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Minutes Regular Meeting

Mauna Kea Management Board
Wednesday, August 31, 2005

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

Attending

MKMB: Chair Rob Pacheco, 1st Vice Chair Barry Taniguchi, 2nd Vice Chair/Secretary Jim Kennedy, Patricia Bergin, Arthur Hoke, Ron Terry, Harry Yada

Kahu Kū Mauna: Ed Stevens

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

Others: Jolynn Akiu-Yap, Dan Birchall, Riley Ceria, Richard Chamberlin, Cory Harden, Bill Heacox, Ron Koehler, Wendy Light, Pamela McKeown, Bob McLaren, Rod Thompson, Ululani Sherlock, Lew Schwenk, Dave Smith, Kurt Wakimoto, and Debbie Ward

I. CALL TO ORDER

Chair Rob Pacheco called the Mauna Kea Management Board (MKMB) meeting to order on August 31, 2005 at 10:05 a.m. Chair Pacheco welcomed Ms. Patricia Bergin as the newest board member.

II. APPROVAL OF MINUTES

It was moved by Barry Taniguchi and seconded by Arthur Hoke that the minutes of the May 2, 2005 meeting of the MKMB be accepted. The motion was carried unanimously.

III. DIRECTOR'S REPORT

A. Follow-Up Audit of the Mauna Kea Science Reserve

President McLain received a memo in late June from the Legislative Auditor's office requesting information relating to the follow-up management audit of Mauna Kea. The Office of Mauna Kea Management (OMKM) and Dr. McLaren of the University's Institute for Astronomy (IfA), and Jim Gaines, Interim Vice President for Research met with the auditor's staff on June 27, 2005 to begin preliminary discussions on this audit.

There are four phases to the audit:

1. First is to assess the extent to which findings and recommendations contained in Report No. 98-6, *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, are being addressed.
2. Second is to define the objectives of the audit.
3. Third is field work, including interviews and site visits.
4. Fourth is writing the report.

In early August the University received a letter from State Auditor Marion Higa stating the objectives of audit. The resolution calling for the audit contains language that extends beyond the auditor's stated objectives which is a review of the 1998 recommendations and how the University has addressed them. There is uncertainty regarding the limits of the scope of the audit.

The auditor's staff is currently here on the island conducting interviews. OMKM staff accompanied the auditors to Mauna Kea

A report is due to the Legislature twenty days prior to the convening of the next session.

B. University's Authority to Promulgate Administrative Rules

The University was unsuccessful in getting legislation passed authorizing the University to promulgate rules. The Office continues to invite key legislators to visit and learn about Mauna Kea.

On August 26, Director Stormont escorted Representative Tommy Waters, Chair of the House Higher Education Committee; Representative Ezra Kanoho, Chair of the House Water, Land and Ocean Resources Committee; and Representative Marcus Oshiro, House Majority Leader to the mountain. They were accompanied by Arthur Hoke and Ululani Sherlock. We shared with them what we do, how we do it, why we do what we do, and the need for the authority to promulgate administrative rules.

There was a lot of discussion about the responsibilities and jurisdictions of the University versus the Department of Land and Natural Resources (DLNR). They spoke with Ranger Pablo McCloud who shared the rangers' predicament by not having enforceable rules. The rangers are there to protect the cultural and natural resources but they can't legally prevent people from engaging in inappropriate activities or behavior. Mr. Hoke stated the visit was productive. The legislators have a better understanding of the situation and the University's quandary by not having rules. Ms. Sherlock added legislators seem to have a better understanding.

There was a recommendation that the University submit legislation separate from that of the System. The University System is also seeking the authority to promulgate rules for its campuses.

Harry Yada requested that his office be kept informed about incidents encountered by the rangers where there was lack of authority to enforce. He would like this issue to be put on the agenda at a future meeting or be given a written report. Director Stormont replied that could be done.

Chair Pacheco asked, outside of the rule-making authority, what other strategies or ideas does the Office have for the upcoming legislation session?

Director Stormont replied we are encouraging other legislators to visit Mauna Kea. Representative Waters and Kanoho would like their respective committee members visit the mountain. One question that continues to come up is how to handle the enforcement aspects of it. Having the ability and the authority to enforce rules is one thing. How we enforce it is the question that still needs to be sorted out.

IV. COMMITTEE REPORTS

A. Kahu Kū Mauna

Cultural Inventory for Mauna Kea Science Reserve

Ed Stevens asked Director Stormont if he had the opportunity to apprise the Board about the proposed cultural inventory of the Mauna Kea Science Reserve. Director Stormont stated it may have been an oversight that this was not brought up at the last meeting.

