



University of Hawai'i at Hilo

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**Minutes
Regular Meeting**

Maunakea Management Board
Tuesday, May 22, 2018

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

Attending

MKMB: Chair Gregory Chun, 1st Vice Chair Doug Simons, 2nd Vice Chair Lehua Veincent, Roger Imoto, Herring Kalua and Gregory Mooers

BOR: Wayne Higaki and Benjamin Kudo (by phone)

Kahu Kū Mauna: Shane Palacat-Nelsen (by phone)

OMKM: Wallace Ishibashi, Jessica Kirkpatrick, Fritz Klasner, Stephanie Nagata, Dawn Pamarang, Sage Van Kralingen, and Joy Yoshina

Others: Laura Aquino, Kamuela Bannister, Pua Case, Dave Corrigan, Lisa Hadway, Hanalei Fergerstrom, Cory Harden, Maile Lauea-Malloe, David Lonborg, R. P. Martin, Dan Meisenzahl, Marcia Sakai, Jennifer Leina'ala Sleightholm, Matthew Kalani Souza, Marianne Takamiya, Gary Takeuchi, Dwight Vicente, and Peter Young

I. CALL TO ORDER

Chair Chun called the meeting of the Maunakea Management Board (MKMB) to order at 10:00 a.m. Chair Chun noted those in attendance constitute a quorum.

II. APPROVAL OF MINUTES

Upon motion by Gregory Mooers and seconded by Herring Kalua the minutes of the January 30, 2018, meeting of the MKMB were unanimously approved.

III. DIRECTOR'S REPORT

A. Thirty-Meter Telescope Contested Case

Opening briefs by Appellants (Mauna Kea Anaina Hou, Fergerstrom, and Temple of Lono) were filed with the Hawai'i Supreme Court on February 16, 2018; and by the remaining Appellants on February 26, 2018. Answering briefs were filed by the University of Hawai'i (UH), the Board of Land and Natural Resources (BLNR) and the Thirty Meter International Observatory on April 9, 2018. Reply briefs were filed by the Appellants on May 3, 2018. This completed the briefing.

On May 7, 2018, the Hawaii Supreme Court set oral arguments for June 21, 2018. There is no deadline for the court to issue its decision, but it has been proceeding expeditiously consistent with Act 48 (2016).

B. Flores II vs. Board of Land and Natural Resources

The Flores II case was fully briefed by all parties in 2017. The Supreme Court held oral arguments on the appeal on March 15, 2018. The parties are awaiting a decision by the court.

C. Office of Hawaiian Affairs (OHA) Lawsuit

The Office of Hawaiian Affairs filed its complaint against various state defendants and the UH on November 7, 2017, but the defendants were not served until December 20, 2017. On January 10, 2018, UH filed a Motion to Dismiss the Complaint. On January 22, 2018, the state filed a joinder to UH's Motion to Dismiss. The motion has not yet been heard by the court while the parties engage in discussions to see whether or not they can reach a settlement.

D. NASA Infrared Telescope (IRTF) Dome Refoil Project Update

After numerous delays due to weather conditions, the IRTF contractor requested to suspend work until spring. IRTF received approval from the National Aeronautics and Space Administration (NASA) and the contractor was authorized to de-mobilize on February 10, 2018. The contractor has until to July 22, 2018, to complete the project. At the time the work was suspended it was approximately 65% complete. Re-mobilization and resumption of the project is anticipated to start after May 28 when a boom lift shipped from Oahu arrives on island.

E. Decommissioning of the Caltech Submillimeter Observatory (CSO)

Phase I of the Environmental Site Assessment (ESA) is expected to be completed in June 2018. The pre-assessment scoping phase of the Environmental Assessment (EA) has been completed and the consultant is reviewing comments in preparation of developing a draft EA. The consultant is also in the process of preparing technical reports on various topics including geology, biology, arthropods, etc.

