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Minutes Regular Meeting

Mauna Kea Management Board
Wednesday, April 6, 2005

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

Attending

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

Kahū Ku Mauna: Ed Stevens

OMKM: Stephanie Nagata, Dawn Pamarang, and William Stormont

Others: David S. DeLuz, Jr.; Cory Harden; Bill Heacox; Tetsuo Nishimura; and Christian Veillet

I. CALL TO ORDER

1st Vice Chair Barry Taniguchi called the Mauna Kea Management Board (MKMB) meeting to order on April 6, 2005 at 10:00 a.m.

II. APPROVAL OF MINUTES

It was moved by Arthur Hoke and seconded by Harry Yada that the minutes of the March 7, 2005 meeting of the MKMB be accepted. The motion was carried unanimously.

III. DIRECTOR'S REPORT

A. Legislative Update

S.B. No. 904

The bill that would give the University authority to promulgate administrative rules and regulations on UH leased lands has died for this session. The last hearing was held on March 23 before a joint meeting of the House committees of Water, Land, and Ocean Resources (WLO), and Hawaiian Affairs (HAW).

Opposing Testimony

Much of the testimony opposing the bill was not applicable to the issue but dwelled on development and hazardous material issues, desecration of landscape, and compensation. Chair Ezra Kanoho (WLO) repeatedly reminded committee members what this bill was about, but confusion about the bill's intent and the introduction of unrelated issues resulted in deferring action on the bill.

Director Stormont felt Legislators still had concerns about why the Department of Land and Natural Resources (DLNR) could not make rules. UH tried to explain why it was not under DLNR's purview to promulgate rules.

S.B. No. 1474

This bill seeks an audit of the decision-making and project approval processes, and a study of the feasibility and necessity of creating a separate management authority for Mauna Kea. This bill passed out of five of six committees and is still alive waiting to be scheduled for a hearing in the House Finance Committee.

The language of the original bill has been modified and currently reads as a request for a study by the Legislative Reference Bureau and not an audit by the State Auditor. Much has happened since the creation of this Office, Board, and Kahu Kū Mauna and we have testified that the Office is willing to work with any entity should the legislature find a need to have a study done.

Discussion

Ron Terry asked if Kahu Kū Mauna weighed in on S.B. 904 to which Ed Stevens replied they did not. Mr. Stevens also stated he was in total agreement with the job the Office was doing. He also stated that the testimony the Office presented to the Legislature was well done and did not require further input from the Council. Dr. Terry wondered if it would be helpful next year if the Council could provide agreement on this issue. Mr. Stevens stated he spoke with Ezra Kanoho and expressed the Council's positive position on what has been happening. Mr. Stevens added that in his discussion with Chair Kanoho he tried to highlight misstatements made by the opposition which were not helpful to the process. He told Chair Kanoho what he believed was really happening. Mr. Stevens felt this helped a great deal in educating him.

Director Stormont stated he believed WLO Chair Ezra Kanoho had a firm grasp of the issues of the bill. Chair Kanoho tried very hard to make sure that the rest of the committee had an opportunity to understand the issues. Director Stormont added the Hawai'i Island Chamber of Commerce and the Japanese Chamber of Commerce and Industry of Hawai'i submitted testimony supporting S.B. 904.

B. Transfer of Mauna Kea Support Services (MKSS) Update

The transfer is moving forward and it has received the full support from the Jim Gaines, Vice President for Research.

Harry Yada asked what is required to achieve the transfer. Director Stormont stated, as he understands, the ultimate decision making authority sits with the Office of the Vice President for Research, and is not something that needs to go to the President or Board of Regents.

Barry Taniguchi asked how the funding would be handled. Currently observatories fund certain functions. Have the details been worked out? Director Stormont replied no, because none of that will change. Mr. Taniguchi replied that it will change. Director Stormont explained that MKSS has an existing structure for receiving funds from observatories and payment to vendors. We do not see this structure needing to change in a significant way. Mr. Taniguchi asked if staff will be university or Research Corporation of the University of Hawaii (RCUH) staff. All of these details need to be worked out. Director Stormont stated one of the tasks listed is to discuss the funding and personnel issues. Mr. Taniguchi thought it will not be such a simple matter.