Mr. Stevens provided some preliminary information on the proposed cultural inventory for the Mauna Kea Science Reserve. OMKM is proposing to complete the inventory of the Science Reserve. Only about 30 percent of the Science Reserve has been inventoried. OMKM is considering retaining archeology specialist, Dr. Pat McCoy. The matter was brought before the Council, and the Council voted to support the inventory and will be providing input for the Office.

The Council voted seven for and two against. The seven votes were affirmative with reservations and conditions. At the next Council meeting concerns about the inventory will be included as part of the inventory conditions. The Council has some reservations about how the inventory should be undertaken, but he wanted the Board to know that Kahu Kū Mauna supports the endeavor.

Design Review Process

Mr. Stevens noted this is not the design review issue that will be covered later. This is about comments from Kahu Kū Mauna regarding whether the process was completed according to the Master Plan. Kahu Kū Mauna is satisfied that the conditions of the Master Plan were met. Mr. Stevens and Mr. Hoke were members of the project design

review committee. The Council felt that with Mr. Stevens' and Mr. Hoke's involvement, they were satisfied that their concerns were paid attention to and are on record in the minutes. Kahu Kū Mauna is satisfied that all the conditions were met.

Council Subcommittee

The Board was informed that Kahu Kū Mauna is contemplating forming a subcommittee of Council members to be forerunners for handling matters that come from the Board or from the Office. Tentatively they have agreed on a committee of three: Ed Stevens, Kihilani Springer, and Niniau Kawaihae-Simmons. This committee will be finalized at the next Council meeting.

The purpose of the Committee is to expedite matters that come to the Council so they can report back to the Board sooner. The committee will review the matter to determine whether full Council review is needed, or if the matter can be handled by the subcommittee. One of the processes they thought would help the Council, which was agreed to by OMKM staff, is that the draft minutes of Board meetings be circulated to include Council members so they can anticipate the requirements of the Board or Office.

Discussion

Chair Pacheco asked if the Council was unanimous with the project design review process. Mr. Stevens replied it was unanimous. Chair Pacheco requested that the Council provide a letter, as a formal record, to the Office. Mr. Stevens replied it is forthcoming.

Ron Terry asked about the cultural inventory and if Dr. Pat McCoy would be paid according to procurement procedures. The Office has a contract with the company that employs Dr. McCoy to conduct further cultural resource inventory work. Work has begun in areas agreed upon by the Council. Dr. Terry inquired if there were reservations about how public some of this information would be. Mr. Stevens replied there was.

Jim Kennedy asked if this is just an extension of an existing contract or whether this required a bid and whether the selection process was followed. Associate Director Nagata explained the Office approached Dr. McCoy because he is the leading archeologist who has worked on Mauna Kea. He has in his possession many of the documents and data from prior years. Part of this project includes putting together a data base of all his information that he has in files. This data has never been fully formalized.

Mr. Stevens remarked one of the positive aspects of the inventory is how well it will be accomplished, how it is laid out, and how it will be recorded. This will add to our monitoring program to keep track of any disturbances. We will be able to act on it as soon as a disturbance is detected. The completed 30 percent inventory was done in more cursory fashion. It was not a detailed inventory and cataloging. Dr. McCoy will be revisiting the sites and refining his data. The result, which Kahu Kū Mauna supports, is that we will have a complete and accurate picture of the cultural inventory on our mountain.

B. Environment Committee

Dr. Terry reported the Environment Committee met on June 9th. They were scheduled to meet again tonight, but there were too many conflicts, so they will try to meet in September. The committee is looking at developing an environmental manual for OMKM. This could be provided to people who are applying for permits.

There was also discussion of a management plan for the astronomy complex. A plan which the committee believes is a good idea, especially with regard to natural resources. One of the goals at the next meeting will be to bring examples of good natural resources management plans where there is some sort of development going on. Three of our committee members have some good examples of this, plus they have the earlier outlines of the Environment Committee, which discussed such a plan extensively. The Committee did quite a bit of work on this plan as well. Debbie Ward, a committee member, updated some of this and sent out a first draft to members to consider. The committee will be coming to the Board soon with recommendations.

The committee also intends to review research projects and grants that have to do with biological resources or relating to natural resources. They are discussing the possibility of a conference to discuss the biological and physical aspects of Mauna Kea. They can get ideas from people around the island, the state, and the world who have studied Mauna Kea and are interested in it to optimize the management of the natural resources.

