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## Minutes Regular Meeting

Mauna Kea Management Board  
Tuesday, January 29, 2008

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

### Attending

- MKMB:** Chair Barry Taniguchi, 1<sup>st</sup> Vice Chair Patricia Bergin, 2<sup>nd</sup> Vice Chair/Secretary Ron Terry, John Cross, Lisa Hadway, and Christian Veillet
- Kahu Kū Mauna:** Ed Stevens
- OMKM:** Stephanie Nagata and Dawn Pamarang
- Others:** David Byrne, Lois Carney, Dawn Chang, Cory Harden, Nelson Ho, Arthur Hoke, Jim Kennedy, Ka'iu Kimura, Ron Koehler, Mike Maberry, Bob Masuda, John Maute, Pablo McCloud, Sean Naleimaile, Cindy Nomura, Stuart Putland, Tetsuo Nishimura, Hannah Kihalani Springer, Sunny Takeishi, Toshi Tanaka, and Deborah Ward

### I. CALL TO ORDER

Chair Barry Taniguchi called the Mauna Kea Management Board (MKMB) meeting to order on January 29, 2008, at 10:00 a.m.

### II. APPROVAL OF MINUTES

It was moved by Lisa Hadway and seconded by Ron Terry that the minutes of the November 27, 2007, meeting of the MKMB be accepted. The motion was carried unanimously.

### III. DIRECTOR'S REPORT

Chair Taniguchi reported that due to a physical condition, Director Stormont was not sure if he would be able to make today's meeting. Chair Taniguchi asked in advance in anticipation of Director's Stormont's unavailability to submit a written report. No report was submitted to the Office or the Board.

Director Stormont was to address several items that were brought up at the November 2007 meeting. Chair Taniguchi asked that the record reflect that a status report was to be presented at today's meeting. The lack of a report is a poor reflection of his performance.

Chair Taniguchi asked Associate Director Nagata to provide a report from the Office.

#### A. Comprehensive Management Plan (CMP)

Associate Director Nagata reported the Office continues work with the consultants, including Ku'iwalu, on the Comprehensive Management Plan (CMP). There is further discussion under Old Business.

**B. Memorandum of Understanding between Mauna Kea Observatories Support Services (MKOSS) and Pohakuloa Training Area (PTA)**

Associate Director Nagata reported the Office and MKOSS are developing a memorandum of understanding (MOU) with Pohakuloa Training Area (PTA). MKOSS will purchase a certain number of units of a product called Durasoil in exchange for 2,000 tons of gravel from the PTA quarry. Durasoil is used to control dust on gravel and dirt roads. MKOSS is also looking at the possibility of using Durasoil on the summit access road for dust mitigation, but first we need to determine whether this product attracts, in particular, Argentine ants.

**IV. COMMITTEE REPORTS**

**A. Kahu Kū Mauna Council**

Ed Stevens reported he, along with Associate Director Nagata, is planning a whole day retreat for the Council at Hale Pohaku to go thru the draft of the Cultural Management Plan prepared by Pacific Consulting Services, Inc. (PCSI). They want to review it with the Council before PCSI goes further. Associate Director Nagata clarified PCSI's first consultation with the Council is to make sure they are going in the right direction.

Mr. Stevens reported they hosted Ku`iwalu for a talk story session at their January meeting to get acquainted with Ku`iwalu and the concepts they are working on. It was a very good meeting and much was accomplished.

The Council has some very strong concerns about the Pan-STARRS project. In the early stages when the plan was presented, it was a simplified plan that looked at placing four small telescopes on the roof of the coude room. It seemed innocent enough at the time, that the Council did not have much objections to the proposal. However, since then it has evolved from placement on the roof of the coude room, to tearing down the entire UH 88" facility and constructing an entirely new observatory. The planners felt as long as they stayed within the same footprint, it was okay. The issue of staying within the same footprint came into question when an option was proposed to orient the new building such that it would straddle an existing underground utility tunnel. It looked as though it would have to go outside the existing footprint and intrude into undisturbed earth. The primary concern raised was that the character of the project has changed drastically from a "recycle" project to a completely new construction project. If this is the way the project will move forward, then it should go through the full approval process for a major project and be considered as "new construction" utilizing a recycled site.