F. Status of the University of Hawai'i Hoku Ke'a Telescope

As reported at the January meeting, UH Hilo issued a request for proposals seeking bidders to remove and properly dispose the non-working telescope in the Hoku Ke'a summit facility. A contract award was granted, a site visit was held on April 11, and a pre-construction meeting will be held later this month. An initial target start date was mid-April with a target completion at the end of May, but due to severe weather conditions the project has been pushed back.

G. Conservation District Use Application for the Ingress/Egress and Parking Project near the Visitor Information Station

The Department of Land and Natural Resources (DLNR) held a public hearing on February 28, 2018, in Hilo on the ingress/egress parking project near the Visitor Information Station (VIS). Sam Lemmo, administrator for the Office of Conservation and Coastal Lands (OCCL), presided as the Hearing Officer. The project's consultant, Sustainable Resources Group International, gave a short presentation on the project. Fourteen members of the public attended. Responses to written and verbal comments were addressed. OCCL will be submitting its report to the DLNR which plans to hear it in June.

H. Administrative Rules

On January 11, 2018, the Office of Maunakea Management (OMKM) received the go ahead from the Office of General Counsel to proceed with rule making. UH met with DLNR on January 18th to discuss the rules and consulted with the Office of Hawaiian Affairs on February 16th and April 13th. A request was submitted to the Board of Regents (BOR) seeking the governor's approval to allow the university to hold public hearings on UH's administrative rules governing public and commercial activities. The BOR will be taking up the matter at their June 7, 2018 meeting.

If the BOR approves the request, the next steps will be to submit a Small Business Impact Statement to the Small Business Review Board, followed by a request to the Office of the Governor requesting approval to hold public hearings. Following the public hearings, UH will make changes, if necessary, to the proposed rules then submit the draft rules to the BOR for approval before forwarding them to the governor for final approval.

I. Legislative Bills

As reported in January SB3090 was introduced by Senator Dela Cruz. This bill called for the establishment of a new management authority thus removing UH from having a role in managing UH's lands on Maunakea. This bill called for transferring UH's managed lands on Maunakea to the new authority. SB3090 passed the Senate but was not heard in the House and the bill died. A second bill, HB1985, which had earlier crossed over to the Senate, was replaced with language from SB3090. The Senate passed HB1985 and was to be heard in conference, but was never scheduled for hearing. This bill died.

The House passed HB1767 requiring four wheel drive vehicles at Waipio Valley and above Halepōhaku on Maunakea. Amendments made in the Senate required the bill to go into conference, but a hearing was never scheduled. This bill also died.

J. Environmental Impact Statement Preparation Notice for the University of Hawai'i's New Land Authorization

As part of the scoping process, open houses were held in Waimea, Hilo and Honolulu on March 12, 13 and 14, 2018, respectively, on UH's Environmental Impact Statement for the new land authorization that UH is seeking. The scoping process has concluded and UH's consultant is reviewing comments which will be addressed in the draft Environmental Impact Statement. It is anticipated that a draft of the document will be available sometime at the end of this year or early next year.

K. Outreach

OMKM continues its outreach efforts to groups who are interested in learning about OMKM's stewardship on Maunakea. Presentations have been made to various community groups.

IV. KAHU KŪ MAUNA COUNCIL (KKMC)

Shane Palacat-Nelsen reported the Council continues to meet on a monthly basis. Some of their discussions have included the decommissioning of the CSO and the cultural monitor for the Thirty-Meter Telescope (TMT). They are currently reviewing the letter Senator Kahele sent to UH, and the 2013, 2014 and 2015 archaeological monitoring reports.

V. Committee Reports

Environment Committee

Fritz Klasner reported the committee last met on March 12th. A presentation on 'Ike Wai project was given by Diamond Tachera, who is investigating aquifer systems. She has precipitation collector sites on Maunakea, including the summit and near Halepōhaku. She is using hydrogen oxygen isotopes to look at groundwater sources and movement. This project was recently initiated.