Discussion

Chair Pacheco asked if there are specific site management plans within the NARS, including the Ice Age. Director Stormont replied there was. Several of the natural areas have very specific management plans, but there is none for the Ice Age. He explained they looked at priorities from a threat standpoint. Once the management plans were completed, money and effort was used for management actions in areas where the threats were fairly imminent. Dr. Terry added they are fortunate to have Lisa Hadway, who is in charge of the NARS on this island, as a committee member.

Mr. Stevens asked Director Stormont about the development of the partnership agreement between OMKM and the NARS. Director Stormont acknowledged Mr. Stevens' request stating he knows it has been a desire of the Council.

Chair Pacheco stated one of the earlier priorities of the Environment Committee was developing baseline data. Dr. Terry explained that is one of the committee's top priorities. OMKM is already doing a lot in that regard.

V. NEW BUSINESS

(Chair Pacheco requested moving the New Business item ahead of Old Business)

A. Caltech Submillimeter Observatory's (CSO) Request to Install an Anemometer

Director Stormont presented CSO's request to install a wind anemometer atop a six-foot tall mast on the roof of their welding shed, which lies adjacent to their telescope dome in the Mauna Kea Science Reserve. The purpose of the instrument is to provide CSO staff with localized monitoring of high wind situations for safety purposes and for future studies on wind effects on telescope performance.

Kahu Kū Mauna reviewed the proposed project and felt it was unimposing. They did not have concerns about this project moving forward. OMKM recommends this project be classified insignificant because the proposed installation will not significantly alter the exterior appearance or structure of the existing facility. Further the impact to the immediate surroundings and summit environment is negligible.

If the project is classified as insignificant, OMKM recommends CSO be allowed to proceed with the project with the following conditions. CSO will:

1. Notify OMKM when it plans to do the installation;
2. Adhere to the mitigation measures described in the proposal;
3. Allow OMKM Rangers access to the project;
4. Notify OMKM of completion of the project.

Action

It was moved by Arthur Hoke and seconded by Jim Kennedy to adopt OMKM's recommendation to classify the project insignificant and impose the conditions as stated above. The motion was carried unanimously.

Discussion

Dr. Terry stated he noticed the equipment has been referred to as "wind anemometer" and "anemometer." Is there any other type of anemometer other than a wind anemometer? Mr. Richard Chamberlin, Technical Manager with CSO, replied not to his knowledge. Dr. Terry remarked anemometer will do then and asked if there were others, and if so, how many are up on the mountain right now.

Director Stormont replied he believed most of the facilities have weather instruments on either their dome or their support facilities. Mr. Chamberlin thought it was true that most facilities have one, but did not know the actual count.

Dr. Kennedy explained that the telescopes of some facilities, such as CSO, are particularly close to the ground. So they need their anemometers to measure the wind near the telescopes. The direction of the wind and the local topology can make quite a bit of difference in wind velocity from one place on the mountain to another.

Dr. Terry understood that and had no objection to the request. He was interested in making sure that we can all access this wind data too. It would be good for scientific studies of the mountain. He was not aware this information was on the web. He hopes information from this instrument will be accessible of the web. Director Stormont stated the Mauna Kea Weather Center site hosted by the University's School of Ocean and Earth Sciences and Technology has a wealth of weather information from many of the facilities, if not all. They do real time and various time averages.

Mr. Stevens stated he stops at the Visitor Information Station (VIS) and is impressed at how they are able to monitor the weather from there. Rangers use the information to predict where they should be at a certain times. Mr. Stevens complimented the staff for their efforts. Director Stormont added credit goes to Ron Koehler, Bob McLaren, staff at Mauna Kea Support Services, and David Byrne, manager of the VIS.

Mr. Taniguchi had one request and asked if material could be sent out to Board members earlier. His schedule is such that he cannot check email all the time. If material is sent out earlier he will have the time to review it. Chair Pacheco added his is the same situation. He asked if information could be sent out as early as possible, it would be helpful to all.

VI. OLD BUSINESS

A. NASA/Keck Outrigger Telescopes Project Design Review Report

Record of Decision

The National Aeronautics and Space Administration's (NASA) Record of Decision (ROD) was issued late July/early August. Mauna Kea was identified as the preferred alternative for construction of the Outriggers. The Canary Islands was a close second. There is a single 10-meter telescope modeled after Keck that is being constructed at the Canary Islands now. It offers a number of attributes and in some ways is identified as an environmentally preferred site because of fewer environmental concerns there as opposed to Mauna Kea.

Scientifically, Mauna Kea presents better site attributes. The ROD identified the ramifications of "no action" and also identified reduced science options. Two observatories in California were identified as being possible hosts for the facility but they offered reduced science options compared to Mauna Kea or the Canary Islands.

