

Mauna Kea Management Board
Regular Meeting
Tuesday, December 12, 2000
Building 393, Room #1
Hawai`i Community College
1175 Manono Street
Hilo, Hawai`i 96720

Minutes of Regular Meeting

- Members Present:** Arthur Hoke, Chair; Robert Pacheco, Vice Chair; Barry Taniguchi, 2nd Vice Chair/Secretary; Heather Cole, Dr. James Kennedy, and Harry Yada
- Interim OMKM Staff Present:** Walter Heen, Director; Stephanie Nagata, Assistant Director; Moses Haia, Resource Specialist; and Arnold Hiura, Communication/Community Outreach
- Others Present:** Ed Stevens, Kahu Ku Mauna Council; Fred Chaffee, Keck Observatory; Bob McLaren, IFA; and Ron Koehler, MKSS

I. CALL TO ORDER

Chair Arthur Hoke called the Mauna Kea Management Board (MKMB) Meeting to order on December 12, 2000 at 10:05 am.

II. APPROVAL OF MINUTES

It was moved by Mr. Yada and seconded by Dr. Kennedy that the minutes from the November 28, 2000 MKMB Meeting be accepted as circulated. The motion was carried unanimously.

III. OLD BUSINESS

A. Council Membership

Mr. Stevens requested Board confirmation of two individuals whose names were submitted at the previous Board meeting – Reynolds Kamakawiwoole and Mikahala Roy – and keep the remaining seat open until the Council has an opportunity to select the final candidate.

It was moved by Dr. Kennedy and seconded by Mr. Taniguchi to confirm Reynolds Kamakawiwoole and Mikahala Roy to the Kahu Ku Mauna Council. The motion was carried unanimously.

Mr. Taniguchi requested clarification to the *Guidelines* to prevent future confusion or problems. In particular, under the section, Structure, third paragraph, regarding the filling of vacancies. The sentence seems to imply filling of vacancies on MKMB instead of the Council. The sentence should clearly state the intention to fill vacancies on the Council. Staff indicated it would make the necessary changes.

B. Design Review Process

Director Walter Heen stated the latest document circulated to Board members reflects staff's input and advice from Dr. Kennedy. The intention of this document is to provide recommendations and advice to the President regarding the process and procedures for reviewing projects proposed for Mauna Kea.

Significant changes were made to clarify the two-path review process:

- All projects, except those totally "inside the dome," are reviewed in parallel by both OMKM/MKMB, and the office of the originating UH campus Chancellor, and then flow to the President.
- OMKM/MKMB is responsible for ensuring that the impacts on the external environment conform to the requirements of the Master Plan
- The originating UH campus Chancellor is responsible for ensuring that the proposed program itself is consistent with the UH mission and policy.
- To ensure protection and preservation of the mountain requires close cooperation between the originating campus and MKMB.

One of the two-paths is currently followed by all UH campuses in which all major projects must be justified within the context of the parameters of the Campus' mission. The second path pertains specifically to projects on Mauna Kea and which requires additional review steps. Proposed projects must comply with the objectives of the Mauna Kea Master Plan as well as having to go through all the processes required in that plan.

The two paths have different functions but are related to the same process. The President eventually receives a report from one path regarding a project's impact on the mountain, and a report from the originating campus chancellor regarding the worthiness of the project to the University.

A concern was raised as to who will bear the cost if OMKM deems there is a problem regarding how construction is being carried out and the situation requires consulting with a professional. It was agreed to add the sentence "such fees shall be borne by the project applicant," to the construction phase section. It was further clarified that this is an option available to OMKM that may be exercised but not necessarily a requirement for all projects. It would apply on a case-by-case basis as deemed necessary.

It was moved by Dr. Kennedy and seconded by Mr. Taniguchi to accept the proposed project review and approval process including the recommended change to the construction review section. Mr. Taniguchi clarified that the Board is adopting a recommendation to the President and not the adoption of the actual process. The motion was carried unanimously.