Many field activities at the summit were limited given the cold and snowy winter. No new threats were detected. There was a recent report of little fire ants, however we are confident that it was a lab cross-contamination issue and are working with partners to improve sanitation procedures.

Field work/projects:

- Annual arthropod monitoring will begin in a couple of weeks.
- Wēkiu bug microbiome (H. Stever) and arthropod barcoding (B. Reil) field work are ongoing. Stever and Reil are Ph.D. students at UH Mānoa.
- OMKM is working with the Forest Reserve and Natural Area Reserves (NAR) biologists this summer focusing on acoustic monitoring for the bird and bat inventory project.
- The erosion project will continue again this summer. The goal is to add work at lower elevations at select locations along the road corridor and Halepōhaku. At present much of the Spatial Data Analysis and Visualization (SDAV) lab is focused on supporting eruption monitoring.

Publications:

- Coldest places in Hawaii -- high-altitude craters, specifically Pu'uwēkiu in 2009 with a recorded temperature of -20C. Field work for the permafrost project is almost completed. OMKM met with NAR staff recently to discuss their interest in continued monitoring and will be preparing a permit/project proposal to transition to long-term monitoring.
- Jessica Kirkpatrick finished her wēkiu bug Master's thesis. At the July Conservation Conference she will be presenting a talk on habitat restoration.

The office is sponsoring three interns this summer through the UH Hilo Pacific Internship Programs for Exploring Science (PIPES) program. One intern will help with the erosion project, one with the permafrost project, and the third will be shared between the bird & bat inventory project and OMKM.

The wēkiu bug workgroup met on April 26, 2018. N. Stephenson and J. Kirkpatrick gave presentations on their Masters' theses. There was also a review of H. Stever's and B. Reil's projects. The group also discussed how to update the habitat restoration strategy, given the potential for restoration related to decommissioning or restoration of the Pu'upoliahu road. The group's focus is shifting to encompass all arthropods and collaboration/coordination on Maunakea in addition to the wēkiu bug and to also engage University, state, and federal managers and scientists.

The Maunakea Speaker Series continues:

- February: Mauna Kea Weather Center with Ryan Lyman

- March: Maunakea and Observing Qualities with Dr. Mark Chun
- April: Erosion Monitoring Baseline with Dr. Ryan Perroy
- May: Sea Level Rise with Rose Hart
- June 21: Maunakea Groundwater with Dr. Don Thomas
- July: Maunakea Scholars, CFHT Program

A volunteer weed pull day was held on February 10th with UHH students. April's volunteer day was canceled due to inclement weather.

The office participated in AstroDay in May; Keaukaha Elementary Science Night in March; and Kealakehe Elementary Science, Technology, Engineering and Mathematics (STEM) Night in April. A presentation on the wēkiu bug was given at Waikoloa Elementary School in March.

In April an all staff training on documenting offerings and new features that show up on the mountain was held.

Discussion

Doug Simons asked about Hoku Ke'a's notice of intent to decommission. Director Nagata replied that this Board still needs to take action on their notice of intent.

Dr. Simons also inquired on the mechanism for receiving public comments on the administrative rules. Director Nagata explained the public has the opportunity to comment on the rules when we go out to public hearing. Based on comments received changes could be made to the rules. Any changes would go back to Kahu Kū Mauna and this Board.

VI. Public Comments

Chair Chun opened the floor for public comments on any of the items covered thus far or any of the action items pending before the Board in Old Business.

Pua Case felt the proposed cultural policies and revisions were made without consultation by with those who requested it and they should not be moved forward until the requirements, recommendations and guidelines have been fulfilled pursuant to the Mauna Kea Comprehensive Management Plan (CMP), the Cultural Resources Management Plan (CRMP) and other associated plans. In particular the CRMP section about Kahu Kū Mauna consulting with a number of agencies and certain individuals. Ms. Case stated she is a board member of the Waimea Hawaiian Civic Club as their education chairperson, and she has not been consulted or notified about any of these policies.

