

CMP CR-9

Management policy for the culturally appropriateness of building ahu or “stacking of rocks” will need to be developed by Kahu Kū Mauna who may consider similar policies adopted by Hawai‘i Volcanoes National Park.

PROPOSED ACTION

It is recommended that CR-9, the building of ahu or stacking of rock should be combined with CR-7, the construction of new cultural features, and should not be treated as a separate management action. However, the following discussion should be considered when developing the policy for CR-7

DISCUSSION

Ahu are cultural features (defined as Native Hawaiian cultural features, see CR-7) and not simply the “stacking of rocks.” Ahu are culturally significant and have as their basis a Native Hawaiian traditional cultural practice with purpose and meaning. There is reason to believe, however, that a large number of the single rock features and small concentrations of piled or stacked rocks on Mauna Kea are modern and that many were constructed by non-Hawaiian visitors in the last decade or so. (CMP, 2009)

Visitors to and users of Mauna Kea will be educated through a Visitor Orientation about the importance of preserving the cultural landscape, with particular attention to prohibitions on the piling and stacking of rocks, unless for cultural purposes.

OMKM believes that the stacking of rocks is a widespread activity that may in some instances have strayed from its original purpose such as their use as markers. Kahu Kū Mauna is concerned about copycat behavior. Rock stacking appears to be more of a spontaneous activity versus the more deliberate construction by a cultural practitioner. Over the years OMKM rangers reported stacks of rocks including creative balancing of rocks, and outline of shapes appearing along the side of the road, summit and elsewhere on the landscape. An example of what the Council does not want to occur is the numerous lettering and designs made by the placement of rocks along the roadways in Kona.

Preserving the cultural and natural landscape

As stated above there was a large number of “find spots” recorded during the archaeological inventory of the Mauna Kea Science Reserve. Most of those were stacks of rocks believed to be constructed by non-Native Hawaiians and are now permanent features that dot the cultural landscape.

Seeing stacks of rocks could encourage others who do not understand the cultural purpose of ahu to engage in “copy cat” behavior.

Traditional Practices

Kahu Kū Mauna notes that Native Hawaiian engaged in the building of ahu or the stacking of rocks for certain purposes, such as trail markers. In this sense, ahu building is a cultural practice and should not be separated from CR-7, which calls for the development of a policy for the construction of new cultural features.

ACTION:

It is recommended that CR-9, the building of ahu or stacking of rock, should be merged or included as part of CR-7, the construction of new cultural features, and should not be treated as a separate management action.

CMP CR-7

Kahu Kū Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian cultural features.

PROPOSED POLICY

Following is a proposed policy for erecting and maintaining new cultural features such as, for example, shrines, alters or ahu:

1. Any Native Hawaiian who would like to construct a new cultural feature shall, prior to any construction or preparation for construction, register the proposed site of the new cultural feature with the OMKM. OMKM will keep a record of the location and contact information of the responsible party. Responsible party means the person who registers the proposed site.
2. New cultural features shall be placed out of plain sight, or a minimum of 100 yards from existing roads and in designated areas to discourage copycat behavior. Plain sight includes areas close to or adjacent to roads, parking areas, driveways or within 100 yards of buildings.
3. New cultural features shall not be placed in any areas used for operations.
4. Any and all new cultural features shall not be placed in any area that would create a risk to public health, safety or the environment.
5. New cultural features shall be placed at least 200 feet from existing historic sites.
6. New cultural features shall be made of natural materials from the surrounding area, but shall not be removed from existing historical sites. Removal, disturbance or damage to historic sites is a violation of state law, HRS 6E-11.
7. New cultural features are to be maintained by the responsible party.
8. Upon observation that the structure has been disturbed or damaged, OMKM shall contact the responsible party.
9. If the new cultural feature is constructed from or includes in its composition materials that are not from the surrounding area it will be removed and the incongruous materials disposed of.
10. New cultural features that have not been registered with the OMKM prior to construction may be subject to removal.
11. All applicable Hawaii State laws and regulations shall apply.

DISCUSSION

The construction of Hawaiian cultural features is an extremely sensitive issue. Many Native Hawaiians will be the first to say that it is not their kuleana to judge the cultural practices of another Hawaiian or to judge without knowing the reason for constructing a feature. The CMP discussion on CR-7 states the intent of this management action is to develop a process to determine culturally appropriate protocols and to develop guidelines to assist in formulating culturally appropriate protocols, such as determining "which kinds of features and locations are appropriate or inappropriate as well as if and when a regulatory review process is necessary."

