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**Minutes
Regular Meeting**

Mauna Kea Management Board
Tuesday, September 28, 2004

Kūkahau'ula, Room 131
640 N. A'ohoku Place
Hilo, Hawai'i 96720

Attending

MKMB: 1st Vice Chair Barry Taniguchi, Arthur Hoke, Barbara Robertson, Ron Terry, Harry Yada

OMKM: Arnold Hiura, Stephanie Nagata, Dawn Pamarang, and William Stormont

Others: Heather Cole, Gary Fujihara, Ron Koehler, Mike Maberry, Russ Oda, and Rose Tseng

I. CALL TO ORDER

1st Vice Chair Barry Taniguchi called the Mauna Kea Management Board (MKMB) meeting to order on September 28, 2004 at 10:07 a.m. Mr. Ron Terry was introduced as the newest board member. Mr. Terry replaces Ms. Heather Cole, whose term expired.

II. APPROVAL OF MINUTES

It was moved by Arthur Hoke and seconded by Harry Yada that the minutes of the July 20, 2004 meeting of the MKMB be accepted. The motion was carried unanimously.

III. DIRECTOR'S REPORT

A. UH Fined for Non-compliance of Conservation District Use Permits (CDUP)

The Board of Land and Natural Resources (BLNR) levied a fine against UH totaling \$20,000. In addition to an administrative fee of \$2,000, each of the nine violations was assessed a \$2,000 penalty.

Four of the nine violations remain unresolved. IfA indicated they will probably be resolved by October 15. They include:

Subaru:

Violation	Status
Unpermitted weather tower	Tower will be removed. An application will be submitted to have the tower installed on a permanent basis.
Corrugated metal collar around a seepage pit cover. Collar not included in construction drawings	IfA will be submitting a request to DLNR for a site plan approval to leave the collar in place. It is probably more detrimental to have it removed than to leave it in place.

James Clerk Maxwell:

Violation	Status
Weather tower was approved under CDUP but only on a temporary basis	JCMT will be removing the tower.
Two parabolic antennas on the ground adjacent to the JCMT site. Antennas were approved under the CDUP, but only on a temporary basis	The antennas are not JCMT structures, but part of the Smithsonian Submillimeter Array's (SMA) early testing program. Even though they continue to provide invaluable information to SMA, they will be removed.

OMKM and IfA both agree that OMKM is the appropriate agency for monitoring existing and future CDUP's. Rangers will participate in the monitoring program.

B. NASA Outrigger Telescopes Draft Environmental Impact Statement (DEIS)

The DEIS was published in late July. Comments are due by September 30. NASA held six public meetings – three on this island, two on Oahu, and one on Maui. The Office will be submitting its comments and will include:

- Discussions of the cumulative impacts
- Mitigation measures
- Boundary of project to protect areas outside the construction site
- Wēkiu bug mitigation plan – methods
- Hiring and monitoring of the cultural monitor and archeologist

The final draft will be circulated to the Board.

The Royal Order of Kamehameha I wrote to the Chair of the MKMB offering its recommendations regarding the DEIS. OMKM agrees with many of the Order's comments and plans to incorporate them in its comments to NASA. Vice Chair Taniguchi stated that unless there were any objections from members of the Board, the Board views favorably upon the recommendations and emphasized the importance of maintaining dialogue and communication with the Royal Order. There were no objections from members of the Board.

C. Update on Smithsonian Submillimeter Array's Evaluation to Relocate some of its Pads

Members of Ahahui Kū Mauna, including Ed Stevens and Arthur Hoke, and Antony Schinckel met on the mountain to evaluate and discuss the relocation of some of the pads. A follow-up meeting on the mountain with SMA staff is scheduled for Friday, October 1, 2004. SMA developed some possible relocation options.

D. UHH Environmental Health and Safety Technician

Associate Director Nagata reported that as a result of the contested case hearings and some of the issues raised, it was apparent that the University needed to be more involved in monitoring compliance with environmental rules and regulations. OMKM is coordinating with UH Hilo on funding an environmental health and safety technician position. The technician will assist the current Environmental Safety Specialist with day-to-day campus compliance issues, thus freeing the Specialist to help OMKM with oversight of environmental concerns, including handling and disposal of hazardous wastes and wastewater, on the mountain. The Environmental Safety Specialist will work with all of the observatories to help them in their compliance efforts.

The Office is planning to have a representative from the Department of Health meet with the Mauna Kea Support Services Oversight Committee to address compliance and regulatory questions and concerns.