Mr. Hoke asked why the Canary Islands was not included in the reduced science options. Director Stormont did not know. In the discussion of the Canary Islands versus Mauna Kea there were differences in the quality of the sites, including elevation, moisture, and seeing quality. Further the Canary Islands is on foreign soil and is farther away from headquarters.

Dr. Bob McLaren thinks that reduced science refers to whether the Canary Islands has a 10-meter telescope to do astrometry – the positional kinds of things and planet detecting. This definition was used to determine whether a site had reduced science options or not. If you have a 10-meter telescope, it is not reduced. If you do not have a 10-meter, it qualitatively reduces the kind of science that can be done. The Canary Islands has a large aperture telescope.

Mr. Hoke stated he wanted to make sure the potential of the Canary Islands was not downplayed. He does not want the Board to suggest that the science quality at the Canary Islands is reduced compared to Mauna Kea because it might tip the scale towards Mauna Kea. From his perspective he thinks the project should go to the Canary Islands.

Chair Pacheco understood from reading the ROD that reduced science sites, as reported by Dr. McLaren, meant a reduction in the kinds of astronomy that can be done. The Canary Islands site could do the same science as on Mauna Kea, but the Mauna Kea site is a better place, i.e. more seeing days, better quality, etc. Mr. Hoke commented his concern was that the ROD did not cover it in detail. They did not provide an analysis on Mauna Kea as opposed to the Canary Islands so that we know how they based their decision.

Director Stormont pointed out the ROD is not meant to lay all the detail. The detail was presented in the Environmental Impact Statement (EIS). Mr. Hoke added he did not find it in there either. He was concerned that this discussion is leading us to believe Mauna Kea is the best place, but the report does not actually say that. The report infers that both places are equal. He feels we should not change what the report says.

Director Stormont stated the report does say that Mauna Kea is superior for a variety of reasons. Mr. Hoke added that none are scientific reasons; rather they are political reasons - because it is on American soil, and NASA would have better control because it is nearer. Director Stormont replied while that is true, he believes scientific reasons were identified and discussed as to why Mauna Kea would be preferred over the Canary Islands.

Dr. Terry noted that a discussion on this is on page 17, Programmatic and Technical Considerations, of the ROD. Director Stormont read excerpts from Page 17: *"The Mauna Kea site is one of the finest locations in the world for ground-based astronomical observations. The atmosphere above the mountain is generally cloud-free; one of the highest numbers of clear nights per year; atmosphere is exceptionally dry."*

“The Canary Islands site is found to be a reasonable alternative site, although it would offer only a single 10-meter telescope, has higher atmospheric water vapor, and would carry some programmatic risk. There is sufficient available land, but it is sloping. The Canary Islands site is generally regarded as having superior astronomical seeing, although substantially poorer seeing than at the Mauna Kea site.”

Mr. Hoke clarified the point he was trying to make was that in the past decisions were made based on what is 100 percent best for science and zero for culture. He is trying to urge them to at least be 50/50. Even though they say the impact on culture is small, there is still an impact. So, it is adding to previous impacts. Director Stormont agreed saying the report uses the term past impact is “substantial and adverse,” and the Outriggers would have a small incremental impact. Mr. Hoke wants to make sure the message does not get confused.

The ROD summarizes the impacts on various resources: cultural, biological, hydrological, geological, soils and slope stability. It also looked at transportation, utilities, socioeconomics, air quality, water quality, wastewater, solid wastes and hazardous materials, as well as visual impacts and aesthetics. In their assessment of the analysis, they state that information on the wekiu bug is somewhat incomplete. They used the best available information to make their decision. The report says the Canary Islands is the environmentally preferable site and that there would be a lesser impact on cultural resources.

Mr. Hoke added the report contains an economic threat, e.g. wekiu bug studies will not be funded if they do not get approval to build the Outriggers. NASA would not be responsible to continue to fund the studies if the project does not move forward. Director Stormont stated that was correct. The EIS contains 11 pages of mitigation measures.

Mr. Stevens cited Page 9 of the ROD, *“The addition of the Outrigger Telescopes would have a small incremental impact. Further, on balance, the impact of the Outrigger Telescope Project is likely to be beneficial as a result of the Wekiu bug habitat restoration...”* He then asked Dr. McLaren if Outriggers 1, 2, 5 and 6 sit directly over the Wekiu restoration plan. Dr. McLaren clarified they sit on the northwest side of the facility. Mr. Stevens asked if the air pipes that come out of the four pads would have a significant impact on the wekiu bug? Dr. McLaren replied no, it would not. He added that was addressed during the design review and elsewhere.