CR-7 states that Kahu Kū Mauna should “take the lead in determining the appropriateness of constructing New Hawaiian cultural features.” However, in reviewing this management action Kahu Kū Mauna agrees that it is not their kuleana to develop culturally appropriate protocols for constructing cultural features. Protocols are personal and private in nature and to develop a one-size-fits-all protocol is not appropriate. Further, to question a person’s reasons for constructing a cultural feature may be viewed as niele or not another person’s business. More importantly the exercise of Native Hawaiian traditional and customary rights is constitutionally protected subject to regulation as permitted by law. Kahu Kū Mauna does not have the authority to regulate the traditional customary practices of other Native Hawaiians.

Legal consideration

The University by its lease is required to comply with all federal, state and county statutes, rules and ordinances. The University’s managed lands on Mauna Kea are classified Conservation District lands and fall under HAR 13-5 which governs land uses. Land uses are defined in the HAR and may be allowed depending on the type and subzone designation. The definitions of land use includes: 1) the “placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs” and 2) “the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.” The rules do not specifically address the construction of cultural features, however, if either 1 or 2 above occurs, a form of permit is required by DLNR. Newly found unpermitted stacks of rock that remain become permanent structures that change the land area.

Although rules governing the Mauna Kea Ice Age Natural Area Reserve (NAR) or Forest Reserve (FR) do not apply to UH’s managed lands, the NAR and FR are integral parts of the cultural landscape of Maunakea. OMKM recognizes political boundaries should not be a reason for parceling the cultural landscape. OMKM acknowledges the NAR and FR rules prohibit engaging in construction or improvement and removing, damaging, or disturbing geological features or substance. But OMKM and Kahu Kū Mauna are aware that that the right of Native Hawaiians to practice and exercise traditional and customary practices is constitutionally protected subject to regulation of such rights as permitted by law.

Historic Sites

Pursuant to HRS 6E-11, it is a violation to injure, destroy or alter any historic property (an historic property includes, for example, any building, structure, object or site that is over fifty years old). The potential exists for the uninitiated to use rocks from an existing historic site for the construction of a cultural feature. Several years ago an OMKM ranger reported a new stack of rocks on the summit. Some of the rocks used for this new structure may have been taken from a nearby historic property which is also on SHPD’s list of historic properties.

Preserving the cultural and natural landscape

Another major consideration is preservation of the cultural landscape. The building of new features should not be constructed without some thought for maintaining or removing them after the purpose for which they were built has ended.

It is OMKM’s responsibility to preserve not only the cultural landscape, but also the natural landscape, biological community, and geological conditions. It is not uncommon to bring and leave flowers, leaves and other plant parts, sometimes with viable seeds, especially those that are easily distributed by wind. Food items left behind can attract vermin such as rats and mongoose, or undesirable arthropods, including ants. Often times man made articles are left behind such as beer cans, crystals, and statues. These, plus plant material and food items left behind, eventually become trash or are blown about by the winds. The breakdown of biological matter could end up providing habitat or encourage growth of unwanted species

The BLNR approved Public Access Plan for UH’s managed lands on Mauna Kea contains a hierarchy of public access control with personal responsibility being the fundamental and lowest level of control. It states:

“As individuals we bring our own personal sense of responsibility and kuleana to Mauna Kea. This sense of kuleana is shaped by our upbringing and by the degree to which we have been taught to act with common courtesy, humility and respect both for nature and for other people...Although this sense of responsibility may not be shared equally by all members of the

public, there is a foundation of personal accountability upon which to build. The most effective management tool is the ability of each individual to take responsibility for their own actions....”

Kahu Kū Mauna Discussion

Kahu Kū Mauna began discussing this issue in 2010. It was assumed that this policy, along with others would be incorporated into the OMKM’s Administrative Rules. However, in 2015 it was apparent that the administrative rules were going to be delayed. Kahu Kū Mauna then began to revisit the policy for CR-7/9. After consultation with the community Kahu Kū Mauna finalized this policy in 2017.

Policy Provisions

The OMKM included a registration process for any new cultural features Native Hawaiians wish to construct on Maunakea to help facilitate management of UH’s managed lands. If a new feature is registered the OMKM will be able to contact “the responsible party” if there are any changes to the feature. Also, personnel who work on Maunakea will be made aware of its existence. The “responsible party” will be responsible for the maintenance of the feature. “Maintenance” includes, but is not limited to, keeping the feature free from debris and repairing the feature if necessary.

At the October 13, 2010 Kahu Kū Mauna meeting, the subject of the lele on the summit was discussed. That lele was erected by the Royal Order of Kamehameha. At that meeting the representative for the Royal Order stated that if “we put up something, we are responsible for it. It was decided that the Royal Order would be informed of any vandalism and damage to the lele.” It was also at this meeting that Kahu Kū Mauna began discussing the use of some type of process regarding new cultural features. The idea of having a Native Hawaiian obtain a permit through the OMKM had been entertained. However, a simple registration process would be more appropriate and would address OMKM’s and Ranger’s concern about knowing the location of the new permitted feature. The registration process would enable OMKM staff to review this policy with Native Hawaiians who would like to construct new cultural features so that all parties have an understanding of each other’s position leading to a more respectful attitude of the culture, history and future.