Ms. Case stated she was not contacted even though she submitted a request to the MKMB at the October 2016. Likewise, they were not notified that these matters would be on the agenda at this meeting. Copies of her comments will be distributed to the Board members.

Ms. Case offered comments on CR 5, 7 and 9. The removal of ho'okupu that included food items, should be left as the kuleana of cultural practitioners to mālama. Preventing food offerings would impede native Hawaiian traditional and customary practices and is a violation of their protected rights. She disagrees that food as part of a ho'okupu would create a health or environmental situation. She did not believe there was justification for the occurrence of "copycat behavior". Ms. Case provided examples of the three ahu constructed by the Royal Order of Kamehameha several decades ago at Kūkahau'ula, near Hale Pōhaku, and Pu'u Huluhulu, has not resulted in other ahu being built in spite of thousands of people passing and stopping by the Pu'u Huluhulu area. She suggested that appropriate signage and persuasive messages in brochures and in other media formats should be distributed to educated uninformed visitors. Regarding CR-9, she felt that the statement about the "large number of the single rock features and small concentrations of piled or stacked rocks on Mauna Kea are modern and that many were constructed by non-Hawaiian visitors in the last decade or so" is false, inaccurate and misleading.

Ms. Case stated these cultural practices were over-exaggerated and meant to micro manage their practices. These policies will diminish their practices. She believes OMKM drafted the policies without adequate consultation, but Kahu Kū Mauna would realize that these policies would have an impact on cultural practices and are unlawful. Native Hawaiians have the right to these practices on the mauna. Ms. Case stated she does not know who is responsible and accountable for proper consultation or notifying them of meetings. If the Kahu Kū Mauna considered and approved these policies they are not representing "us"

Mr. Fergerstrom cited the memo from the United Nations Office of the High Commissioner for Human Rights about the case of Routh Bolomet regarding the political status of the Hawaiian Islands is that of sovereign nation-state but under a strange form of occupation by the United States. The governance of Hawaiian Islands should be the laws of the occupied state (Hawaiian Kingdom) and not the occupier (United States). Mr. Fergerstrom felt that due to pending Supreme Court cases that directly deal with some documents we work with, such as the Master Plan. These policies are untimely.

Matthew Kalani Souza, stated we not make the mistake of setting up for failure again, but felt we can find a way forward. Past generations did it and we do it, but requires bravery, intuition, innovation and us behaving as family. He felt everyone's view point is important and we should not give up on each other. There is a need to avoid pointing fingers and say what is going wrong. It is what our grandparents would do and it is what he is asking us to do for our grandchildren and great-grandchildren.

The public comment period was formally closed at this point.

VII. Old Business

A. Comprehensive Management Plan Management Actions EO-2 & P-4 Orientation Plan

Fritz Klasner stated this plan was brought before the Board on March 9, 2016, as informational only. This version incorporates Kahu Kū Mauna's review and comments made at their February 15, 2018 meeting. The CMP requires approval of this plan by DLNR. Following approval by the MKMB, the next step is to submit the plan to DLNR's Office of Conservation and Coastal Lands (OCCL) for review and approval. The primary changes from the 2016 version are updates and responses to questions from the observatories and vendors. The plan reflects a video version, and three types of orientations: visitor, user, and project/permit specific.

Discussions

Chair Chun commented that even though this plan has not been approved, orientations have and are being conducted. Mr. Klasner confirmed stating orientations have been conducted since 2013.

Action

Given that we are already instituting this plan and there have been no objections to this plan, it was recommended by Gregory Mooers and seconded by Herring Kalua to approve and forward the plan to OCCL DLNR for their review and approval.