Mr. Yada asked didn't the Master Plan state that MKSS will be transferred? Director Stormont said it calls for a possible future incorporation. Jim Kennedy explained the Master Plan does not say everything will be transferred. It specifically states that IfA would remain responsible for things directly associated with astronomical research. Under the subleases and Operating and Site Development Agreements there are a number of areas that fall into that category, e.g. computer networking, the weather prediction programs, and interaction with the meteorology department. The outline we have been given identifies those major features and provides a mechanism for both the IfA and the Office to accomplish that. The difficulty will be in working out the details.

Mr. Yada asked how the Board will be involved in the process. Will the plans come to the Board as a final version for us to look at? Director Stormont stated it will come to the Board. A draft of the transfer is being reviewed by the affected units within the University. It will be brought to the Board for review as well. Associate Director Nagata asked the Board if they wanted to be involved in the process or be involved at the end. Mr. Yada thought if the difficulty was going to be in the details, it would be hard not for the Board to be involved in the process. He felt it should be a staff judgment. Eventually the responsibilities of the Board for certain functions will increase. As a Board member he would be interested in knowing what those functions are before it gets to the final stage. Mr. Hoke thought it would be worth the effort to be involved in the process so that the Board is not confronted with disturbing issues at the end of the process. Director Stormont explained it was his intention to have the system and IfA take a look at the plan and provide some input before refining the plan and presenting it to the Board for formal review.

Mr. Yada believes the Office should take greater control of at least the physical management of the roads and facilities, and not so much the functions directly associated with astronomy. Ultimately we are being looked at as the quasi-independent management responsible for the mountain, not for astronomy.

Dr. Kennedy expressed the need to ensure some type of dialogue with the tenant observatories. Even though this is an internal matter with the University, the observatories are stakeholders and they are the ones providing the money. They need to have an opportunity for input to the process to provide guidance. The Office has a political need to ensure a level of comfort.

The Board requested to be kept abreast and be involved with the ongoing process.

C. Staffing

Dr. Jim Gaines has committed funding for positions requested by the Office. Director Stormont will be working on position descriptions for a professional level natural and cultural resource specialists, chief ranger, and other positions. Director Stormont stated that one of the functions of the resource specialists is to be a liaison between the MKMB committees and the Office.

D. Institute for Astronomy (IfA) Septic Tank Project

Director Stormont reported this project is ahead of schedule. There was a problem, however. One of the conditions of the project approval was that Mr. Stevens be notified when excavation work was to be done. Due to a miscommunication, Mr. Stevens did not receive the information. There has been correspondence between Ron Koehler, Mr. Stevens, and others to apologize for that oversight.

Mr. Stevens stated he would have liked the opportunity to interact with Dr. Pat McCoy, the consultant hired by IfA, to know that he conducted a cultural inventory at Hale Pohaku. The main issue is that the lack of notification would have been perceived negatively by the community. Mr. Stevens' interest in bringing up this incident was to correct it to prevent miscommunication in the future.

Dr. Terry asked about the conditions of the contract and if Kahu Kū Mauna's notification requirement was one of the contract conditions. Director Stormont replied that this was contracted out by the University and the requirement to notify Ed Stevens was not part of those conditions. Dr. Terry felt those things should be part of the conditions of the contract.

Dr. Kennedy completely concurred with Dr. Terry and stated Mr. Steven's comments are valid. He then asked Director Stormont if this problem has been resolved and do we know how to do this better the next time. Director Stormont replied he believed so.

Mr. Stevens explained that he was planning to attend the pre-construction meeting, but had to excuse himself and notified Ron Koehler. Somewhere along the line he did not receive the minutes of the meeting, which would have indicated the start date. In discussions with Mr. Koehler, the need to notify Kahu Kū Mauna was set in his mind. He concluded that the matter was resolved and thanked Dr. Kennedy and Dr. Terry for their comments.

Dr. Terry stated for big federal projects he has worked on he provided an environmental manual for the contractor, which includes a checklist. This way there is a record and if conditions are not met, they can be fined. He suggested having something like this for larger projects.