Mr. Hoke stated he thought he read that the wekiu bug habitat would be decreased by 30 percent even with the creation of new habitat. If so, this would have a serious impact on the bugs. Director Stormont explained the wekiu bug mitigation plan calls for a three-to-one ratio of restoration of habitat to lost or potential lost areas. He also thinks outriggers 1 and 2 are on the Waimea side of the facility.

Dr. Terry added these are experimental mitigation measures but they are better than nothing. He is concerned there is not enough data on the wekiu bug and the Board should be concerned about this. It is too bad that baseline data on the bug was not established 20 years ago. There are conflicting reports on the studies and disagreements among experts. It is hard for a citizen board to make an intelligent decision on this matter, therefore, we need to carefully review and require, within reason, stringent mitigation efforts.

Director Stormont stated page 8 of the ROD identifies and summarizes the impacts on the wekiu bug: *“During on-site construction and installation of the Outrigger Telescopes, about .008 hectares or .019 acres of Wekiu bug habitat would be displaced. The project, as proposed, calls for a minimum habitat restoration at a ratio of at least three to one.”* An effort to replace and increase habitat will be made but we do not know if the mitigation measures will work. Chair Pacheco added we do not know what the overall impact of the wekiu bug’s population will be from the project in the first place, the data is not there.

According to Dr. Terry’s experience, mitigation measures are formalized in the ROD. It is a recap and includes all of the measures called for from a cultural resource mitigation perspective in the MOA, the best management practices (BMP), and the construction practices. All of these are included as part of the EIS. The ROD also includes correspondence between the Environmental Protection Agency (EPA) and NASA. The EPA is concerned about cultural and habitat impacts. The EPA recognizes the Canary Islands site would meet the purpose and need with fewer impacts to the resources. The EIS acknowledges that the cumulative effects of past projects have been substantial and adverse. The EPA letter mentions that the cultural monitor should have the authority to halt the project. NASA’s response stated there is a section of the MOA that provides the cultural monitor with such authority.

Debbie Ward pointed out that the ROD states there was no response from the public following the final production of the EIS. This is not the case. There was response from one cultural organization which was not recorded in the ROD. She added that Dr. Stone did not receive acknowledgement to his response.

Mr. Stevens asked for verification. He thought he read something about the need to upgrade or modify the MOA. Director Stormont was not aware of any modification to the MOA adding that it has been completed and is attached to the EIS.

Project Design Review

Director Stormont stated this agenda item was listed as an action item, however, the report regarding the project review process for the Board's review, discussion and approval has not been completed. He apologized to the Board adding his report would be sent before the next meeting.

At the May meeting a summary was provided along with the minutes of the first three project review process meetings. Director Stormont submitted a summary of those meetings to Kahu Kū Mauna.

Before the next meeting Board members will have the material and report. At the next meeting there will be a discussion regarding the Master Plan and its described process. Associate Director Nagata put information together regarding the Master Plan and its various requirements, which Board members received. That, together with the director's project design review report, Board members will have the opportunity to review and go through the Master Plan checklist.

Overall Project Review Process

Chair Pacheco asked if everyone on the Board was comfortable with the Master Plan process. Does everyone feel comfortable with the ambiguities of the Master Plan and what the design review process is meant to accomplish?

Mr. Taniguchi replied the challenge facing the Board is that this is the first project to go through the design review process. Dr. Kennedy stated historically every time we come to the next step of more complex issues, we find ourselves having to discover our way. It is reasonable to expect that having reached the highest level of responsibility that is implied in this kind of program, we are going to have to do exactly the same thing. It is going to be a discovery process.

Mr. Yada asked if the mitigation measures of the ROD and Conservation District Use Application (CDUA) were included in the materials presented to the design review committee. Did the committee have the benefit of reviewing the mitigation measures? If so, what point in the process were they given the material?

Director Stormont replied mitigation measures do not drive the design of the facility. The design of the facility is guided by science, and the boundaries of where they can and cannot go. Changes to the plans are made to reduce the impact, if any, by the development of the facility. For instance, early on in the process, several of the planned outriggers were planned for construction further away from the existing Keck I and II buildings. Because of concerns expressed during the review process, they were brought in closer to the buildings on the plateau as opposed to out near the slope. This kind of change was made through the review process and was not the result of a mitigation measure or constraint from other processes.

Mr. Stevens added that moving the outriggers in closer was suggested by him. He wanted to state this because the applicant, NASA/ California Association for Research in Astronomy (CARA) paid attention and made the change based on his reasons and detailed explanation why they should be moved. He was totally satisfied with being on the committee because the applicant listened and responded.