D. Rules Development and Permitting for Commercial Tour Operators

Rules Development

Associate Director Nagata has been meeting with Sonia Faust, Attorney General (AG) for DLNR, Ruth Tsujimura, UH Legal Counsel, and representatives from various divisions within DLNR to discuss jurisdictional issues and how to proceed with rules development for Mauna Kea. It was decided this group would comprise a task force to look into this matter.

As a first step the AG's office agreed to review existing administrative procedures and processes to see if any might be applicable to Mauna Kea. Their research indicated there are some administrative avenues, but they are very limited in scope and do not clearly define DLNR and the University's respective jurisdictional authority. It was decided the best alternative is for the University to ask the Legislature for statutory authority to promulgate rules.

UH is in the process of drafting a bill to present to the Board of Regents (BOR). If approved, the bill will be included as part of the University's administrative package to the Legislature.

Mr. Hoke asked if there will be provisions for enforcement authority. Associate Director Nagata replied that Legal Counsel did not think UH should seek enforcement authority at this time. Instead, UH could rely on administrative penalties similar to those that are employed by other state agencies. Director Stormont stated that DLNR uses this process for the prosecution of rules' violations. Penalties are civil, not criminal.

Mr. Hoke stated he did not think administrative penalties are sufficient to stop infractions. For example, tours are being conducted without permits. If we are limited to civil action against them, unauthorized activity will continue because civil courts take too long to resolve matters. Director Stormont stated DOCARE found the civil process much quicker than the criminal process. DOCARE chose the administrative penalties route because it is a simpler and faster means for resolving violations.

Associate Director Nagata added Legal Counsel indicated if this process does not work, the University would then seek greater authority. The violations are relatively minor and most people comply with what the rangers tell them. It may be a little different for commercial operators. We may be able to cite them with trespassing if they are not a permitted operator. Vice Chair Taniguchi commented it is probably faster to handle commercial violators through administrative procedures. If they ignore actions taken against them, the recourse is to issue a trespassing citation. At that point trespassing becomes a criminal violation. Director Stormont stated letters have been sent to non-permitted commercial operators who have been on the mountain, and we have not seen them on the mountain since.

Mr. Hoke stated if UH does not have some enforcement authority it will not be able to issue citations for trespass. It would end up in a situation in which a civil process is used to invoke a criminal offense which will make things more difficult. He is not advocating the establishment of a University police department, but if there is enforcement authority included in the legislation, the University would be able to outsource this function. Without this authority, UH will not be able to outsource.

Permitting for Commercial Tours

Sonia Faust reviewed the BLNR's December 2000 decision to transfer the permitting function for commercial tour operations to UH. She issued an opinion stating the transfer is legal. But she qualified her opinion by stating that "BLNR's intention was to transfer only the permitting authority respecting commercial tour operations and nothing else." UH does not have a policy governing commercial tours, therefore OMKM is planning to ask the BOR to adopt DLNR's commercial operator's conditions as a temporary measures until such time UH can develop its own policy and permitting system.

Mr. Yada explained to Mr. Terry that DLNR currently has issued permits for nine commercial operators. These permits contain terms and conditions under which commercial tours operate. Director Stormont added we will be looking at changes to the way permits are issued as well as the fee structure.

E. Board of Regents (BOR) Visit to Mauna Kea

Members of the BOR are invited to a visit to Mauna Kea on October 22, 2004. The October meeting of the BOR will be held in Hilo.

IV COMMITTEE REPORTS

A. Kahu Kū Mauna

Ed Stevens informed the Board that Kahu Kū Mauna will be preparing a draft to update its current guidelines and will submit to OMKM for presentation to the Board.

B. Administrative Rules, Astronomy Education, Environment, Hawaiian Culture, and Public Safety and Conduct Committees

No reports.

Mr. Terry asked how the committees are structured. Director Stormont provided background on the committees and explained that the five committees are composed of members from outside entities and agencies knowledgeable in the respective functional areas. Board members are on the committees and serve as chairs. The committees report to the Board.

Protocol Project

Mr. Stevens asked about the status of the Mauna Kea Protocol project which Mr. Guy Kaulukukui, formerly with the Bishop Museum, was to develop. Now that Mr. Kaulukukui is no longer with Bishop Museum, was the project dropped?

Associate Director Nagata explained that the project appears to have come to a dead halt. In conversations with Bishop Museum, the Museum does not believe it is the appropriate entity to develop a protocol for Mauna Kea and was uncertain of what to do next. Because of this, the Office should take the lead. Bishop Museum spent about \$150,000 of the federal funds allocated to them for the project and there might be a \$20,000 balance. The Bishop Museum apparently completed its search of its archives and collections for anything related to Mauna Kea. The information has been put into a database. Compilation of the data with the goal of developing a protocol has not been done.

