



University of Hawai'i at Hilo
640 N. A'ohoku Place, Room 203, Hilo, Hawai'i 96720
Telephone: (808) 933-0734 Fax: (808) 933-3208
Mailing Address: 200 W. Kawili Street, Hilo, Hawai'i 96720

Minutes Regular Meeting

Mauna Kea Management Board
Friday, May 08, 2009

Kukahau`ula, Room 131
640 N. A'ohoku Place
Hilo, Hawaii 96720

Attending

MKMB: Chair Barry Taniguchi, 1st Vice Chair Patricia Bergin, 2nd Vice Chair/Secretary Ron Terry, John Cross, Lisa Hadway, Herring Kalua, and Christian Veillet

BOR Ex officio

Officers: Dennis Hirota

Kahu Kū Mauna: Arthur Hoke

OMKM: Stephanie Nagata and Dawn Pamarang

Others: Doug Arnott, Robert Christensen, Jim Gaines, Jim Kennedy, Cindy Nomura, Stuart Putland, and Harry Yada

I. CALL TO ORDER

Chair Taniguchi called the meeting of the Mauna Kea Management Board (MKMB) to order at 10:00 a.m.

II. APPROVAL OF MINUTES

Upon motion by Ron Terry and seconded by Herring Kalua the minutes of the March 20, 2009 meeting of the MKMB were unanimously approved.

III. INTERIM DIRECTOR'S REPORT

A. Comprehensive Management Plan (CMP)

The final Environmental Assessment (EA) for the CMP was published in the April 23, 2009 Office of Environmental Quality Control's (OEQC) *Environmental Notice*. Based on the information contained in the EA, the University determined that the proposed action, implementation of the management actions in the CMP, would not have a significant impact on the environment.

Board of Land and Natural Resources (BLNR) Meeting

The BLNR held their meeting on April 8 & 9, 2009. After hearing a day-and a half of testimony, the BLNR approved the CMP subject to the following conditions:

- The Board of Regents is the entity responsible for implementing the CMP. The BOR may delegate its responsibilities to an entity within the University subject to approval of the BLNR.
- UH is required to submit four sub-plans within one year of approval by the BLNR or prior to the submission of a Conservation District Use Application, whichever occurs first:

1. Cultural Resources Management Plan (CRMP)
2. Natural Resource Management Plan (NRMP)

3. Decommissioning Plan
4. Public Access Plan.

- Submit, within a year or before the submission of a CDUA, a BOR authorized management and implementation framework for project developments within UH's managed areas.
- Report annually to the BLNR the status of each of the management actions and component plans.

April 16, 2009 University of Hawaii Board of Regents (BOR) Meeting

The BOR accepted the responsibility for implementing the CMP and BLNR conditions. They authorized and directed through normal University governance the University of Hawaii at Hilo, OMKM and MKMB as the entities responsible for implementing the CMP. The BOR reserved the right to appoint two regents to sit as ex officio members on the MKMB. Regents Dennis Hirota and Eric Martinson were appointed.

Ron Terry commented that it is extremely significant that the CMP was adopted and wanted it noted in the minutes that our Board thanks the BLNR for all the time and effort they put into the very difficult process of reviewing and approving the plan, and also the BOR for their similar effort. He personally feels the conditions that the Land Board put on the CMP are fair and reasonable and will assist in making the Plan better and implementable. There is a lot of work for us and they have expressed their confidence in our abilities.

Action

It was moved by Ron Terry and seconded by Patricia Bergin to send a letter from this Board's thanking both the BLNR and the UH BOR. The motion was carried unanimously.

Discussion

Lisa Hadway felt that in view of the conditions imposed by the BLNR the CMP was incomplete until the conditions were completed. She is concerned that the TMT draft EIS may not contain the full breadth of information.

Dr. Terry commented that the Cultural Resources Management Plan (CRMP) includes the completed inventory for the areas in which the TMT and PanSTARRS telescopes are proposed and, therefore, is covered for purposes of their EISs. Public access is an issue that may be outstanding for part of the Northern Plateau. It is not an issue for the PanSTARRS area since there is full public access and it is an area where people park. Dr. Terry did not think it should be part of our plan to decide when and which telescopes will be decommissioned. He also did not think the decommissioning plan will impact the decision about the CRMP and the Natural Resources Management Plan (NRMP). The NRMP is nearly complete and he did not see how those two plans were going to make a difference for the TMT or PanSTARRS. What may make a difference is that there is still the 30-day challenge period on the draft EA for the CMP. Also what was not known was the status of the contested case. If the AG rules there won't be a contested case it could be challenged in Circuit Court. A challenge to the EA, a contested case or challenge in Circuit Court could delay the acceptance of the CMP. He felt we should continue to work on the parts of the plans that are missing, regardless of any legal challenges that we get, mainly because they are important for protecting the resources.

Interim Director Nagata stated we will be engaging a consultant to help with the development of the Public Access Plan. The basis for the Decommissioning Plan is contained in the CMP and the NRMP. Christian Veillet stated the approval of the four subplans has to happen within one year which could push us to December. The Land Board is aware of the CRMP and NRMP and they can reasonably expect them within a year.