Mr. Yada thought there is ambiguity in the approval process. Since staff plans to bring this back at the next meeting, he requested that recommendations be made regarding the approval procedure. He has fewer concerns if the Board is just approving a design opposed to approving the entire project. Chair Pacheco stated there is a distinction between the design review process and the overall project review. Dr. Terry thought the memo from OMKM lays it out but it is still confusing because there are still some questions and advice embedded in the memo that is supposed to explain things. Mr. Yada thought the memo itself laid out the next step. Once the design development phase is approved, the next step would be the construction plans. As he understands it, there is no formal approval for the construction plans to come back to the Board. The issue is how the project as a whole comes back to the Board for its review after we approve the design review. Dr. Terry stated we have to approve or

recommend the project. His understanding is that the Master Plan includes far more than the design review. It is basically our thumbs up or thumbs down, which is yet to come to the Board.

Chair Pacheco stated the Plan is unclear on this matter. The design review process is fairly clear, but beyond that there is the decision of whether we want to say to the University whether we think this is a good project or not. The decision is on the science, its benefits versus the impact on the cultural and the natural resources. Do we have any authority to do that? Chair Pacheco does not think we need to argue about our authority, but rather we need to act as if we have it. Dr. Terry pointed out it is a recommendation and we have the power to make a recommendation no matter what.

Mr. Yada wanted to make sure that the Board had a say on the entire project not just the design review. He wanted to make sure all of the mitigation measures in the EIS and the CDUA are considered, and if necessary impose additional conditions beyond those of the Land Board. Chair Pacheco stated this Board imposed its own conditions on every project it has approved. This project is no different.

Dr. Kennedy concurred with Mr. Yada. We need to be comfortable and clear as to whatever it is we approve or disapprove as a recommendation - that it is clear what that constitutes. Under the Master Plan we are being expected to provide a recommendation about the project as a whole and if it conforms to the requirements of the Master Plan as stated. In that case, we are talking about the whole project plan, including the mitigations that are proposed, the conditions that have been imposed by other agencies that have been involved with this project, as well as anything else the Board or Office would choose to add to that list. It appears from the memo that we are being asked to do something in at least two steps. One of which is to make a recommendation whether or not the review processes thus far are okay. Dr. Kennedy stated that what the Office is seeking is the oversight of the Board of the internal design review processes thus far, and make it very clear that that is all that we are acting on. At a later time the Board expects to make a recommendation as expeditiously as possible, that incorporates everything.

Director Stormont stated the Master Plan discusses a review by the Office and the Board at this stage in the design review process. It also says that the Board will have an opportunity to review and comment, and make a recommendation before it moves up the approval chain. Dr. Kennedy agreed with Director Stormont but it was important that everyone needs to have a clear understanding and the language of any motion that passes out of here, especially since it is the first time, needs to be clear that this is not the Board's last step in the overall review process.

Dr. Terry asked who besides Ron Nagata, architect from the outside, individuals from NASA, and Mr. Stevens sat on the design review committee. Director Stormont replied Mr. Hoke was part of the process from its inception. There were representatives from NASA, CARA, and from the IfA. The committee is composed of the applicant (the developer), and architect or engineer not related to the project, OMKM, MKMB, and Kahu Kū Mauna Council.

Dr. Terry asked if the Board would have the benefit of an orientation by some of these members about conformance up to this point. He would appreciate the guidance of those who have been involved before making any sort of vote or decision. Chair Pacheco stated there are the comments from Kahu Kū Mauna and the Director's report that will hopefully walk us through that process.

Director Stormont explained his report will describe what has transpired and how the project design guidelines were or were not met. There will be a discussion of each of the guidelines. At the next meeting, the Board can hear comments from those who have been part of the process, review the results of the report from the Director, and consider the letter that is forthcoming from Kahu Kū Mauna.

Dr. Terry asked if that was what Mr. Stevens was reporting on earlier and if there was going to be any details in that letter. Mr. Stevens replied there would be no details. He explained that he wanted it very clear and on record that his report today was on the process only. Kahu Kū Mauna is satisfied that all the steps were taken as specified by the Master Plan, and it does not indicate any endorsement of the project.

Chair Pacheco asked Board members if they were comfortable with the project review process and if they felt it was the best way to proceed.