Discussions took place regarding the possibility of preparing a draft protocol then having it reviewed and checked. Searching for these protocols is a huge task. Perhaps this is something Kahu Kū Mauna could discuss. Mr. Stevens stated they could also explore the possibility of transferring the remaining funds to hire the (Kanakaole) Foundation to continue the research.

Director Stormont stated the tricky part, and probably the hesitancy on Bishop Museum's part, is that developing these types of protocols is an interpretation. There are many who hesitate to say what is appropriate and what is not. Heather Cole stated that at this point, what more can we do than have an interpretation. Mr. Stevens added that interpretation should be done by those most knowledgeable to interpret and should be done by on island resources. He has always had some apprehension about Bishop Museum doing it because they are so removed from the island and from Mauna Kea. How can they come up with a protocol that is acceptable? He favored Ms. Cole's idea to contract with the Kanakaole Foundation to begin the process.

Vice Chair Taniguchi charged the Office with following up on this issue, provide the Board with a status report, and, if we have access to it, consider what to do with any remaining funds. Mr. Stevens added we might consider the possibility of going to the legislature for funding.

V. NEW BUSINESS

A. Kahu Kū Mauna Council Reappointments

Kahu Kū Mauna Council requested the reappointment of Larry Kimura and Kihalani Springer to serve their second and final four year terms.

It was moved by Harry Yada and seconded by Ron Terry to reappoint Larry Kimura and Kihalani Springer to the Council. The terms of their appointment are retroactive to July 1, 2004 and expire on June 30, 2008. The motion carried unanimously.

B. IfA Haleakala and Update on Pan STARRS

1. Haleakala Long Range Development Plan

Mike Maberry, Associate Director for External Affairs for IfA, gave a presentation on UH IfA's Long Range Development Plan for the Haleakala High Altitude Observatory Site. This is available on the Web and a hard copy was also left with the Office. Mr. Maberry announced the pre-release of a DVD entitled "Sense of Place." This video is shown to people who go to the summit so they will have a better understanding of the cultural significance of Haleakala. A copy of this DVD was also left with the Office. The final DVD should be out in early 2005.

2. Pan-STARRS Update

Mr. Maberry provided an update on the Pan STARRS project. He first gave a brief historical review of the project:

- March 2002 MKMB briefed on Pan-STARRS Project and informed that IfA was preparing a whitepaper for submittal to the U.S. Air Force Research Laboratory.
- May 2002 MKMB informed that the whitepaper was accepted and IfA was invited to submit a proposal.
- October 2002 IfA Director Kudritzki presented a brief description of the Pan-STARRS Project.
- December 2002 MKMB approved IfA's request to conduct site testing and recommended the Pan-STARRS Project be designated a major project.

- January 2004 MKMB briefed on Pan-STARRS funding status and IfA's decision to install PS-1 on Haleakala.

Current Status:

1. IfA received its fifth year of funding.
2. Expect first light on a prototype on Haleakala by January 2006.
3. Expect to make a site selection for the full system by October 2004.
4. Intend to publish notice of intent to start the EIS process by January 2005.

VI. ANNOUNCEMENTS

A. Appreciation and recognition of service

Chancellor Rose Tseng acknowledged and thanked Heather Cole for all her hard work as a founding member of the Board. Ms. Cole was presented with gifts of appreciation from Chancellor Tseng. On behalf of the Office and the Board, Director Stormont and Vice Chair Taniguchi presented Ms. Cole a print by Dominic Tidmarsh.

Former Chair Arthur Hoke was presented a resolution thanking him for his dedication and service as the first chair of the MKMB. Chancellor Tseng also presented gifts of appreciation to Mr. Hoke.

B. Reappointment

It was announced that Mr. Taniguchi was reappointed by the BOR to serve a second term.

C. BOR October Meeting

Chancellor Tseng announced that the BOR will be in Hilo Thursday, October 21 and Friday, October 22 and the meetings are open to the public.

VII. NEXT MEETING

Unless otherwise notified, the next meeting is scheduled for October 26, 2004, 10:00 a.m.

VIII. ADJOURNMENT

1st Vice Chair Taniguchi adjourned the meeting at 11:44 a.m.

Respectfully submitted:

Signed by Barry K. Taniguchi

12/16/04

Barry K. Taniguchi, 1st Vice Chair, MKMB

Date