B. Comprehensive Management Plan Management Actions:

1. **CR 5 - Guidelines for the Culturally Appropriate Placement and Removal of Offerings**
2. **CR 8 - Policy for the Scattering of Cremated Human Remains**
3. **Combine CR 9 - Policy for the Cultural Appropriateness of Building Ahu or Stacking of Rocks with CR 7**
4. **CR 7 - Construction New Hawaiian Cultural Features**

The CMP identified these management actions to help protect cultural resources. The policies developed by Kahu Kū Mauna were intended to be consistent with UH's proposed administrative rules under HAR 20-26 relating to public and commercial activities on Maunakea lands.

Purpose:

The CMP directs the OMKM to create and implement policies to assist OMKM in its ongoing stewardship of the University's managed lands on Maunakea.

Background:

Beginning in 2010, Kahu Kū Mauna began deliberations on developing policies related to cultural activities identified in the CMP. In October 2010, the Council met with representatives from the Royal Order of Kamehameha (ROOK) to discuss the condition of the lele on the summit of Maunakea. The lele was constructed, originally, by the ROOK. Apparently the lele had been subject to vandalism and was in disrepair for some time. The ROOK representative acknowledged that they should be the group responsible for the lele's upkeep. This sparked a discussion between Council members regarding CR-7 and CR-9.

The Council considered protocols associated with traditional practices and felt, like the ROOK, that the builders of cultural features should be responsible for their maintenance. The Council was concerned about preserving the cultural landscape and the need to prevent copycat behavior while ensuring that practitioners can conduct their

practices in private. The Council considered that the “stacking of rocks” as mentioned in CR- 9 can, in some instances, be a traditional practice and did not warrant a separate management action, but instead it should be included as part of CR-7.

Policies for the aforementioned CR’s were developed by the Council in 2012. However, these policies were not formally approved since the University’s “Administrative Rules” would include measures addressing these policies. The development of administrative rules were delayed in 2013 when a complaint was filed expressing concerns of ex parte communications between the University and the DLNR while matters including a contested case, master lease and sublease requiring action by the Board of Land and Natural Resources were pending.

Since it was becoming evident that the University’s administrative rules were going to take considerably longer than anticipated, the Council decided to reinstate the process of having OMKM formally adopt these policies. As part of their review process the Council held a consultation with OHA in 2015 when representatives from OHA came to Hilo to meet the Council to address the unpermitted ahu that had been removed back in the summer of 2015. They discussed this ahu under the context of CR-7.

In May 2016 Kahu Kū Mauna held a consultation session with representatives from, among others, OHA, DLNR, Aloha Aina, Royal Order of Kamehameha, UHH Hawaiian Language School, as well as individuals that had either lineal or cultural ties to Maunakea. In all, over 70 people attended. The consultation session began at 10:00 am and concluded at 2:00 pm. In August, following the consultation session, Kahu Kū Mauna revised the CR policies including comments and concerns expressed in the consultation session keeping in mind that neither the Council nor OMKM should define culture. However the Council fully recognized that the University of Hawai’i through its general lease is required to follow and comply with all existing statutes, rules and regulations.

The policies were taken to the MKMB for their review and approval at its October 2016 meeting. Following extensive testimony at that meeting, MKMB deferred action on the policies and directed Kahu Kū Mauna to hold more consultation sessions with the community.

OMKM then placed advertisements in the Hawaii Tribune-Herald, West Hawaii Today, Honolulu Star-Advertiser and OHA’s monthly Ka Wai Ola. The advertisements were an invitation to the community to “talk story” sessions with Kahu Kū Mauna. The advertisements ran twice a month, from December 2016 to May 2017. Two consultation sessions were held in East Hawaii and two consultation sessions were planned for West Hawaii. Unfortunately, the West Hawaii sessions had to be cancelled twice due to scheduling conflicts. In order to continue consultation Kahu Kū Mauna agreed in July 2017 to send email invitations to those who responded to the notices of the West Hawaii session. Kahu Kū Mauna previewed the materials that were sent to the invitees on July 17, 2017. The Council set August 31, 2017 as the deadline for comments. Kahu Kū Mauna approved the current drafts of the policies at their September 2017 Council meeting.