C. Commercial Permitting Process

Mr. Yada stated that the DLNR Honolulu Office changed the draft submittal to the Land Board (LB), which was reviewed at MKMB's last meeting. DLNR staff is now recommending the LB issue new permits to pending applicants and give UH or MKMB discretionary control over the permits. It is being recommended that this procedure be applied until clarification of the transfer of the permitting process is obtained from the Attorney General (AG).

Mr. Yada reminded the Board of DLNR's position regarding commercial operators on Mauna Kea, i.e. it issues permits based on UH's capacity issues and does not wish to defer issuing new permits.

MKAA Perspectives and Recommendations

Rob Pacheco presented Mauna Kea Activities Association's (MKAA) perspectives which dispute DLNR's view that denying new permits would decrease competition on the mountain and that physically challenged customers were not being served by current operators.

MKAA is recommending to the LB the deferral of issuing new permits. If the LB were to proceed and issue new permits, a host of logistical, operational and enforcement issues, as well as uncertainty over the future management of the mountain, will arise.

MKMB's Position at Previous Meeting

Heather Cole asked if OMKM is required to accept the responsibility recommended by DLNR, especially since it was decided at the last MKMB meeting to recommend instituting a moratorium on new permits.

A question arose whether UH could set its own rules and policies governing commercial operators. Mr. Yada felt the original CDUA approval and the old Master Plan allowed DLNR to issue permits with conditions imposed by UH, and therefore would most likely apply now. Director Heen's interpretation of the lease between DLNR and UH (General Lease S4191) indicates UH has the right to use the leased land and the right to grant to others, rights and privileges of said lands. This could be interpreted to mean, except for hunting and government purposes, UH has the authority to grant permits and licenses to go onto the premises. However, General Lease S4191 does not cover the Hale Pohaku site.

Permits to Poliahu

Currently there are no permits to Poliahu, and Mr. Pacheco stated MKAA opposes issuing of permits to Poliahu. Mr. Yada indicated DLNR did not intend to issue permits to Poliahu, and there was an error made when the recommendations were changed.

Fees

There was discussion regarding OMKM assessing its own fees and depositing such funds with RCUH, thus having the funds available directly for OMKM use. Fees could be used to cover administrative and enforcement costs associated with commercial operations.

Recommended Testimony

Through consensus, it was recommended to OMKM that testimony be presented to the Land Board and that it contain the following: 1) action proposed by DLNR staff would be contrary to the Master Plan; 2) no action should be taken on the pending permits; and 3) the permitting and the fee setting and collection processes should be transferred to OMKM, subject to the AG's opinion as to the propriety and legality of said action. Due to potential conflicts, Rob Pacheco and Harry Yada abstained from participating in the formulation of the preceding recommendation.

Director Heen stated staff will attend the LB meeting and will present testimony as recommended.

D. Committee Reports

Environment – The Environment Resource group was to meet that afternoon, Tuesday, December 12, 2000 at 3:00 pm for an orientation session.

Hawaiian Culture, Education, Public Safety and Conduct, Administrative Rules, and Budget all had no reports.

IV. NEW BUSINESS

A. Wekiu Mitigation Plan Presentation by Fred Chaffee (Keck) and Bob McLaren (IfA).

Bob McLaren presented a proposal IfA received from the California Association for Research and Astronomy (CARA) for a small project to restore about 6,000 sq. ft. of wekiu habitat on the floor of Pu`u Hau`oki crater. Approval was obtained from DLNR to proceed with the plan. Dr. McLaren indicated the Plan is experimental in nature and does not require a CDUA permit or Land Board approval.

Background

The Wekiu Mitigation Plan (Plan), prepared by a professional entomologist, is a component of the outrigger project proposal and will be an attachment to the Environmental Assessment which is expected to be released within the next few weeks.

The wekiu lives in the loose cinder layer. In the course of adding the outriggers, approximately 2,000 sq. ft. of cinder area will be removed potentially disturbing wekiu habitat. The Plan proposes to create new habitat at a ratio of 3:1 to what is anticipated will be disturbed. In the course of developing this aspect of the overall outrigger project, it became evident that this habitat restoration could begin immediately.