Associate Director Nagata clarified that Pan-STARRS was declared a major project back in 2002, and is going through the major project review process. Mr. Stevens asked is it a major project recycle or a major project reconstruction? Associate Director Nagata stated the Master Plan did not make a distinction between the two. A project is reviewed based on its classification, i.e. major vs. minor. A major project would have to go through the formal design review process required in the Master Plan, in addition to complying with all State and Federal, if applicable, requirements.

Mr. Stevens clarified the Council's concern is that if this project did not go through the required steps it would be setting a precedence. He urged the Board to seriously consider this and not let this project set precedence.

Ron Terry commented that when he saw the design review for Pan-STARRS he was surprised by what was required. The discussion about rearranging and going out of the 3-D footprint prompted Sean Naleimaile to speak up and state this is not what they wanted to see. Dr. Terry's impression is that Pan-STARRS is going to stick with the original 3-D footprint. Dr. Terry asked Mr. Stevens given that he felt this is new construction, would he rather see it on a different site?

Mr. Stevens replied it is his own personal opinion that a site trade-off should be considered as an option. Build the Pan-STARRS facility down in the North Plain and upon completion, dismantle and remove the UH 88" Telescope Observatory from the summit. There may be some objections to the site trade-off resulting in building on new ground, but it is a matter of educating the people that the North Plain is a "benign" area that is mostly pahoehoe where there are no known burials or cultural sites. Regardless of whatever site is chosen, an archaeological survey would have to be done. It is suggested that the site trade-off option be considered for all existing observatories on the summit when it becomes their time to dismantle and rebuild.

Lisa Hadway's understanding was that Pan-STARRS is not going to progress until the Comprehensive Management Plan is done. Dr. Terry stated the design review process has been suspended and does not expect another meeting for some time. Dr. Terry replied when it is resumed, the Pan-STARRS designers may wish to consider expanded alternatives. Mr. Stevens suggested that since the project has been put on hold it is a good time to consider regrouping or redoing rather than let the project get too far ahead making it hard to turn back.

Dr. Terry expressed his concern that we also need to carefully investigate the natural environment of any new alternative site(s). In addition to the wēkiu bug and other invertebrates, there are other considerations that need to be brought forward.

Mr. Stevens added he hopes that Ku`iwalu will take this discussion into account in determining what should go in the CMP.

**B. Environment Committee**

Ron Terry reported the Committee continues with the development of the Natural Resources Management Plan. When the CMP issue came forward, they were trying to find a way to integrate these two in terms of content and timing. At the next meeting they will have something a little more concrete to report.

**C. Hawaiian Culture Committee**

No Report.

**V. OLD BUSINESS**

**A. Mauna Kea Observatories Support Services (MKOSS) Transfer**

Christian Veillet began discussing this matter with other observatories and has also reviewed historical documents. The main reason for making a change, as voiced by the committee, is perception. It seems that MKOSS functions very well providing services to the observatories and to the general public, primarily maintenance of the road and Visitor Information Station. It does not appear that any negative perception is based on what is happening today.

Regardless of where MKOSS ends up, it is going to be under the University of Hawaii (UH). The observatories would not object to the transfer provided they receive assurances that UH is committed to ensuring that services provided by MKOSS will continue.

One issue is the Operating and Site Development Agreement (OSDA) between each observatory and UH that describes MK[O]SS as the entity dedicated to providing services to all the observatories. Some might think the OSDAs should be revised because MK[O]SS is described as being under IfA. Dr. Veillet thinks this might be a minor point because it is a small part of the OSDA.

A second issue involves a conflict of interest that might arise because of MKOSS' control by the observatories. For example, a problem could occur if the observatories want something that the Office is against. Dr. Veillet feels this argument may be weak because the Board is there to handle these types of conflicts.

The third issue involves a long term scenario. Currently, the Board's handling of issues seems to work by making sure things are done properly and trying to keep matters in balance, including observatories. There is also a commitment by UH to make things work well. But things could change in the future. For example, what if the Board becomes anti-astronomy and decides it no longer wants to provide services to the observatories. However, it could be set up where the funds for MKOSS is protected and shielded from UH. MKOSS would still be controlled by the Oversight Committee which is composed of representatives from all the observatories. Even if MKOSS is moved under OMKM, and the OMKM Director becomes the official "boss" of the Oversight Committee; the voting power will still be in the hands of those who are providing the funds to run MKOSS.

