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Your Name (required) *

Gregory Chun on behalf of Roberta Chu, Chair

Your Organization (optional)

Maunakea Managment Board

Your e-mail address (in case we need to reach you) *

roberta.f.chu@gmail.com; gchun711@hawaii.edu

Board of Regents Agenda Item (required) *

GOV- IV.A. Discussion and Potential Action on BOR Resolution Regarding Maunakea

Your Position (required) *

Comments Only

Your Testimony/Comments

Please see attached.

Your Testimony (pdf or word)

BOR_Reso2301_MKMBComments.pdf (182.7 kB)

Maunakea Management Board University of Hawai'i Hilo

July 24, 2023

Memorandum

To: Alapaki Nahale-a, Chair
University of Hawai'i Board of Regents

Laurel Loo, Chair
Governance Committee

From: Roberta Chu, Chair *Gregory C Chun* For Roberta Chu
Maunakea Management Board

Re: Regents Resolution 23-01 concerning Maunakea

Aloha Regents and Governance Committee. This memorandum outlines the concerns of the Maunakea Management Board (MKMB) regarding the transition of management responsibilities from the University of Hawai'i (UH) to the Maunakea Stewardship Oversight Authority (MKSOA) created through Act 255. It is our understanding that consideration of the Board of Regents (BOR) Resolution 23-01 is, in part, intended to address the University's concerns regarding the transition of responsibilities to MKSOA. As a primary advisor to the institution on all matters regarding Maunakea we feel a sense of duty to raise our concerns for your consideration.

Background

For context since there are new members of the Regents who may not be familiar with our role, the MKMB was created through the University's 2000 Master Plan. That plan was the result of a State Audit in 1998 that was highly critical of UH's management of Maunakea. Among other things, the plan called for greater community input on management of the mauna particularly from the Hawai'i Island community. MKMB was created to serve as a primary venue for gathering and vetting public input on UH plans, policies, permits, rules, and leases governing Maunakea. MKMB played a critical role in standing up the Office of Maunakea Management (OMKM)¹ at the University of Hawai'i Hilo (UHH) when it was created in 2000, the implementation of the 2000 Master Plan, development of the Comprehensive Management Plan and its sub-plans (CMP), and the development and passage of UH's Administrative Rules. While not required by statute, MKMB operates under Sunshine rules.

¹ OMKM is the predecessor unit to the Center for Maunakea Stewardship (CMS) that was created by the BOR in 2019. CMS combined OMKM with the Maunakea Support Services group that was previously under the Institute for Astronomy (IfA). CMS is organizationally placed under UHH.

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MKMB also receives input from Kahu Kū Mauna (KKM; UH's cultural advisory committee) and the Environment Committee (EC; UH's environmental review committee). While MKMB, KKM, and the EC all are advisory to UH we have been a primary source of community, cultural, and technical feedback on all major projects and initiatives and ongoing management activities covering Maunakea. MKMB in particular has been the public face for UH on many controversial matters such as the Thirty Meter Telescope (TMT), administrative rules, and UH's proposed teaching telescope at Hale Pōhaku. As such, we have considerable experience in the stewardship of the mauna as well as a first-hand understanding of community concerns. Further background on MKMB and our role in the institution may be found in the [2020 Maunakea Master Plan](#).

Act 255

Act 255 created the MKSOA as a new state agency attached to the Department of Land and Natural Resources (DLNR). Act 255 became effective on July 1, 2023 and established a five-year transition period for the transfer of management from UH to MKSOA. Assumption of management by MKSOA shall be completed by July 1, 2028 or sooner if UH and MKSOA agree.

It is clear under Act 255 that upon completion of the transition from UH MKSOA will have final authority over all land use and management decisions for the lands currently leased to UH including decision-making authority that is currently held by the DLNR which UH does not hold. Further, Act 255 states that during the transition period (emphasis added):

§ -3 Mauna Kea stewardship and oversight authority; established. (a) There is established the Mauna Kea stewardship and oversight authority, which shall be a body corporate and a public instrumentality of the State for the purpose of implementing this chapter. ***The authority shall serve jointly with the University of Hawaii in fulfilling the obligations and duties under the state lease for a period of five years as established in section.***

§ ~6 Transition; management plan. (a) The authority shall have a transition period of five years beginning July 1, 2023; provided that all of the initial members have been confirmed by the senate. ***During the transition period, the authority shall jointly manage Mauna Kea lands with the University of Hawaii; provided that the authority's day-to-day operations shall be carried out by the center of Mauna Kea stewardship for the transition period*** established in this subsection.

Act 255 does not clarify what exactly "joint management" means and how it is supposed to work. This lack of clarity is problematic and raises significant concerns for MKMB:

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1. MKMB serves in an advisory capacity to UH on matters related to Maunakea. While advisory, it has been consistently emphasized to us that our advisory role comes with a great deal of “implied authority” as we are UH’s primary agent for reviewing and vetting community feedback on your plans, policies, leases, rules, and permits. It is unclear as to what our role to MKSOA is as they assume responsibility for management. Do we now have obligations to that body as well and, if so, what are they? What is our legal exposure for any advice, guidance, and recommendations we make to UH as MKSOA assumes control? While we do not speak for them, we know that KKM and the EC have similar concerns.
2. Given our origins coming out of a critical state audit of UH, MKMB has always worked to ensure that UH plans and policies prevented or mitigated environmental issues on the mauna and that stewardship and public safety were enhanced and protected. In that regard, compliance with state conservation district rules is of utmost importance to us. Those protections are currently under the jurisdiction of DLNR whose permitting requirements guide all management actions which MKMB reviews to ensure that UH and the Maunakea Observatories are in compliance with. Act 255 does not address how current conservation district rules apply and who the responsible permitting authority will be. Act 255 implies that this authority will lie with MKSOA going forward but what then is their role during the transition period when UH and the Maunakea Observatories seek conservation district use permits for projects that MKMB is asked to review and make recommendations on? How are environmental protections assured? The community deserves to know.
3. CMS is UHH’s operational entity responsible for the day-to-day management of Maunakea. All plans, policies, permit requirements, rules, and leases that CMS follows and enforces have been reviewed and vetted by MKMB and many of these were amended prior to adoption to incorporate our recommendations. As such, even as advisors we have an obligation to ensure that those are being followed. Act 255 does not provide that assurance and, in fact, clearly states that UH is supposed to be carrying out MKSOA’s day-to-day management during the transition period. Whose plans, policies, permits, and rules is CMS implementing and enforcing? Clearly, all legal requirements and obligations existing under those documents still lie with the UH and as noted some of those requirements were incorporated because of MKMB input.

Examples

There are two examples that we are aware of where this lack of clarity in roles and responsibilities become real for MKMB in the near and mid-term.

1. MKMB has been briefed by CMS that per its Department of Health permit, UH is required to decommission its underground fuel storage tanks located at Hale Pōhaku

no later than July 1, 2028. These tanks need to be replaced to support ongoing operations on the mauna. We understand that CMS is working on the engineering design of the replacement storage and dispensing unit now.

Both the decommissioning and replacement storage units will require conservation district permitting. Whose permitting requirements will UH be following and who is MKMB advising? Further, Act 255 directs MKSOA to develop its own management plan which will set forth MKSOA's vision for land uses on the mauna. What is that vision, how does this project fit within it, and what are the implications for MKMB on input we provide to a plan and permit that may be questioned? It is our understanding that concerns about this project have already been voiced by members of the MKSOA board. In our experience UH should anticipate conflicting community views on this project and plan for legal challenges as part of the permitting process.

2. Resolution 23-01 directs UH leadership to:

“To ensure the prompt availability of a teaching telescope for the University of Hawai'i at Hilo Physics and Astronomy Program, a new educational telescope facility shall be established on already developed land at Hale Pōhaku, in coordination with MKSOA and the Department of Land and Natural Resources (“**DLNR**”) as contemplated in this resolution. The Board shall support the funding of the planning, design, and construction of the new educational facility.”

At its May 11, 2016 public meeting MKMB was asked to review and recommend approval of UHH's Notice of Intent (NOI) to decommission Hōkū Kea, a small teaching telescope located on the mauna serving UHH's astronomy students. At that meeting there was significant public outcry that UHH should commit to replacing Hōkū Kea before proceeding with its decommissioning as this is the only telescope on the mauna specifically dedicated to training UHH students. There was also public opposition to any continued development of the mauna. Time and space do not permit getting into the details of everything that has transpired since 2016 but the current state is that all permitting for decommissioning Hōkū Kea is completed and the project is being prepared for bid. Hopefully, deconstruction work can commence this year.

Concurrently, opposition has grown to UHH's plans for replacing the teaching telescope at Hale Pōhaku and some MKSOA board members have voiced concerns over moving forward with this project. Community support for the project has remained steady. At its August 2, 2022 meeting MKMB recommended approval of the Environmental Assessment (EA) and Conservation District Use Application (CDUA) for UHH's replacement telescope planned for Hale Pōhaku. As this project moves forward does MKSOA have the authority to disallow the project or delay it and, as a

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result, add significant time and cost to UHH? What is MKMB's legal exposure as a result of the BOR directing UH leadership to move forward with this project? How does community support for the project get weighed and what assurances are there that our own UHH students are served?

Recommendations

Given the above, MKMB offers the following recommendations as the BOR deliberates Resolution 23-01:

1. Clarification of roles and responsibilities during the transition period is critical and needs to be a three-way conversation that includes UH, MKSOA, and DLNR leadership. There are statutory, legal, and regulatory obligations that apply to each entity that must be considered during the transition. For example, as previously noted how are conservation district rules currently under the jurisdiction of DLNR going to be applied and enforced? And what happens to UH's obligations under their existing permits should MKSOA take exception? Any agreement should be documented in writing.
2. MKMB has advised and made recommendations on all UH plans, policies, permits, and rules UH is responsible to enforce. Even as advisors, as a voice for the community MKMB has a duty to ensure UH's compliance with these. Please clarify what is expected of MKMB and what our legal exposure is in our advisory role to UH during the transition period.
3. There is a sense of urgency that must be communicated and acted on by all entities to strike an agreement of what joint management means as expeditiously as possible so that the transition may be completed within five years or sooner as contemplated in Act 255. The longer this goes on the higher the risk of legal and public conflict grows for all involved.

In closing, MKMB hopes that this memorandum conveys how seriously we take our responsibilities to UH and the community. This feedback is intended to assist the BOR in its understanding of the implications of Act 255, which are numerous. Outlined here are just the issues that affect MKMB most directly which, when addressed, will help us better fulfill our commitment to UH and the community. We are available to meet and discuss these concerns and any other questions the BOR may have regarding this matter. Mahalo for your consideration.

Copy:

David Lassner, President UH

Bonnie Irwin, Chancellor UHH

Gregory Chun, Executive Director CMS