The requirement that it be placed out of plain sight is a directive from the Cultural Resources Management Plan. Speaking directly about the issue of new cultural features: “The proliferation of such features is undoubtedly a result in part of what is popularly known as the “copy-cat effect.” The appearance in recent years of large numbers of rock piles at Hawai’i Volcanoes National Park led the Park’s committee of cultural advisors to view the construction of such features as a misguided practice resulting in the desecration of Hawaiian culture and, thus, a “cultural sacrilege” (Honolulu Advertiser Nov. 4, 2005). The increase in the number of rock piles and the implications for land managers was discussed in a draft interim monitoring plan developed by PCSI in 2006” (CRMP 4-20).

If the new features were placed in plain sight there may be the temptation for others, not Native Hawaiian cultural practitioners, to mimic the behavior. Naturally, the new features could not be placed in any areas that would constitute a safety hazard. This would include roadways, areas adjacent to roadways, driveways, areas adjacent to driveways near buildings or any areas used for operations. Further, having cultural features in plain view can also result in vandalism or inadvertent disturbance or damage to the sites. Constructing the features out-of-site or a distance away from the road and historic sites will help to prevent disturbance to new and historic sites.

The condition of using only natural materials found in the surrounding area is required to minimize any environmental hazards concerning the introduction of any animal or plant species that is not found on Maunakea. Fire ants and invasive weeds are some examples. Items left behind that are not originally part of the natural landscape should be removed.

ACTION:

Need for a Process

There needs to be a process that accommodates those wishing to exercise their cultural practices, and which ensures compliance with regulations, prevents disturbance or damage to historic sites, and provides for proper maintenance to help preserve the cultural and natural landscape,

Permit

To comply with conservation district rules the OMKM process requires registering with OMKM.

- The application for registering shall include the date, name of the person, contact information, location, description, and longevity/permanence of the feature, and a photo of the feature after it is completed.
- OMKM shall work with the applicant regarding areas where the applicant wants to construct his/her feature. OMKM could provide a map depicting areas that are 200 ft. away from existing historic sites; a 100 yard buffer from the access road; and boundaries of UH's lands. In addition, designated areas shall avoid locations containing threatened and endangered species. The buffer zone for the latter shall be determined depending on the particular threatened or endangered species
- The application shall be accompanied with the terms of the permit including a discussion on the purpose and reasons for the conditions, OMKM's roles, and the responsibilities of the applicant.

OMKM will apply for a permit from DLNR for the new structure.

FOR BOARD REVIEW

CMP CR-5

Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.

PROPOSED POLICY

1. Offerings shall not be placed on existing historic properties, roadways, pathways or existing structures or areas used for operations.
2. Offerings including food will be removed.
3. Any offerings that present health, safety or environmental concerns issue shall be removed.
4. All applicable Hawaii state laws and regulations shall apply.

DISCUSSION

Mauna Kea Cultural Resources Management Plan

The CRMP makes the following observations:

“There are a number of cultural practices that could potentially affect historic properties. One practice that has become a major management problem in many places in Hawai`i, including many State Parks, are those involving offerings placed on shrines. At a number of religious sites and culturally significant places in Hawai`i, accumulations of offerings have become obtrusive and distracting to the point that they can have an adverse effect on historic properties. Organic offerings become a problem as they deteriorate or are dispersed by winds, while inorganic offerings, such as stones or objects made of modern materials, remain at the site for considerable periods of time unless removed.” (CRMP 4.1.2.3)

Natural Area Reserves (NAR) and Forest Reserve rules

- Both the NAR and the FR rules prohibits the alteration of historic properties.
- Both the NAR and FR do not allow the introduction of any plant or animal, except as approved by their board.
- In order to avoid direct conflict with NAR and FR rules the draft policy for C-5 includes provisions that disallows:
 - Any offerings that present health, safety or environmental concerns shall be removed.
 - Any food offering is considered a health and environmental concern.

In addition, the following shall also apply to CR-5

- Offerings placed on any roadways, paths, structures and areas used for operations are considered to be a safety hazard.
- The UH’s Master Lease for the UHH managed lands specifies that the UHH will adhere to the laws of the State of Hawaii.

ACTION:

It is recommended that the policy for CR-5, the placement or removal of offerings, be approved.

CMP CR-8

Develop and adopt a management policy for the UH Management Areas on the scattering of cremated human remains.