Dr. Veillet mentioned there is a Directors' meeting in March and this will be one of the issues that will be discussed. He will report back to the Board at the next meeting.

Dr. Terry asked about who was on the committee to look into the transfer issue. Dr. Veillet replied there is a committee comprised of Lisa Hadway, Jim Kennedy, Rob Pacheco, Harry Yada, Ron Koehler, and Associate Director Nagata. The committee met before the last Board meeting. He is trying to clarify matters with the observatories and gain consensus.

Dr. Terry stated Dr. Veillet gave an excellent summary from the observatory side, but he would like to get Mr. Yada's and Mr. Pacheco's perspective, i.e., the advantages and disadvantages from the public or other user's standpoint. Dr. Veillet added there is consensus from the committee that the transfer should take place. Dr. Veillet is working to try to make that move.

John Cross supported the move to the Office, but as a new member on the Board wanted to know what kind of rules and decisions the Director or staff could make on their own so that they do not have to come to the Board for every request. Mr. Koehler explained almost everything the MKOSS does is routine. When a situation arises that is not routine, he goes to OMKM. For instance, the Smithsonian Submillimeter Array's (SMA) request to grade an area where they are having some drainage erosion is taken to OMKM. Internal matters are taken care of by MKOSS. External activities, e.g., putting up a structure, trenching, or something out of the ordinary, MKOSS goes to OMKM and the Board.

Dr. Veillet commented that one of the observatories' concerns is making sure the Office is properly prepared to take on the services, such as managing personnel. Currently, Mr. Koehler can turn to Bob McLaren for guidance and advice. There needs to be assurances there will be someone that Mr. Koehler can turn to when problems arise.

Chair Taniguchi agreed that there is a good working relationship between MKOSS and OMKM. The question is where does MKOSS fit in the organizational structure? Currently on paper MKOSS appears linked with IfA. Perception is reality to many people, and the link between MKOSS and IfA gives the wrong impression. Practically speaking things will still work the same if a transfer is made.

Ms. Hadway asked if the fees from commercial tours go to MKOSS. Associate Director Nagata explained that MKOSS receives a share of the commercial tour operator fees based on a formula for how much of MKOSS' expenses are attributable to commercial tour operations. We reimburse MKOSS. OMKM also sets aside monies for an infrastructure fund for MKOSS to use for example, road improvements. Associate Director Nagata stated that before the University took over the commercial permitting function, the fees paid to DLNR went into the general fund. None of the fees were applied directly towards Mauna Kea. MKOSS was actually supporting the commercial tours operations because it had to absorb all the expenses. Now the commercial tour operators are paying their share of the costs.

#### **B. Proposal Processing Schedule & Project Review**

Dr. Terry reviewed the latest of the flow charts. It is based on what you saw at previous meetings, with some minor changes. These flow charts are meant to serve as a guide for how we process applications that come to the Board. It provides a systematic step-by-step look at the process. Since this process has not yet been applied to a major project, any deviation might indicate a wrinkle in the process. When that occurs we should review it and make appropriate changes. There will likely be changes after some of the problems are identified.

It is important to note that the Board's role is scaled back. Originally it was assumed the Board would be managing the EIS. MKMB's role now is more that of commenter on the EIS at the various different stages. If MKMB does not like it, it certainly has a say about it. Although MKMB's vote is a recommendation, it will be an important factor when it goes to the President, Board of Regents, and DLNR, particularly if MKMB gives a negative vote. Since MKMB is not the accepting authority for the EIS, it is taken out of the chain of liability. MKMB will not get sued when an EIS is challenged for its adequacy. It also reduces the cumbersomeness of the whole process, but does not detract from the Board's ability to review projects. It puts the responsibility squarely on the applicant.

The approach deviates when it comes to filing a conservation district use application (CDUA). It was felt by various members of the group that once MKMB and UH approves a proposed project we should feel comfortable going ahead and filing the CDUA in conjunction with the applicant. The applicant does all the work, but OMKM files the CDUA. So MKMB will be a party at that point to contested cases and other things. It was felt that after they have been through the EIS process and the approval/disapproval process, if the Board approves it, it should be willing to help walk it through the CDUA process. If MKMB disapproves, OMKM will not file the CDUA.