The Council recognized that native Hawaiians have a constitutional right to exercise their traditional cultural practices, however those rights are subject to regulation by law. With that in mind, the Council developed these policies based on existing rules starting with the Constitution and guided by the general lease requiring the University to comply with all existing rules and regulations. They also considered Hawai’i Revised Statute 6E which makes it a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property. Any person who violates this is subject to a fine of no more than \$10,000 for each violation.

The Council looked at the Hawai’i Revised Statutes for the definition of land use. Land use is the placement or erection of any solid material on land. It also includes the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land. This is further qualified in the DLNR conservation district rules. If you are going to engage in the land use it requires a permit from DLNR.

The Council also looked at rules for the Natural Area Reserves and the Forest Reserve. Although these rules do not apply to University lands, the Council understood that going forward with the University administrative rules, by law UH’s rules are be consistent with both the NAR and Forest Reserve rules. Some of the items in these rules include prohibiting the introduction of plant or animal life except for dogs when permitted by hunting rules; damage, removal, or disturbance of any geological features or substances; prohibition to remove, damage, or disturb any historic or prehistoric property.

Chair Chun stated when this matter was previously taken up and sent back to Kahu Kū Mauna, the Council was quite frustrated with us. They felt they had adequately addressed the issue of consultation and have been working at

it, as Director Nagata reported, for many years. Nonetheless, they took our recommendation and went back and did more work.

Mr. Palacat-Nelsen stated on behalf of Kahu Kū Mauna, he feels comfortable that they went through a consultation process that was able to cast a wide enough net to include everything that Director Nagata covered. The Council was concerned about being limited to just particular groups. They took the time in several meetings to discuss the process of how they would actually go out and do consultation. They came up with several plans and took some recommendations from OHA when they met with them in 2015. In order to cast a broad enough view point the Council held a public meeting. They had sessions based on this Board's recommendation to do more consultation. With their first attempt they received some letters from key individuals in the community - people who have been vocal in the Hawaiian community from the 70s. The second attempt was frustrating for the Council because they put in a year's time of planning and going out in the community, but they went out again. This time it was decided to convene more sit downs and intimate discussions. They published "Talk Story" sessions ads to not only talk about the policies, but other matters the community may have concerns about. The Council felt they had taken in enough consultation regarding the CRs. They sat down with the Division of Conservation and Resources Enforcement (DOCARE) officers to discuss enforcement. They were considerate of the NAR and Forest Reserve by including a broader landscape in their consultations. They did not want to conflict with our neighbors. The recommendation put forth today was based on three years of the Council working on this aside from other management issues that were raised such as the ahu being taken down. In addition, the Council considered international cultural practice on the mountain as well. It was not just native Hawaiians, although the native Hawaiian practices are protected by law. The international community is also using the mauna.

The Council agreed that from January 2018 they are comfortable with the process they went through and are comfortable with what is being to the Board today.

Discussion

Lehua Veincent commented some of the language in the CRs touches his mana'ō in the wrong way. We need to be careful with some of the language because of a concern about "food offering". There are certain foods that are appropriate. We have to be very aware of some of those spiritual connectedness that we as Hawaiians have. When we say no food offerings, we need to be more specific as to what those foods are. Another issue is the perception generated by words. For example CR-9 states "*OMKM believes that the stacking of rocks...*" It's a perception so the validity and reliability of what comes to him is going to be questionable for him. Another example is the word "may". That is also a perception word which occurs often in the document.

Chair Chun asked what the process would be once the Board recommends approval of these policies to address things such as what Mr. Veincent is raising. Director Nagata stated that if the Board recommends approval in concept we could still work on the language to make it clearer or more appropriate. We would also work with Kahu Kū Mauna on any changes to the policies.

Director Nagata continued stating with respect to food offerings, from an invasive species perspective, food offerings can attract "vermin" and that is an environmental health concern. We do not know what is in some of these offerings as we do not open them up. If we see something being attracted to it then it would be removed.