PROPOSED POLICY

The scattering of cremated human remains, or ashes, is allowed provided the manner in which the scattering of the cremated remains is carried out discretely and away from public view and areas where the public frequents. The cremated remains must not be identifiable as human remains. Further, no memorials, including plaques, flowers, plants or plant material, food, religious symbols or personal objects are to be left in the area. The permittee recognizes and is aware of the sensitivity of this activity and agrees to perform it in a discreet and private manner.

1. Cremated remains must be scattered and not left or buried in a container such as a bag or urn.
2. No memorials, such as photos, personal objects, religious symbols, flowers, plant material, food, plaques, etc. shall be left at, near or on the landscape.
3. The scattering of cremated remains shall take place in areas away from public view and at a minimum of 100 yards where the public frequents including trails, roads, developed facility or body of water.
4. The scattering of human remains shall take place at least 100 yards from any historic property.
5. The scattering of cremated remains is prohibited in the vicinity of any 'ōhelo berry bushes.
6. Cremated remains must not be identifiable as human remains including bone fragments.
7. In the event scattered cremated remains are found they will be buried to the extent possible and the location documented.
7. In the event that any containers with cremated remains discovered on any University of Hawaii managed lands on Maunakea will be removed and stored for a period of time and later relocated or scattered.
8. If there are more than 10 people that will participate in the scattering of the cremated remains then a Special Use Permit from the Office of Maunakea Management is required.
9. All scattering of human remains shall be done with respect.
10. All applicable Hawaii state laws and regulations shall apply.

DISCUSSION

There are no reference materials attached to this item since the State of Hawaii has no applicable laws regarding the scattering of cremated human remains. The Department of Health (DOH) does not have any administrative rules governing the scattering of cremated human remains for the general public. The DOH has determined that cremated human remains are not an environmental hazard. While there are Federal laws under the Clean Water Act and rules of the Environmental Protection Agency that pertain to the scattering of ashes those laws and rules apply to scattering in the sea, lakes or rivers.

The CMP recommends that UH “adopt a policy similar to that recently instituted at Hawai‘i Volcanoes National Park, with the following considerations: The scattering of cremated human remains requires a special use permit. A death certificate is required to obtain a special use permit. Conditions of the permit include: scattering must take place in a such a manner and in such a location that the ashes will not be located and identified as human remains; no memorials, plaques, photos or flowers may be left behind; the permittee recognizes and is aware of the sensitivity of this activity and agrees to perform it in a discrete and private manner; all local, state, and county rules and regulations must be followed; violation of the terms

and conditions of the permit may result in the immediate revocation of the permit and/or other law enforcement action. However the ultimate determination will be based upon appropriate cultural consultation and applicable rules.” (CMP 7-9)

Both Haleakala and Volcanos National Parks do not allow burial of any containers of cremated human remains. Both parks also require a permit, death certificate and notification of the date of the scattering.

Since many Hawaiians participate in the scattering of ashes the CMP considers it a contemporary Hawaiian practice. “Undoubtedly, the scattering of cremation ashes today is a contemporary cultural practice that has taken the place of traditional interment practices. The scattering of the ashes of cremated human remains and the burial of urns in the summit area of Mauna Kea are on-going cultural practices. These private affairs are not well known or documented, but they may impact historic properties” (CMP 5-8)

This being the case, OMKM has adopted some of aspects of the policies of both the Haleakala and Volcanoes National Parks. These include:

1. Cremated remains must be scattered and not left or buried in a container such as a bag or urn.
2. No memorials, such as photos, personal objects, religious symbols, flowers, plant material, food, plaques, etc. shall be left at, near or on the landscape.
3. Cremated remains must be pulverized so as not to identifiable as human remains including bone fragments.
4. The scattering of human remains shall take place at least 100 yards from any historic property.
5. Cremated remains must be pulverized so as not to identifiable as human remains including bone fragments.

However, there are some regulations that the OMKM believes to be important for safety and health reasons that we would like to include in our policy. These include:

- A. The scattering of cremated remains is prohibited in the vicinity of any ohelo berry bushes.
- B. In the event that any cremated remains are discovered on any University of Hawaii managed lands they will be buried and the location documented.
- C. If there are more than 10 people that will participate in the scattering of the cremated remains then a Special Use Permit from the Office of Maunakea Management is required.
- D. All scattering of human remains shall be done with respect.

Notes:

Item A: ohelo berries are regularly collected as a food source and in included as a health measure

Item B: it would be disrespectful to leave someone’s remains exposed

Item C: OMKM has an existing Special Use Permit requirement for groups of over 10 people and will be part of UH’s administrative rules. The Special Use Permit requirement for groups with over 10 people is an important resource protection measure and as safety precaution. Rangers can be on hand in the event of a member or the party becomes ill or is need of first aid.

ACTION:

It is recommended that the policy for CR-8, scattering of cremated remains, be approved.