Mr. Stevens stated that for the Outrigger Telescopes project there are two documents – the Memorandum of Agreement (MOA) which was developed by the National Aeronautics and Space Administration (NASA), and a Best Management practices which was developed by Keck. These two documents clearly spell out what is to be done and what is not to be done. It covers all his concerns and he is in full agreement with both documents. Any new project hereafter, if it is categorized as a major project, would have all of these provisions. Director Stormont added that the Conservation District Use Permit (CDUP) for the Outrigger project also has a very long list of special conditions.

Mr. Taniguchi asked if a similar checklist be developed for minor projects. Director Stormont asked if the environment committee could assist in his matter. Dr. Terry replied with the help of Kahu Kū Mauna on cultural provisions it could be possible. He will work with the Office on setting up the framework.

IV. COMMITTEE REPORTS

A. Kahu Kū Mauna

Reappointment of Ulu Sherlock and Ed Stevens

Kahu Kū Mauna is recommending the reappointment of Ulu Sherlock and Ed Stevens for a second term beginning July 1, 2005 to June 30, 2009, a period of four years. A letter has been delivered to the Office.

News Reports of the University's Desire to Conduct a Peace Ceremony

Ed Stevens shared information about correspondence he received from Kealoha Pisciotta in response to a news article about the University's desire to conduct a "peace" ceremony to help heal past wounds with respect to Mauna Kea. A letter from the Mauna Kea appellants (Mauna Kea Anaina Hou, The Royal Order of Kamehameha I, Sierra Club Hawaii Chapter, and Clarence Ching) was sent to Patricia Lee, Chair of the Board of Regents.

In general, the Mauna Kea appellants think this peace gesture is a facade and they are critical of it. They also feel they should be approached first so they can be the first to agree on it. Mr. Stevens felt this peace gesture would be a positive move and was surprised by Ms. Pisciotta's email. He asked the Office to make copies of the correspondence and distribute it to Board members.

V. OLD BUSINESS

A. MKMB Roles and Responsibilities

Associate Director Nagata recapped the discussion that took place at the February 9, 2005 meeting. The Office was asked to review the roles and responsibilities of MKMB. First she reviewed and summarized the roles and responsibilities described in the Master Plan. Then she reviewed the Board's activities over the past four years. The Board is following the Master Plan and it has also taken on additional responsibilities not specified in the Plan. The Board should decide what its function should be. Should it be a management board as its name suggests or an advisory board? Defining the roles and responsibilities of the Board will depend on the function of the Board.

Discussion

Mr. Taniguchi suggested deferring this matter to a future meeting. He also suggested Board members go over the material provided by Associate Director Nagata. This is just a first step of a larger undertaking. He felt there may be a need to amend the Master Plan. We should look at what works and what does not work.

Dr. Kennedy stated that we should remember that the Master Plan is not a detailed business plan. It is a framework that we are expected to work within to meet certain broad goals. In that context, it has been a part of both the Office and the Board's role to define themselves within the limits and boundaries of the Master Plan. He completely agrees with Mr. Taniguchi in pursuing the objectives and goals that are set in the Master Plan. We have discovered some areas where the Plan did not speak at all, and therefore we had to be creative and put things in place. We have encountered a few areas where it seems current restrictions should be examined.

Mr. Taniguchi stated 2005 is the fifth year since the adoption of the Master Plan in 2000. He felt hiring a professional consultant to help refine the Master Plan might be worthwhile. The question of should we have more authority rather than be advisory is a major issue we need to decide on.

Mr. Stevens recalled that, when the Master Plan was approved by the Board of Regents in 2000, it was with the knowledge, as Regent Nainoa Thompson stated, that there were flaws in the Plan and that over time those flaws would be worked out. We should not leave the Plan the way it is. There is a lot of ambiguity. He asked Mr. Taniguchi if he was suggesting that we should not modify the Maser Plan for a specific thing but look at the whole Plan. Mr. Taniguchi felt we should look at the whole Plan since changes have occurred over the past five years.

Mr. Yada added the Board has learned a lot and is aware of where some of gaps are in the Master Plan. He thinks part of the problem with the Master Plan is the inherit ambiguity within the University itself. It is hard to lay out a plan when the University itself has not clearly defined which of its agencies is responsible. All of us have opinions about our roles, but ultimately it comes down to what does the University and Board of Regents want this Board to represent.