Mr. Veincent understands, but it is hard for him to balance what is going to be very invasive and not pono and what is culturally appropriate. Right now there is a battle in terms of these two concepts and he does not have the answer.

Mr. Palacat-Nelsen stated Mr. Veincent is absolutely right and agrees we will never have an answer. The Council's discussion included thoughts from some of us who still continue to raise ho'okupu onto our ahus and lele. We understand the significance and spiritual content. Now we are dealing with environmental concerns. We had that conversation and have not come to a complete resolve. We felt that broadening the language would help with addressing the environmental issue.

Dr. Simons understands that this policy is requesting cultural practitioners to register to put new cultural features on the mountain and the office goes forward with the permit to DLNR on behalf of the cultural practitioner. Is that how it works and is there a fee for that? And, if there is a fee, who pays? Director Nagata explained the idea behind the registration is to discuss with the person on the location to make sure they are not putting it next to a historic property or accidentally remove a rock from that property. Also if something were to happen to a registered structure we would be able to contact the family and let them know. Because we are on conservation land and a permit is required, we would assist the applicant in getting a permit from DLNR. Whether or not DLNR actually charges them a fee is something that would have to be discussed with the practitioner.

Herring Kalua thanked Mr. Palacat-Nelsen for what he does as the chair along with the rest of the practitioners who serve on Council. We have a great responsibility here. Kahu Kū Mauna is where you should be going to communicate. When you speak from your heart and piko, everything falls in place. We need to accept changes but our culture, our environment and whatever we do need to work together for the generations of the future.

Chair Chun stated some of the polices reference distances from a historic structure or from the roadway that new features would not be allowed to be built. In one case it is 100 yards and in the other case it is 200 feet. Can you describe how these numbers came about?

Director Nagata replied the 200 feet diameter was to be able to protect historic property. That was mentioned in the Natural Resources Management Plan and suggested that would be a good buffer zone. The 100 yards is two-fold. It was an issue the Council considered. For example, the scattering of cremated remains should be done with dignity. Scattering ashes close to or on ground where people are walking, hiking, or driving, the Council felt it would not be appropriate. Putting it 100 yards away is far enough away from human traffic. The 100 yards for the construction of new features was to put these new features out of sight so individuals who are not knowledgeable about the mountain and who do not know what a cultural feature is would not see them to tamper with. The location would be private enough so it would not be disturbed.

Chair Chun stated there are several places that reference Kahu Kū Mauna being consulted if a feature or something needs to be removed. His understanding is that consultation would also need to include OHA. Is that correct? Mr. Palacat-Nelsen replied yes, that is correct.

Chair Chun asked Mr. Palacat-Nelsen if it was correct about the Council having seen instances of copy cat behavior. Mr. Palacat-Nelsen replied that was correct. Photos are given to the Council and as he also mentioned previously, there is an international scope - especially dealing with the stacking of rocks. We know our kupuna did that for various reasons, but we are not sure what that means for someone who is from Germany or Japan. We also heard from the community that the rules should be for others and not for Hawaiians.

Chair Chun asked if these CRs prohibit a traditional and customary practice in anyway. Mr. Palacat-Nelsen stated that Kahu Kū Mauna was very careful in drafting the CRs to make sure they were not writing native Hawaiians out of the process or prohibiting them from access. The Council does not advocate for each cultural practitioner, but they advocate for a general purpose to allow native Hawaiians to be on the property. For the permitting process, he personally does not like the word "permit," but if we do not have some kind of oversight then we would have families hindering other families on the mauna. Every day something is going on spiritually up there. Whether it is Hawaiian or not, it is happening. The Council discussed cremated remains and how it could be poured on 'ohelo berries that is collected by other families. If someone wanted to scatter their remains they should be able to, but someone who wants to pick the 'ohelo berry should not be eating the remains of someone's ashes. There is a conflict right here, but at the same time we have to allow for both to take place. In developing these policies we are trying to be broad, but at the same time create a space for native Hawaiians to be there.