Associate Director Nagata added one of the assumptions accompanying the flow charts states that if the MKMB did not recommend approving the project, it would recommend that the Chancellor of the campus which supported

the project would be the one to submit the CDUA. For example, the Chancellor for Manoa would be responsible for a project proposed or supported by IfA.

Dr. Terry stated we tried very hard to make sense of the process outlined in the Master Plan. He thought if this flow chart was done when they were developing the Master Plan, they might have come up with a slightly different Plan. This is a good faith effort to try to address the most likely situations that we will encounter.

Chair Taniguchi suggested adopting the guidelines as a living document, subject to change in the future. Dr. Terry added that by adopting it, it would be memorialized and become part of the process. It should be attached to all proposed projects.

Dr. Terry moved to adopt the Major Project Review Steps and Schedule for Processing Proposals Submitted to OMKM as official OMKM guidelines. Chair Taniguchi added recognizing that it is subject to change and it is a living document. Dr. Terry accepted that amendment. Patricia Bergin seconded the motion. The motion was carried unanimously.

**C. Natural Area Reserves Memorandum of Understanding (MOU)**

No report from the Director. Chair Taniguchi requested carrying this matter over to the next meeting.

**D. Administrative Rules**

No report from the Director. Chair Taniguchi requested carrying this matter over to the next meeting.

**E. University of Hawai'i System Comprehensive Management Plan**

(Chair Taniguchi requested moving this item last on the agenda.)

Dawn Chang provided the Board with an update on the CMP. It was made clear at the November meeting that there needs to be coordination with OMKM and development of the CMP should be driven by OMKM. The completion date of May 2008 was unrealistic and disrespectful because the current efforts of the Office were not being taken into consideration.

Since November they have aggressively engaged in coordination with OMKM. They attended two Environment Committee meetings, a meeting with Kahu Kū Mauna, and meetings with OMKM's Natural Resources Management Plan and the Cultural Resource Management Plan consultants. We are taking guidance from OMKM.

Following the November meeting a recommendation was made to the University System that the May deadline was not going to work. As a consequence, UH System is taking the lead from OMKM which is hoping to take a completed and approved CMP to the Legislature and seek authority to promulgate administrative rule. A new deadline for the CMP is late Fall 2008.

Ms. Chang stated Ku'iwalu and OMKM's consultants had developed a conceptual working draft of the Table of Contents:

Cultural and Environmental "Orientation"

Based on internal discussions with Ku'iwalu's subconsultants, meetings with Kahu Kū Mauna and the Environment Committee, it was felt a cultural and environmental orientation was a critical part of the CMP. Current thinking is to put it before the Introduction and Executive Summary to set the framework and understanding of the significance of Mauna Kea.

Background

This section will provide a summary of the history of events and various plans and reports, including the Auditor's reports, and ending with Judge Hara's decision.

Goals and Objectives of the CMP

The goals and objectives will be defined and based on a review of Judge Hara's order, consultation, meetings and community outreach.

Description of the Resources

Descriptions of the cultural and natural resources are being prepared by OMKM's consultants.

### Description of the Social and Human Environment and Existing Uses and Activities

This section will address astronomy facilities, infrastructure, recreational, commercial, educational activities and cultural.

### Community Involvement Process

The community involvement process is a critical component of the CMP. The success of the CMP is dependent on the endorsement by the community at large. Does the community feel that the CMP is reflective of the community's concerns? Does the community feel it had a part in addressing the CMP's management measures and are they willing to embrace it? There will be a lengthy community involvement process. All of the consultants, including Ku'iwalu, will be engaging in their respective community outreach. To gauge community sentiment, Ku'iwalu will be engaging in both traditional public forums, large public meetings, and non-traditional public meetings in venues that people feel comfortable with that is within their own kuleana.

### Management Recommendations for Addressing Future Land Uses and Activities

The CMP will include management measures for addressing future land uses. We do not know how the community feels about future development, siting, or decommissioning of obsolete telescopes. Feedback from the community will help guide the development of management recommendations. Ms. Chang emphasized and made it clear that the plan is not addressing a particular development such as Pan-STARRS and the Thirty Meter Telescope (TMT.) It is addressing the concept of future development. As of today, January 29, 2008 – the plan is not proposing to include a particular development.