Mr. Stevens stated this is a big issue with "the other side." They feel there needs to be more clarity as to the role played by the management board and OMKM, and it needs to have more authority. The term "advisory" is a bad word for them. Mr. Taniguchi believes they want it out of the University's hands completely. They want an independent management board. He visualizes as being like the Hawaii Tourism Authority (HTA), or a Natural Energy Lab of Hawaii (NELHA) and the inherent politics of such agencies and believes it would be worse for the mountain. At least by managing within the University we hold ourselves to a higher degree of responsibility.

Mr. Yada commented that to some degree if we engage a consultant to look at the Master Plan it may actually be a similar process called for in SB 1474, including the University's role and trying to define the roles within the different University's components. Director Stormont partly agreed. From a manager's perspective he doesn't have a problem with somebody coming in evaluating the situation.

Associate Director Nagata asked if it was Mr. Taniguchi's intention that we hire a consultant to look at Master Plan, activities that have taken place since the Master Plan was adopted, how it works with existing issues, and whether it needs to be amended. Mr. Taniguchi added that on major issues the Board should become more authoritative versus advisory.

Dr. Terry asked if the bill was to move forward, does it have a start and end date? Director Stormont stated the Legislative Reference Bureau would need to report back twenty days before the start of the next legislative session. Dr. Terry stated we should incorporate that in our timeline too.

Mr. Yada said that even if the bill does not pass, what we are considering doing would be a University effort to do what the bill is suggesting. It might be able to defer or deflect future attempts to do the same thing. At least the legislature will see the recommendations that will result from our efforts to look at that the process.

Mr. Hoke believes the focus of the Master Plan is on what is in the best interest of the mountain for astronomy purposes. He believes we need to approach it from a different viewpoint, that is, what is best for the mountain. The efforts of Group 70 were clearly focused on astronomy and they tried their best to write the finished product in that way. That is why we have differences between what was negotiated with the committee of the Regents and what came out in the Master Plan. Whoever is going to be the contractor that works on this, the premise has to be we are looking at the mountain, not at what the mountain can do.

Dr. Terry stated that when a consultant was suggested, he hoped it was not a consulting firm that would have too large a role. It would have to be an entity with an open mind. Associate Director Nagata added before we hire a consultant/facilitator, you we need to have a clear idea what you want.

Mr. Taniguchi stated another aspect to think about, although not in the Master Plan, is representation and terms of Board members. He personally feels there is a benefit to having permanent members. For example, the person holding the position of the district land agent for DLNR.

At the suggestion of 1st Vice Chair Barry Taniguchi, this item was deferred.

VI. NEW BUSINESS

A. Visitor Information Station (VIS) Renovations Project

This item is listed under new business and is presented to the Board for consideration. Updates of this project have been given at previous meetings. There is a plan to make some immediate internal renovations to the station at Hale Pohaku. Aside from a partial enclosure under the awning outside the building itself to house telescopes, all renovations are internal and make no change in the footprint of the building. Now that this plan is final, Director Stormont wanted to send it to the Board for its review and input. All of the funding will come from the IfA's infrastructure development fund. The observatory directors approved the original budget of \$75,000 at their meeting in October 2004. It has since grown to about \$125,000 and a proposal has been sent to the IfA to seek additional funding.

The question is what do we call a project? And what are the actions that need and do not need to come before the Board for its review and approval? Director Stormont felt that this type of effort is not something we need to seek action and approval from the Board but the Board should be kept informed.

Discussion

Dr. Kennedy agreed with Director Stormont. We do not have specific rules to deal with this type of situation only because it is not an observatory facility. Looking at the patterns and models that we have followed based on what the observatories are allowed to do under their subleases, it is very clear that interior changes to a facility do not require an approval process as long as it does not have any external impact.

Mr. Yada commented anything that requires a permit, such as a CDUP or a building permit from the county, should come to this Board. Dr. Kennedy felt comfortable with that and agreed with Mr. Yada's statement. Dr. Terry did not think the Board needed to necessarily approve interior structures, but the VIS is a physical representation of this Board. This is MKMB greeting everyone who comes up to the mountain. The way it portrays us is central to our mission. He is not saying we need to approve everything they do, but having a lot of information about it and asking our opinion is important.