Someone from the audience commented that when the environmental harm of ho'okupu is discussed are you comparing it to all the cars that are going up there? How does that relate to all the cars already going up, and the construction that is up there, and all the other manmade intrusions in places that do not have any spiritual significance?

Mr. Mooers stated he has been struggling a little with CR-5 ever since Mr. Veincent made that comment. CR-5 policy 3 states that: *"Any offerings that present health, safety or environmental concerns issue shall be removed."* And then down below it states: *"Any food offering is considered a health and environmental concern."* Can staff explain if there is an offering that is creating an environmental concern, what draws a line to that? If it is covered with ants? Something is happening? Do we really need to say both things? Are there any food offerings that would not be an environmental concern that would not have to be removed?

Director Nagata commented one thing to keep in mind is that ho'okupu can be left at the summit as well as at Halepōhaku and anywhere in between. We do not open the ho'okupu so we do not know what is inside of it. Sometimes there are food offerings that are placed on lele, etc. When the rangers see bugs crawling over it or in it, they will remove them. Other than that they would normally leave it there until it turns brown and brittle and then remove them. The concern by the Council, as well as the rangers, is that when they are left there it sometimes gets blown away into the landscape.

Mr. Veincent asked if the orientation covers any form of offerings - what is culturally appropriate, how you wrap it,

etc. Director Nagata replied it does, but we do not go into details. Mr. Veincent wondered if that could be elaborated more. How do we orient the information to people before they do those things?

Mr. Palacat-Nelsen stated that is a good point. The Council had that discussion of what should be included into the orientation. The Council did not want to make a pretense of defining ho'okupu. They did not want to say this how a ho'okupu looks like so you have to do it this way. We just wanted people to respect it.

Chair Chun commented that the orientation program is constantly being updated and improved and believes there is some work actually being done on it now.

Jennifer Leina'ala Sleightholm commented that Hawaiians shouldn't have to come before a board and explain the way of their practices, or about managing their practices. Hawaiians should discuss among themselves and self-monitor.

Motion

It was moved by Doug Simons and seconded by Herring Kalua to accept and recommend approval of CR 5, CR 8, CR 9 and CR 7. The motion recommends approval from MKMB in its advisory function to the OMKM for moving forward with finalizing the CRs.

Comments

Mr. Mooers commented he has been on the Board now for just about 8 years and this is the most difficult item that the Board has ever had to discuss; and particularly for him because he is not a native Hawaiian. He is very moved by all the comments made. It is a very hard situation because we have certain requirements based on our lease and responsibilities the University has to manage the lands. He will vote to support these based on the good and hard work of Kahu Kū Mauna. These are good people who are trying to do the best they can. He does not think there is a perfect answer here. It is very difficult for him. Faith is a very personal thing and he does not like the idea of regulations, but he also understands the predicament that the University is in. He thanked Mr. Palacat-Nelsen for the work of the Council. It is very easy to criticize what has been done, but the Council has made very good effort to do what is pono, and so he will support this.

Mr. Veincent also thanked Mr. Palacat-Nelsen, but stated he is opposed, not that it had anything with the work that has been done, but something he feels inside himself. It is a difficult case.

Action

The motion was passed four in favor (Simons, Imoto, Kalua and Mooers) and one opposed (Veincent). Approval of the CRs passed.

VIII. EXECUTIVE SESSION

The Board moved into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities pursuant to HRS §92-5(a)(4). Executive session commenced at 12 noon.

The Board reconvened in public session at 12:08 p.m.

IX. ANNOUNCEMENTS

There were no announcements.

X. NEXT MEETING

Board members will be polled for a meeting date.

XI. ADJOURNMENT

There being no further business Chair Chun adjourned the meeting at 12:09 p.m.

Respectfully submitted:

Signed by Dr. Gregory Chun

4/2/19

Dr. Gregory Chun, Chair, MKMB

Date