Ed Stevens felt we may want to advise TMT to look at the CMP and the CRMP, especially in the cultural area, because there may be information there that they need to consider. Ms. Hadway commented she wanted to be sure that the integrity of the CRMP and NRMP as they are written now is maintained and not changed prior to submittal to the Board. Chair Taniguchi replied we would control the filing of those reports.

Interim Director Nagata stated we need to determine the process with respect to the Regents. Chair Taniguchi commented that timing is important especially since the BOR does not meet certain times of the year. If, for example, something is due by February 2010, working backwards, we have to be ready by November. The protocol or process is that everything is supposed to go from our level to the UHH Chancellor, to the president, then to the BOR. He asked Regent Hirota if we go through the normal protocol for notifying the Regents or go

straight to him. He thought we should just go straight to him. Regent Hirota stated the BOR only meets ten times a year, so you need to really work those numbers backwards regarding scheduling.

Mr. Stevens recognized Interim Director Nagata, Chair Taniguchi, and Arthur Hoke and anyone else that was deeply involved with the passing of the rule making authority. Interim Director Nagata stated the person who really spearheaded the rule making process was Gerald DeMello. He led the way and helped us to navigate the whole process. Both Arthur Hoke and Chair Taniguchi provided factual testimony. They corrected some of the misinformation that was out there, which was very important. In addition, there was a lot of testimony submitted by the community and we had the support of the Office of Hawaiian Affairs and the Hawaiian Civic Clubs.

Dr. Veillet was concerned that the Office still did not have a director yet. It is manpower that we need at a time when there is a lot on our plate. Dr. Veillet made a motion for this Board write a letter to the UH Hilo chancellor, copying the president, that we are concerned about the non-appointment of a permanent director and ask for a status report. The motion was seconded by Dr. Terry. All was in favor and the motion was carried unanimously.

Dr. Terry also asked about the additional staff that was discussed. Interim Director Nagata stated the legislature authorized six non-funded positions. She also added we are working with our fiscal administrative office in trying to fill some of the positions. We are working with Jim Gaines, UH Vice President for Research and the system's office regarding funding.

B. Rule Making Authority

House Bill 1174, UH's bill seeking authority to promulgate rule making, passed out of conference on April 30, 2009. It passed the House on May 5th and the Senate on May 7th. We are awaiting the governor's signature.

C. Design Review Process

Pan-STARRS Project

The design review process for the Pan-STARRS project resumed on April 29, 2009. The last meeting was held in November 2007. The purpose of the April 29th meeting was to bring everyone up to date regarding the design status of the project. The committee approved the schematic design for the project, including the orientation of the siting of the facility and the color. MKMB is required to review the schematic design before they can go on to Phase 3, design development. We will be submitting the summary of the schematic design at the June meeting for this Board's review.

Thirty Meter Telescope (TMT) Project

The TMT completed their pre-design phase of the design review process, and they are almost near completion of the schematic design of the project. We will be bringing that to the Board for review and approval before they can move on to the design development phase. A draft of their EIS is anticipated for publication within the next month.

D. Commercial Tours

It has come to the attention of the Office that there are Department of Transportation (DOT) regulatory requirements governing the transport of school children or pupils under the age of 18. Generally transportation requires the use of a school bus. A school bus is any publicly or privately owned motor vehicle which is used to transport pupils to and from a school, school functions, or school-related events. There are provisions that waive the use of a school bus, but there does not appear to be an exemption from the use of a certified driver. Drivers must meet school vehicle driver qualifications.

OMKM contacted the DOT motor vehicle safety officer in Hilo who explained the requirements. To get a waiver, the statute allows the Department of Education to give out these waivers. But to get the waiver, each pupil is required to have their parent(s) sign a liability waiver.

IV. KAHU KŪ MAUNA COUNCIL (KKMC)

Ed Stevens reported the Council established a subcommittee consisting of Arthur Hoke, Kihalani Springer, and himself. This subcommittee will be working directly with Interim Director Nagata and the Board on the implementation of the CMP. At their next meeting they are going to discuss implementation and prioritizing what they think they should be focusing on.

V. NEW BUSINESS

Gemini's Request to Install an All-Sky Camera System

On February 3, 2009, OMKM received a request from Gemini to install an all-sky camera (ASCAM) on the roof of Smithsonian's summit facility. The purpose of the ASCAM is to replace human spotters for scanning the skies for aircraft while observatories are operating the laser guide star operation. The high powered lasers pose a danger to pilots. Gemini conducted a successful test for FAA personnel on April 27th. The ASCAM, which will be used by observatories using the laser guide star operations, sends an alert when it detects aircraft and observatories can immediately shutter their lasers.

Kahu Ku Mauna Council

On February 9th a copy of the proposal was submitted to Kahu Ku Mauna Council for their review. Following their initial review the Council requested that Gemini consider sharing the use of other all-sky cameras that currently exist on the summit. The Council later learned that the ASCAM served a different function from the weather cameras currently installed on the summit. The Council did not have a problem with this project particularly because the purpose of the ASCAM was for safety reasons and that information generated from the camera will be used by other facilities that employ laser guide star operations. One of the concerns expressed by the Council was the potential for a proliferation of equipment installed by individual observatories and preferred that observatories share equipment whenever possible.