Chair Taniguchi asked why not? If you are getting community input, you are going to have those who want it and those that do not want it. There is no sense in kidding ourselves that the plan will say there is no future development. Ms. Chang stated they are not proposing that they not talk and have the discussion about future development, but rather the document will not be lieu of an EIS for Pan-STARRS or for the TMT.

Chair Taniguchi stated you are going to get both sides of the story so why not do a programmatic EIS for the total science reserve? Then that way we know. If OMKM and MKMB are going to be charged with managing the science reserve into the future, we should look at items like possible future development - what they are and what kind of impacts they would have on the reserve as a whole.

Ms. Chang was concerned about including specific development. People would be faced with making judgments on a specific type of development as opposed to just engaging in discussions in general about future development. For example, if the community as a whole says no, we do not want to look at the Northern Plateau, then the TMT would not even be considered because that is the only viable location for the TMT. Asking people to look at general development in the general context of future development might make the discussion very difficult or might even polarize people. After engaging in full discussion it may be that we end up doing what Chair Taniguchi suggests.

Chair Taniguchi remarked 500 acres has been identified for future development. He does not know how many facilities can be put within the 500 acres, but likely one could go on the northern plateau. Mr. Stevens felt the carrying capacity of the summit should be reviewed. He felt it was already too crowded. Pan-STARRS for example should consider locating on the North slope. It seems to make sense and there are benefits to both sides. While excavating and building the new one down below, you can still operate the one at the top. The advantage is that backfill from the excavation can be used as backfill when the facility on top is dismantled. It has to be something natural to the area. It should not be imported material.

Dr. Terry stated one of the problems we have with identifying new areas for development is the issue of data gaps with respect to the biological and physical resources. We need a process for obtaining knowledge to make siting decisions in the future. We are not there yet. We are not going to be able to make intelligent decisions at the moment. That is why funding for this office's scientific initiatives is so critical, not just for our primary interest, which is managing the resources, but also for future development. If you want to have future development, you are not going to get it without quality information. This Board is not going to let you go there.

Chair Taniguchi stated there is going to be opposing views. If he was on the Land Board judging a plan, he would rather see a comprehensive plan with enough information, not necessarily fixed in stone, but for him to know about possible projects and understand the potential impacts of those projects. Impacts should be reviewed not

only in the Science Reserve, but lands adjacent to the Science Reserve. Chair Taniguchi said you can do things right or you can do the right thing. They are two different things. Doing things right is just following what the law says. Doing the right thing is taking steps beyond just the law. It is time we do what is right and not just do things right.

Ms. Chang stated it has always been their intention to do the right thing. The members on the team feel the kuleana is more than just doing the work, but it is doing honor to Mauna Kea. We are deferring to OMKM for their leadership in this, and will provide the MKMB with regular updates. MKMB and eventually the Land Board will have to approve this. The plan is to go before the Land Board and provide a briefing on the CMP content and process. We need to get guidance and feedback from the Land Board early in the process and not wait until December when they might say they this is not what they expected.

#### Implementation Plan

There will be a section addressing how the plan is to be implemented.

#### Adaptive Management

The CMP will include a process for regular updates in response new information.

#### Discussions

Ms. Ward asked if there is going to be an energy budget, including looking at adaptations that could reduce energy consumption. Telescope facilities use a tremendous amount of electricity. Ms. Chang stated that if it is something that is relevant and makes the management of Mauna Kea more efficient, then we should look at that. Dr. Terry stated that should be part of their Natural Resources Management Plan.

Nelson Ho hoped there would be some discussion regarding lease issues. Ms. Chang stated that and other issues regarding ceded lands, financing and funding need to be addressed. There may be some issues that are not part of the CMP, but they plan to discuss these as part of the community outreach to provide guidance to policy makers.

There was discussion about assurances that obsolete telescopes will be dismantled and not just left on the mountain. Even though it is a requirement in the sublease to dismantle, what would happen if the telescope owner went bankrupt? It was suggested that funds be kept aside for later use or require a performance bond.

Chair Taniguchi commented that the deadline to complete the CMP was pushed back to November 2008 in order to go before the Legislature in 2009 to get authority to promulgate administrative rules for managing the mountain. Without the CMP we would have to wait another year.