The first part would be looking at the design review process, as a separate item. The second aspect would be to look at the overall project and its impact on the natural and cultural resources, and mitigation measures described in all the available documents we have from the ROD, EIS, and CDUP. We would review all the documentation and the

project's overall conformance to the Master Plan. Recommendation to approve or disapprove will be based on all the available information. Input from Kahu Kū Mauna and the Environment Committee would also be included. Finally, if the recommendation is to approve, then we would likely have more conditions.

Dr. Terry cautioned about the risk of imposing additional conditions. We have to be careful that our conditions do not conflict with those that have already been imposed such as in the CDUP. Mr. Hoke stated that as we walk through the process, we may find areas where we are uncomfortable and will need to adjust accordingly.

Pending Circuit Court Appeal

Chair Pacheco brought up the issue of the Circuit Court decision on the appeal of the CDUP and how that might impact the Board's deliberation. Dr. Terry inquired if the plaintiffs argued for injunctive relief. Dr. McLaren replied to his knowledge an injunction has not been filed.

Chair Pacheco stated if we recommend approval of the project and the Circuit Court denies the permit, the project is stalled. If we recommend the project not be approved, then the Circuit Court case may not go forward. If the permit is held up in court we still have to make our recommendation. Chair Pacheco recommended the Board not consider the Circuit Court case in its decision making. Director Stormont asked Chair Pacheco if he meant the overall project. Chair Pacheco replied yes. Mr. Hoke felt we should not consider the Circuit Court action as part of our decision. Let them go their way and we go our way; maybe we will meet and maybe we will not.

Mr. Yada stated at the next meeting the Board will be asked to deliberate the design review, however, not knowing what the report contains, and assuming we recommend approval, he feels the Board's decision should be conditional upon the entire project coming back to the Board for review. At that point we can evaluate all the conditions of the EIS, the CDUA and other conditions that may apply.

Dr. Terry asked whether we should postpone making a decision on the design review. Chair Pacheco did not think so. If we get to the point where we are ready to make a decision and the Circuit Court has not been decided yet, then we should go ahead and make our decision. Dr. Terry agreed. His experience with the Saddle Road is that it took three years to get a decision. Mr. Yada added without the granting of injunctive relief, the permit is still legally valid.

Dr. Kennedy agreed the permit is legally valid. The process that we are talking about is an internal University review under the Master Plan. It is reasonable for the Board to take this next step. We have the benefit of corporate memory and experience. Several of the Board members have been involved on the periphery of this process for some time. He felt that deferring action on the overview of the design review process would not be prudent. It does not seem appropriate to wait for completion of non-University external processes, especially if the decision of those processes allows the project to move forward. In that case the University would be way behind in its review process.

Mr. Yada asked Dr. McLaren how he sees this process in terms of the timing. What is the status of actual construction plans? Dr. McLaren stated the construction plans are essentially ready. There are a number of mitigation measures that need to take place in advance of construction and they have not been done yet. Mr. Yada asked if we put a condition that the overall project must come back for review, when do you see that happening. Dr. McLaren stated they are waiting on the recommendation of this Board. Is this Board waiting for something to be provided by the project?

Chair Pacheco asked if he was correct in thinking that the only thing stopping the project from going forward right now is the green light from the Regents and President. Dr. McLaren replied yes. Chair Pacheco asked if it was possible to get a message from the President or the Chancellor's office requesting a decision from this Board by a certain date.

Mr. Yada feels that judging from this discussion the Board wants to do an overall review. He would like to see this project come back after the design review and have staff summarize the ROD mitigation measures, the CDUA conditions, and EIS commitments for the Board's review and consideration as part of the larger overall project approval process.

Mr. Stevens asked if the Board is supposed to recommend that the design is good. If so, how will that be determined? Nobody here is qualified to say the design is good. Dr. Terry and Patricia Bergin clarified that it should conform to the Master Plan. Mr. Stevens replied the process conforms, but what about the design? He is not

an expert on construction details and what they should be. Mr. Taniguchi stated that is why we need to rely on Ron Nagata and others. Mr. Taniguchi thought the recommendation would be that the design meets the criteria. Dr. Terry agreed adding that is why we need some guidance and need to hear from members of the committee that went through the process.

Chair Pacheco added we should think about the process for future projects. Should we do it differently? If we could rewrite this chapter of the Master Plan, what would we change? At what point should we make a decision on the project – at the beginning of the process, before permits are sought? If this is the case, once the project receives approval from the University the developer can apply for its permits.

Ms. Bergin's perception as a new member of the Board was we realize and understand that we must make a decision. What we need to help us make that informed decision is as much information as possible so we can address all of the concerns that might surface. She thought the Board was prepared to do that as long as they can rely on getting that kind of information.