DLNR Permit Approval

If approved by the MKMB, applicant shall submit a request to the DLNR for a permit.

Recommendation

OMKM recommends the Board classify this project Minimal Impact and allow the applicant to proceed. OMKM's recommendation is based on the following;

- The proposed activity does not significantly impact the surrounding environment
- The proposed structure will be installed on an existing building
- No excavation is involved
- There are no archaeological sites near the proposed site
- The equipment is a needed safety measure.
- The information generated from the instruments will be shared by other optical observatories on Mauna Kea.

Conditions

OMKM recommends the following conditions:

1. Submit copies of correspondence between the applicant and DLNR
2. If a DLNR permit is issued submit a copy to OMKM
3. If applicable, comply with conditions of the DLNR Permit.
4. Notify OMKM when it will commence summit construction activities.
5. Adhere to the mitigation measures described above and in the applicant's proposal
6. Allow OMKM rangers to visit and monitor installation activities.
7. Notify OMKM upon completion of the project.

Action

It was moved by Herring Kalua and seconded by Patricia Bergin to accept OMKM's recommendation to classify this project Minimal Impact and approve it with conditions. The motion was carried unanimously.

Discussion

Mr. Stevens commented Kahu Kū Mauna's concerns were about proliferation on the mountain. He explained there are three major participants right now: Gemini, Subaru, and Keck. The point he wanted to mention to the Board is that we will always be looking at shared use on the mountain and limit proliferation. It was not so much an objection, but we needed more information. We were very satisfied that this is a good program and we endorse it very much.

Dr. Terry thanked Mr. Stevens and Kahu Kū Mauna for all the hard work they do researching projects above and beyond what most of us members on the Board are doing. The Council goes beyond cultural concerns in a lot of what they address. It really helps when the Board has their reviews.

VI. ANNOUNCEMENTS

A. Commercial Tours

Doug Arnott asked if the Board was aware that the requirement regarding the use of school buses has the potential to completely stop visitation of school kids. In particular groups that are sponsored by their school as opposed to an extracurricular activity, or paid for by their parents, or some kind of external group. He feels the OMKM and the Board should take the lead in having a specific waiver made for the licensed Mauna Kea operators. According to Mr. Arnott because operators do these things either for free or for very little money they have no motivation to go to a lot of legal expense to get a special waiver. For him, clearly, a Mauna Kea operator is permitted to take the children up.

Interim Director Nagata explained when we learned of the regulations related to transporting school children, it put the Office in a very awkward position because it is not our intention to deny access or the opportunity for students to visit Mauna Kea. The law applies to the transportation of students or pupils under the age of 18. The use of a school bus can be waived, but drivers have to be certified. Both Jack's and Robert's have drivers who are certified.

Chair Taniguchi stated the Board is not in a position today to make a decision. They will need to look at this. He did not think the Office can apply for a uniform waiver. You, as a carrier, have to apply for that waiver. Dr. Terry noted perhaps we could support the waiver. Ms. Hadway suggested looking at the Department of Education's (DOE) waivers. The DOE has a very specific set of waivers that parents have to sign. In her department, kids have waivers if they are DOE schools and until they sign those waivers they cannot be in that state vehicle. DLNR has a four-wheel drive van that will probably take school kids up Mauna Kea and other places that are impractical for other types of vehicles. Will our state vehicle fall under these same provisions?

Interim Director Nagata thought probably the state vehicle would not, but your driver might. This may be something your attorney general may need to look into. The Office spoke with the DOT representative in Hilo and his response was you need to have certified drivers. The motor vehicle safety officer indicated that he would be more than willing to come and address the Board on this issue. Patricia Bergin commented she is with a charter school and they buy vans to transport their students. They then turn them over to DOE because of the liability issue. But they certify all of their van drivers and their teachers are certified every year.

Dr. Terry asked Mr. Arnott if he could write a letter outlining his concerns and opinions. Mr. Arnott had a write up for today's meeting which he distributed to the Board.

Dr. Veillet asked what the role of the Office was with respect to checking the legitimacy of the operations. Are we checking every van going up? Chair Taniguchi stated it is a matter of whether they fall within operator's guidelines. Dr. Terry added the tour operator permits require them to follow all applicable state, federal, and county regulations. We do not have to check those things. Interim Director Nagata stated we would probably request that all of the operators submit a list of their certified drivers.

B. Recognition from Previous Board Members

Harry Yada and Jim Kennedy, expressed their elation at seeing positive movement and results from the efforts made during the previous years. The original board spent several years trying to get rules passed to move on and it has finally happened. They expressed their appreciation to all who were involved in arriving to where we are today.

VII. NEXT MEETING

The next meeting of the Mauna Kea Management Board is scheduled for Tuesday, June 23, 2009.

VIII. ADJOURNMENT

There being no further business, Chair Taniguchi adjourned the meeting at 11:20 a.m.

Respectfully submitted:

Signed by Barry K. Taniguchi
Barry K. Taniguchi, Chair, MKMB

6-23-09
Date