Change Task Force, will not convene a meeting. MACZAC member Robin Kaye indicated that it sounds like Governor Lingle does not support this climate change initiative but should since it could become part of her legacy. MACZAC member Makaala Kaaumoana opined that there needs to be an official process in place, even if the Climate Change Task Force solely meets to endorse what other climate change adaptation work is being done in Hawaii by groups such as the ORMP. MACZAC member Sue Sakai noted that OP should have the role of pulling together all the other agencies because planning is an integrated endeavor whereas all other government agencies have more specific and discrete roles. That is the job of OP and is why the OP Director is frequently designated as chair of these types of groups. So not convening even a single meeting of the Climate Change Task Force means that OP is not doing its job. Inadequate funding is a difficult burden but there are certainly ways around that hurdle. For instance, the vast majority of Task Force members work in Honolulu and the rest are likely coming to Honolulu regularly during the legislative session so meetings could be scheduled around that. Sue concluded that this issue is far too important to just let it slide; where there is a will, there is a way. Abbey responded that he is doing what he can in the avenues that are open to him. MACZAC vice-chair Jim Coon concluded that OP became crippled when it was administratively attached to DBEDT. MACZAC member Robin Kaye concurred that it is a terrible absence of responsibility for OP not to convene the Climate Change Task Force, and that it would also be terrible for MACZAC not to take this issue on. There should not be barriers for the Task Force to not meet. MACZAC members discussed what role they could play in helping to convene the Climate Change Task Force. MACZAC chair Donna Brown suggested that it would be possible for MACZAC to donate some of its own funds to allow the Climate Change Task Force to hold a meeting. Abbey Mayer indicated that it is not only funding issues but also staffing issues that are barriers; government agencies have concerns over their work loads since they do not currently have sufficient resources given the RIF and furloughs. Donna Brown said she does not understand since most of the Climate Change Task Force members would be attending as part of their regular jobs and seem eager to do so, and anyways MACZAC is willing to donate both funds to allow meetings as well as staff hours to help with the work.

NOAA Update

Steve Frano from NOAA-OCRM, indicated that the Hawaii CZM Program is preparing for a new NOAA annual grant, and also mentioned that the ORMP will be due for an update soon. The other issue that NOAA anticipates on the horizon is ocean thermal energy conversion (OTEC), which utilizes the temperature difference between warmer surface waters and colder deep waters to turn a turbine and generate electricity. NOAA has been involved in OTEC since the 1980s when it drafted many regulations, but the technology was not advanced enough at that time for implementation of floating OTEC facilities. However, OTEC technology has developed substantially in recent years. The Navy, through the US Department of Energy and with NOAA, is planning to do some research on OTEC's feasibility. On June 22-24, NOAA will conduct a workshop on impact baseline studies to address what issues need to be included in an EIS. NOAA will also be involved in a long-term outreach strategy and will seek MACZAC's assistance on this. Steve Frano will communicate with Jessica Stabile, MACZAC Project Assistant, to coordinate the outreach.

MACZAC member Donna Wong asked Steve to confirm whether it was NOAA that would be funding the CZM Program Manager Position that was eliminated by DBEDT during the State's RIF process. Steve indicated that indeed NOAA would fund the position for a two-year period, beginning July 1, 2010. OP Director Abbey Mayer stated that the CZM Program Manager job description and position recruitment had not been posted yet but that the State's Department of Human Resource Development would be doing that soon. MACZAC members Donna Wong and Makaala Kaaumoana asked Abbey to describe the minimum requirements for the CZM Program Manager position and to explain who exactly establishes those, and to clarify whether the CZM Program Manager is a civil servant position, and whether the posting simply requires the applicant to be a planner or whether coastal zone experience is also required. Mary Lou Kobayashi, OP's Planning Program Administrator, explained that the CZM Program Manager position is within the planning series so the applicant would need planning and managerial experience, while experience regarding coastal issues would be discussed during the interview process.

Hawaii Ocean Resources Management Plan (ORMP) & Community-Based Resource Management

ORMP Update

Marnie Meyer, Hawaii CZM Planner, gave updates on both the ORMP Policy Group and ORMP Working Group. Marnie noted that the Army Corps of Engineers had joined both ORMP groups and were actively working on watershed projects based upon the ahupuaa model. Marnie also mentioned that once again, the City & County of Honolulu had been invited to participate in the ORMP groups as the other counties do, but Mayor Mufi Hannemann responded that while the City & County would not be formally joining the groups, they may still be able to participate in certain ORMP projects.

Marnie reported that the ORMP Policy Group recently met on February 3 (the first time since September 2008) and members indicated that they desired to meet more often and wanted to have another meeting convened within the next 4-6 months. Marnie noted that a major topic addressed in the Policy Group meeting was the document "A Framework for Climate Change Adaptation in Hawaii" (September 2009) jointly produced by the ORMP Working Group and the UH Center for Island Climate Adaptation and Policy (ICAP), and which was presented to the Policy Group for official endorsement. One important issue is the role of permitting and climate change; while there is no requirement for an EIS to consider sea level rise, many do anyway. It was opined during the ORMP Policy Group meeting that leadership on climate change is very important as is public involvement and support, and MACZAC was envisioned as

helping in this regard. Because of political backlash regarding climate change, the group decided to focus on specific goals that actually had a chance of being accomplished.