## **VI. NEW BUSINESS**

### **A. University of Hawai'i Commercial Tour Permits**

Associate Director Nagata reported the UH commercial tour permits which expired on December 31, 2007, were extended. The past year was the first year under UH management and some sections of the permits need to be clarified and/or expanded. There were two major issues that need to be addressed in the permits.

#### Transfer of UH Permits

One issue is whether or not the permits may be transferred or assigned. Similar to the DLNR permits, UH permits do not allow assignment, sale or transfer of permits; however, the language is vague and needs clarification. Realistically, the permits have intrinsic value. If assignments and/or sales are allowed, UH does not receive a share in the net gain. The UH should receive some of the proceeds of the transfer/sale. But based on discussions at a meeting with the commercial operators, OMKM may decide to continue the policy of no assignments.

Chair Taniguchi stated the total number of permits is limited to nine, but there are others who want to obtain a permit. There is value in the permits if one of the Permittees wants to relinquish its business and were to sell the permit. But what if the Permittee wanted a family member to take over; do you allow that transfer of permit? It is a complicated issue.

Dr. Terry suggested that if anybody has any comments or ideas that they direct them to Associate Director Nagata as soon as possible.

Chair Taniguchi stated the permits expired on December 31, 2007, but have been extended to February 1, 2008. However, it will be extended again and we will try to get the new permits issued soon after February 1st. Associate Director Nagata stated we had hoped to bring it to the Board at this meeting for approval, but based on our last meeting with the tour operators it is not going to happen.

#### Use of Large Sized Vans

The other issue involves the size of passenger vans. The DLNR and subsequent UH permits restricted the size of vans to what was commonly known as a 15-passenger vehicle. It did not define size in terms of length, width, and height. Now in addition to the standard 15-passenger vans, several companies are using vans that seat 15 passengers but are larger than the standard 15-passenger vans.

OMKM's position is to disallow the use of oversized vans. These are quite large and create a problem in the parking lot. OMKM is considering allowing mid-sized vans. OMKM understands that car manufacturers are phasing out the standard 15-passenger vans because of safety and liability issues. In which case, in the long term commercial operators will have to replace their vehicles with a larger mid-sized van.

Chair Taniguchi suggested if anyone had comments on these two issues to please let Associate Director Nagata know. Associate Director Nagata plans to present the new permits at the next Board meeting.

#### **B. Evaluation of Mauna Kea Management Office and Staff**

Chancellor Tseng submitted a memo dated January 16<sup>th</sup> requesting comments and review of OMKM staff by the MKMB. Each year she evaluates the performance of her executive and managerial staff and effectiveness of their respective departments and responsibilities. She is asking for the Board's help because it has more direct interaction with OMKM staff.

Chair Taniguchi appointed Christian Veillet as Chair, Patricia Bergin, and Lisa Hadway to serve on a committee to initiate the evaluation process. Since the evaluation is a personnel matter and will contain privileged communication it will take place in an executive session. Findings of the committee will be reviewed in a subsequent executive session before submitting a report to the Chancellor in April.

Chair Taniguchi added they had checked with legal counsel and asked whether they could have non-Board members on the committee. Legal counsel's advice was not to have past members on the committee but they could be consulted. Past members of the Board will be consulted along with Kahu Kū Mauna. Chair Taniguchi added if anyone has comments, including the public, to please contact Christian Veillet, Patricia Bergin, or Lisa Hadway.

#### **VII. ANNOUNCEMENTS**

Chair Taniguchi read a memo from Director Stormont: "I hope all is well with each of you. Though I had hoped to be there, I will not be attending today's meeting, as I am not well. Per recommendations from a physician and physical therapist, I remain away from work due to conditions related to a severe physical ailment. I will be undergoing further tests today to help fully diagnose the extent of the problem. Upon hearing of my condition last week, Chair Taniguchi had requested a written update from me for your review, but that is not available today. I will forward that, however, to all members as soon as possible."

#### **VIII. NEXT MEETING**

The next meeting of the Mauna Kea Management Board is scheduled for Tuesday, April 8, 2008.

#### **IX. ADJOURNMENT**

There being no further business, Chair Taniguchi adjourned the regular meeting at 11:45 a.m.

Respectfully submitted:

Signed by Dr. Ron Terry  
Dr. Ron Terry, Secretary, MKMB

April 8, 2008  
Date