Mr. Hoke stated that having been part of the process that developed the Master Plan he feels that the astronomy group in general now appears to have a better understanding of what the Hawaiians are talking about. They do not accept it all, but at least they are listening and seeing things with a different set of eyes. For some their only interest is still 100 percent science. Others say they we will look at maybe getting away with a little less science so that culture will suffer less damage. He hopes that someday they will all look at it from that viewpoint because science will continue to progress, but culture will disappear if we do not do protect it. We found that clearly with the Smithsonian Submillimeter Array (SMA). They have listened, they have understood, and they have changed. Mr. Hoke stated he was not sure whether Keck has reached that point. They seem to listen but he is not sure they fully understand.

Chair Pacheco asked if the Board wanted to ask members of that committee to be here to have dialogue with. Director Stormont said Keck would be here, and we could ask Mr. Nagata. Mr. Hoke thought it was essential to have Mr. Nagata here because he was following it from what he could tell and the Board is relying on his technical expertise.

At the next meeting, the action item will be in reference to the first three parts of the design review process. The Office will bring together pertinent information from the different documents that clarify the impacts, and mitigation measures; compares the Canary Islands with the Keck site; and identifies the various documents to help prepare for the final decision.

Ms. Bergin asked if it could be presented in chart form. In narrative form we tend to interpret things differently. Comparing the two side by side (i.e., the Canary Islands site versus the Mauna Kea site or anything else) we can actually see if this is a concern and what has been done to address it. She would appreciate a chart form instead of having to flip through documents searching for the text.

Mr. Yada asked if the evaluation of the Canary Islands site was an issue. Our responsibility is to deal with the decision that it is Mauna Kea, not evaluate the two sites. That decision has already been made. In terms of the CDUA mitigation, the EIS mitigations, etc. he would like to see it summarized in chart form and maybe grouping similar measures together. Director Stormont stated that is a good point. This body is charged with recommending yea or nay on Mauna Kea, and not so much Mauna Kea versus somewhere else.

Chair Pacheco agreed. However, it would help him in making a decision if he understood the scientific potential at Mauna Kea and the alternate site and whether or not this project could be successful in another place. It is one thing if the project can only take place of Mauna Kea. It is another matter if this project can also be put somewhere else. Director Stormont added the Board could include in its recommendation the fact that an alternative site was identified. Mr. Hoke stated he feels the Hawaiian community sees these considerations as very pertinent. This entire issue lies not in the science but in the ground.

Chair Pacheco asked if anyone in the audience had anything to say without getting into any in-depth comments on opinions about the project being that the Board is not ready to make that choice or take actual testimony.

Ms. Ward noted that in the design review process, NASA and CARA were both parties to the design review committee decisions, and that was not the case with the CDUA application. Only the IfA was listed. In the contested case, the people who were asking questions about NASA and CARA's involvement were told that that

was not pertinent at all. She thought it interesting to look at the parallel between the CDUA process and the design review process because if they are not a party in one situation but they are very much a party in another, it raises the question whether the UH is being disingenuous with its statements about NASA and CARA having absolutely nothing do with the application. It raises questions for her as to the appropriateness of them being on the design review committee.

Director Stormont responded saying their involvement in the design review committee was to provide information. They are the developer and they are not making any decisions. They are the ones developing the design. It was not as though there were decisions being made by that committee along the way. You need to understand the role of that committee, which was not to make decisions but to incorporate concerns raised by other committee members, which included representatives from the Board, and Kahu Kū Mauna, and an independent architect.

Ms. Ward thought that would have been true in the contested case hearing as well, but it would have been helpful to bring in their information into the contested case. Her point was that you cannot say they are not an applicant. There is an obvious difference in the way it is being represented. Mr. Hoke agreed they were not a part of the committee. They were there so that we could question them about the design. He did not consider them to be members of the committee.

Mr. Taniguchi clarified we are not approving the project. We are just looking at design. They are going to design the project so they need to be part of that process; it is not the same as the CDUA process. The EIS is a different process, and we need to remember that and not get distracted by extraneous material. Director Stormont added the CDUP is a different process. Mr. Taniguchi reminded everyone the permit has a time limit. The permit was conditional on beginning construction in two years. This October will be one year into that two-year period.

VII. NEXT MEETING

To be announced at a later date. Board members will look at trying to schedule meetings for the remainder of the year.

VIII. ADJOURNMENT

There being no further business, Chair Pacheco adjourned the regular meeting at 12:05 p.m.

Respectfully submitted:

Signed by James Kennedy
Dr. James Kennedy, Secretary, MKMB

10/3/05
Date