Marnie further reported that the ORMP Working Group also met on February 3, immediately following the Policy Group meeting. The Working Group members realized that they need to be more clear on what they collectively want and to communicate that better to the Policy Group. The Working Group desires that the Policy Group meet more often so that they are not stuck in limbo. The Working Group will also try to coordinate their meeting dates (generally on Thursdays) with OP Director Abbey Mayer's calendar so that there are less conflicts with LUC hearings so that he may attend more often. Regarding climate change, the Working Group members will attempt to gather greater public support by disseminating scientific information on climate change issues. They plan to present the scientific information to multiple audiences so as to attempt to convince the doubters that climate change is indeed real. The Working Group will also work more closely with ICAP, including on public outreach with MACZAC's assistance. Moreover, the Working Group plans to draft an executive order directive to try to get the State to move on climate change adaptation. The Working Group has previously formed four caucus subgroups (climate change, community outreach, policy/legislation, watersheds). Now that the entire Working Group has decided to focus on climate change issues, each caucus subgroup likewise will focus on climate change. For instance, the watershed caucus will address issues such as what the impact of climate change might be on Hawaii's watersheds, and the community outreach caucus will focus on disseminating climate change information, with MACZAC members on each island helping to reach out to the local communities and also their respective legislators.

Community-Based Resource Management Update

Melissa Iwamoto, Hawaii CZM Planner, gave an update on the ORMP implementation projects. One of the projects has been approved by OP, so DBEDT is now drafting a contract. Once things are finalized, Melissa will be at liberty to report more information to MACZAC about this.

Melissa also gave an update about the climate change presentation created by former Hawaii CZM Program Manager Douglas Tom ("Using CZM and the ORMP as a Foundation for Adapting to Climate Change in the Islands"), which is being made into a CD video. Melissa asked for MACZAC's help in thinking about what the CD's audience should be (statewide) and help with the CD's ultimate distribution and viewing. The distribution of the CDs will be further discussed at the next MACZAC meeting, since by that time the CD production should be complete.

Melissa informed MACZAC that the Hawaii Community Stewardship Directory is currently being updated, with 110 groups already listed. Melissa indicated that there is still time to get more groups listed and asked MACZAC members to assist in getting the word out to any additional groups that they might know so that they may be included in the updated directory.

MACZAC's Budget Working Group Update

Donna Wong indicated that the budget working group is stuck since OP has not responded to their budget proposal submitted last November. Donna inquired as to what was causing the long delay. OP Director Abbey Mayer stated that he did not know and would have to look into it and get back to MACZAC via communication with MACZAC chair Donna Brown.

New/Old Business

Zappacosta Case

MACZAC member Walter Ritte raised the issue of the exemption from the SMA permit process for the Zappacosta residence being constructed on agricultural lands within the SMA on Molokai. The structure was deemed exempt on account of its status as a single family residence, despite the fact that it is 21,000 square feet plus an associated 1,000 square foot guest house, thus making it the largest farm dwelling on agricultural land in the State. Walter noted the poor treatment of the public in this process, some of who have since decided to seek legal advice regarding a potential lawsuit. Walter distributed a document addressing the legal issues involved in the Zappacosta matter.

MACZAC Correspondence

On member Donna Wong's motion, MACZAC members unanimously voted to send a letter to OP regarding its lack of rules for contested case hearings on SMAs. Member Donna Wong will draft the letter.

MACZAC members also unanimously voted to send a letter to NOAA expressing gratitude that NOAA offered to temporarily fund the Hawaii CZM Program Manager position for the next two years, on account that the position had been eliminated in the State's RIF process and so would not exist otherwise. MACZAC chair Donna Brown will draft the letter to NOAA.

MACZAC members unanimously voted to send thank you letters to their site visit hosts at both the Hawaii Institute of Marine Biology Research Laboratory and the Pacific Biosciences Research Center/Kewalo Marine Laboratory. MACZAC chair Donna Brown will draft the two letters.

MACZAC members unanimously voted in favor of having member Henry Lau write, as the need arises, commendation letters to individuals or organizations for their good deeds benefitting marine and coastal resources. For instance, MACZAC wanted to send a congratulatory letter to the Ulupalakua Ranch praising them for their donation of a 12,000 acre easement to the Maui Coastal Land Trust.

Upcoming Events

Jessica Stabile, MACZAC Project Assistant, informed the group that there were two upcoming events of interest to MACZAC. The first event is a CZM federal consistency workshop being put on by NOAA in Honolulu on March 16, which Jessica along with other staff from OP/CZM will be attending. The second event is a conference being put on by the Hawaii Association of County Building Officials (and co-sponsored by Hawaii CZM as well as NOAA) on Maui in late-April. This is an annual conference, hosted by the different countries on a rotating basis, and MACZAC typically sends one member to attend. Member Henry Lau agreed to attend on MACZAC's behalf.

Next MACZAC Meeting

The next MACZAC meeting will be held in late-April; exact date is to be determined. MACZAC members indicated that they should have more neighbor island meetings this year, whether it be the next meeting or subsequent meetings.

Adjournment

Chair Donna Brown adjourned the meeting at 4:43 p.m.