The interior of Pu`u Hau`oki crater was prime wekiu habitat. This area was previously disturbed during the Keck I, II and Subaru projects. Some of the cinder that was pushed over the edge 15 years ago is beginning to self-sort due to the diurnal freezing and thawing phenomenon on Mauna Kea, creating a potentially viable wekiu habitat. Initially, disturbed and “no-longer habitat” were considered synonymous, however, a consultant’s opinion suggests previously disturbed area can be potential habitat because of the phenomenon.

Although DLNR has approved this project, Dr. McLaren learned the State Historic Preservation Division (SHPD) did not have an opportunity to review the project. Dr. McLaren contacted and sent a copy of the project to SHPD. IfA obtained a verbal communication from Pat McCoy last week that SHPD’s preliminary review indicated the project is a good one, and SHPD had no fundamental objections, although it may have some concerns. A written opinion from SHPD is forthcoming.

SHPD’s Preliminary Review

SHPD was told there would be no new excavation for this project – just spreading cinder on the proposed area from an existing stockpile of cinder that will be sifted to create cinder of the right size. SHPD requested more detail of this activity. SHPD indicated IfA’s proposal is considered a request for 6E concurrence and a reply can be expected within the next two weeks. A 6E concurrence is a response from SHPD regarding requests for impacts on historic and cultural sites.

Although the entire summit is considered an historic property, SHPD noted the summit cinder cone complex of which Pu`u Hau`oki is a component does not contain shrines or other man-made features either known or suspected. Further it has noted this area has been previously disturbed.

Keck's Position

Regardless of whether this project moves forward before the outrigger project, the Plan is still a component of the overall outrigger project. IfA and Keck realize this is the first physical activity to take place on Mauna Kea under the new Master Plan process. In retrospect, they should have touched base with OMKM/MKMB prior to submitting its proposal to DLNR, but it was believed this project was relatively minor in nature. Keck will not proceed without concurrence from the Board and Office.

According to Dr. Chaffee, Keck considers this a worthy project because it addresses a long-standing problem and the project is believed to be a benign activity. If Keck receives approval to proceed prior to knowing the outcome of the application for the outrigger project, it intends to complete the Plan. However, Dr. Chaffee stated if the outrigger project is denied and this Plan has not commenced, there would be no money to do the project. He also indicated that the longer the process takes, the less compelling it is for Keck to proceed, because the Plan requires a winter season, a key component of the Plan.

Benefits of the Plan

One benefit of the Plan is that it will provide valuable information regarding a methodology for creating and enhancing wekiu habitat. If successful, it will benefit not only Keck, but also the entire Mauna Kea Science Reserve. Further, if the Plan is approved now, Keck will expend a large sum of money while the larger project is under review. If the Plan were not approved, there would be a lost opportunity of getting a head start, and if the outrigger project were denied approval, there would be the loss of valuable information.

Questions to IfA and Keck

Mr. Stevens asked if Keck plans to use cinder it excavates for the outriggers as part of the Plan. He indicated using the backfill from the excavation of the outriggers would have less impact on the 106 review because it will be spreading the excavated cinder in the same area. It would be most permissible to spread the cinder inside the crater than elsewhere. Because this project was envisioned to take place before the outrigger project, the outrigger excavation could not be used for the mitigation project. However, should the outrigger project proceed and the Plan delayed until later, this would be another assured source of material.

Mr. Taniguchi asked if Keck sought the opinion of other environmentalists since it behooves the Board to hear all viewpoints before it makes its recommendations. Dr. McLaren indicated it has the support of the U.S. Fish and Wildlife Service.

Stand Alone vs. Overall Outrigger Project Proposal

By taking under consideration a section of a larger project, the Board could be setting a precedent and treading on sensitive ground, especially if the larger project is undergoing section 106 evaluation. Chairman Hoke and Moses Haia expressed concern that a separate look at this project would take it out of the 106 review process. If the mitigation plan is separated from the larger project, there may be a need to amend the Master Plan to make it a stand alone project.