Dr. Kennedy stated Dr. Terry raised a good point. He added this broad activity of renovating a facility came before the Astronomy Education Committee some time ago. That committee was looking forward to not just this aspect,

but what has been described in the documents as a multi-step process, some of which would take place outside of the facility. Dr. Terry makes a very good point of where we are not just in terms of this narrow focused step about whether or not it is inside the walls or out, or needs permit, but the whole direction of that effort. What he has seen so far of what has been circulated has been entirely consistent with the same things that were broadly supported by the Astronomy Education Committee.

Director Stormont stated we all agree the merits of the project are good. Based on discussions we had at the last meeting, the Office was to develop guidelines regarding what does or does not require approval. He wanted to have this discussion to ensure the Board is aware that this project is moving forward and to share his thoughts on the project.

Dr. Kennedy stated many of the principals that have been involved in this development are the same individuals who compose a portion of the Astronomy Education Committee. The Mauna Kea Observatory Outreach Committee members are all part of that group.

Mr. Yada suggested they check with the conservation office. He knows of a warehouse in Kona that renovations within the building required a CDUP requirement. He recommends checking to be safe.

Action

It was moved by Barry Taniguchi and seconded by Ron Terry to approve the concept and approved Phase I of the project. The motion was carried unanimously.

VII. ANNOUNCEMENTS

Development of a New Master Plan

Cory Harden asked if the Board planned to have any type of public involvement in the development of a new management plan and discussing the role of the Board. Mr. Taniguchi replied the Board has not reached the point where they will make that decision. His suggestion was just something they might want to consider pursuing. Mr. Taniguchi then clarified Ms. Harden statement. Ms. Hardin mentioned the *management plan*, whereas Mr. Taniguchi is referring to the *Master Plan*. The Master Plan is not the management plan. The Board of Regents (BOR) is responsible for approving those. We can make recommendations to the BOR, but it will take the matter up under its agenda for any type of public input.

Dr. Terry acknowledged that the Board will be talking and thinking about this process for awhile and will not be making any definitive plans now. He suggested putting it on the agenda for discussion and offering the public the opportunity to comment. We should make a specific effort to invite members of the public here to comment and have drafts available for distribution. That is the primary function of the MKMB as stated in the Master Plan. We are the input for the public both through our presence here representing diverse interests and as a forum for public interest.

Does the Master Plan require approval by the BLNR?

Mr. Stevens asked for an update regarding the discussion at the last meeting whether or not the Master Plan needs to be approved by the BLNR. Was a request to review this matter submitted to General Counsel? Associate Director Nagata replied an inquiry has not yet been submitted. Mr. Stevens suggested listing it as an action item so we do not forget about it. It seems to be a real nagging problem.

Mr. Taniguchi stated we need to be careful because there is a difference between a management plan and the Master Plan. As he understands, the Master Plan has never gone before BLNR, and the Master Plan is not a management plan.

Director Stormont stated that conservation district regulations require a management plan as part of the conservation district use application (CDUA) for astronomy projects. During the contested case process that is what came up and that is where a lot of confusion was created. The regulation is vague regarding when the management plan is supposed to be submitted. The interpretation was you can attach a management plan as part of the project's CDUA and have it approved at the same time as the CDUA. This was what was done with the Outrigger telescopes application. Those who were found to have a standing in the contested case process argued that the management plan specified in the conservation district regulations was actually the Master Plan. The legal interpretation was that was not the case. The Master Plan is something separate. A management plan is specific to a project.

Dr. Terry stated it is even more imperative to have legal counsel give us an opinion on it so when people ask this question we can say this is what the University believes the law says.

VIII. NEXT MEETING

The next scheduled meeting is Monday, May 2, 2005 at 10:00 a.m.

IX. ADJOURNMENT

There being no further business, 1st Vice Chair Taniguchi adjourned the regular meeting at 11:25 a.m.

Respectfully submitted:

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

May 2, 2005
Date