Dr. McLaren did not feel it was circumventing the 106 review process since it was in the process of obtaining 6E concurrence from SHPD.

Dr. Kennedy felt the Board could set an adverse precedent if it decided to deny testing of all mitigation prospects just because it may be part of a major project and may be one that would benefit the proposing agency. Wouldn't the Board want to know if mitigation ideas worked? But he also agreed the Board should not allow something that is truly major to be broken into a series of minor steps as a means of bypassing the process. He asked what was being violated by doing exploratory mitigation.

MKMB's Responsibility

At this point in time, the Board's task is to make a recommendation regarding the classification of this project, i.e., minor or major. The merits of the project, including discussion involving the 106 process, is to be reviewed after the President makes his determination. Further, anyone who comes to the MKMB with a project has a right to ask whether its project is eligible for review. By judging the merits of a project when it is brought forth for consideration and before a proper review process is setting bad precedent.

Director Heen stated OMKM is required to get feedback from the MKMB before it makes its preliminary determination of minor or major. One aspect in making a determination is to consider whether the project affects other projects in the works. Mr. Pacheco suggested the classification under which DLNR granted the permit might provide guidance on how to evaluate the project. The Board needs to decide whether this is good for the mountain and to know the results of this Plan regardless of what other construction activity is planned for the mountain. He suggested having the environment committee review this project.

Suggested Recommendations

Dr. Kennedy suggested looking at this mitigation plan as a stand-alone project and determine if this is major or minor. He also suggested that MKMB go on record that it is confining itself to testing mitigation processes before approval of a project to see whether such processes are going to work. Mr. Taniguchi agreed to state for the record that MKMB's action is confined to the mitigation portion and is not applicable to the larger project, and state in the minutes that MKMB is not following a jigsaw approach.

It was moved by Dr. Kennedy and seconded by Mr. Pacheco to emphasize to staff that this is a stand-alone project, and the MKMB specifically recognizes this is as a mitigation experiment. Further, MKMB does not intend to break up major projects into small pieces for purposes of going through the minor vs. major review process. The motion was carried unanimously.

V. ANNOUNCEMENTS

Underground Storage Tank Removal

Ron Koehler announced that the Department of Accounting and General Services (DAGS) is in the process of requesting a bid on a project to remove an underground storage tank in the summit area. Mr. Koehler indicated a formal project would be presented at the next meeting of the MKMB.

Overview

In the late 60's, UH had to rely on generator power and placed a 4,000 gallon diesel storage tank in the ground. Since 1985 when electrical power was installed, the use of the tank was discontinued and eventually forgotten. The diesel storage tank was not required to be registered back in 1968, and the State Department of Health in 1998 overlooked it during an inspection when it inspected tanks at Hale Pohaku.

The tank is located between the UH 80-88 and the UK Infrared telescopes, and is adjacent to the generator building. The location of the tank is in a disturbed area where vehicles drive over and is sometimes used as a parking area.

Project Plan

The plan is to fill this area with cinder from an existing cinder stockpile. The tank has been tested for tightness, does not appear to leak, and has been drained.

A standardized EPA removal process will be used to remove the tank and the surrounding soil will be tested for contamination after removal. If the soil is contaminated, the soil will be removed.

Mr. Stevens asked Mr. Koehler to make sure construction material (e.g. CRM wall) is not used as backfill. Mr. Koehler also indicated he will contact SHPD for 6E concurrence. Chairman Hoke suggested getting copies of the specs.

VI. NEXT MEETING

The next MKMB Regular Meeting will be held on January 9, 2001.

VII. ADJOURNMENT

Chair Hoke adjourned the regular portion of the MKMB Meeting at 1:01 pm.

Respectfully submitted:

Signed by Barry K. Taniguchi

Barry K. Taniguchi, Secretary, MKMB

1/11/01

Date