

Event Details

Date 2016/10/04 - 2016/10/04
Time 10:00 AM - 12:00 PM
Recurring
Event status
Title Mauna Kea Management Board
Location 640 N. Aohoku Place, Room 131, Hilo, Hawaii 96720
Mauna Kea Management Board
Tuesday, October 4, 2016
10:00 a.m. to 12:00 p.m.
Institute for Astronomy
Kukahau'ula - Room 131
640 N. A'ohoku Place
Hilo, Hawaii 96720

AGENDA

I. CALL TO ORDER

II. APPROVAL OF MINUTES OF THE JUNE 22, 2016 MEETING

III. DIRECTOR'S REPORT

IV. KAHU KU MAUNA COUNCIL

V. COMMITTEE REPORTS

A. Environment Committee

VI. NEW BUSINESS

A. Information Only: Bird and Bat Inventory Proposal

B. Action Item: CR-5 Develop and Adopt Guidelines for the Culturally Appropriate Placement and Removal of Offerings

C. Action Item: CR-8 Develop and Adopt a Management Policy for UH Management Areas on the Scattering of Cremated Human Remains

D. Action Item: CR-7 Determination of the Appropriateness of Constructing new Hawaiian Cultural Features

E. Action Item: CR-9 Management Policy for the Cultural Appropriateness of Building Ahu or "Stacking of Rocks"

F. Action Item: Submillimeter Array (SMA) Parking Lot Geotechnical Investigation

G. Action Item: University of Hawaii 2.2-m Telescope Maintenance and Repair

H. Executive Session (Closed to the Public)

To consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities related to the contested case hearing on the application for a Conservation District Use Application permit for the Thirty Meter Telescope project, pursuant to HRS §92-5(a) (4)

I. Action Item: Review and Approval of Draft Administrative Rules

VII. OLD BUSINESS

A. Discussion: Governor's 10 Point Plan

B. Discussion: Decommissioning of Telescopes Update

VIII. ANNOUNCEMENTS

IX. NEXT MEETING

X. ADJOURNMENT

12/12/16
9/16/16

Maunakea Comprehensive Management Plan Action:

CR-5 Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

"The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]"

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Mauna Kea Cultural Resources Management Plan

The "Mauna Kea Cultural Resources Management Plan" (CRMP), along with the "Mauna Kea Comprehensive Management Plan" (CMP) outline the types of management actions to be implemented by the Office of Maunakea Management (OMKM) on the University of Hawaii's (UH) managed lands on Maunakea.

The CRMP makes the following observations:

"There are a number of cultural practices that could potentially affect historic properties. One practice that has become a major management problem in many places in Hawai'i, including many State Parks, are those involving offerings placed on shrines. At a number of religious sites and culturally significant places in Hawai'i, accumulations of offerings have become obtrusive and distracting to the point that they can have an adverse effect on historic properties. Organic offerings become a problem as they deteriorate or are dispersed by winds, while inorganic offerings, such as stones or objects made of modern materials, remain at the site for considerable periods of time unless removed. "(CRMP 4.1.2.3)

The CRMP also makes the following specific recommendations:

"Establish protocols

1. A culturally trained staff person or a specially designated individual shall be responsible for the culturally appropriate removal of offerings.

2. Establish culturally appropriate means of handling the removal of non-food offerings.
3. Food offerings shall be removed immediately following the ceremony.” (CRMP 4.2.1.3)

University Hawaii Administrative Rules

In addition, the rule making authority granted to the University of Hawaii regarding rules for the management of Maunakea state, in pertinent part explicitly that the UH’s administrative rules must :

“Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources(DLNR) related to forest reserves and natural area reserves;” [§304A-1903] Mauna Kea lands[;] rules.

Therefore, any policy implemented by the OMKM needs to be consistent with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves whose land surround the UH managed lands on Maunakea.

The OMKM’s policies also need to comport with the DLNR’s administrative rules that apply to Conservation District Lands.

The OMKM’s policy on the placement and removal of offerings will be formalized by the adoption of administrative rules for UH’s managed lands.

Department of Land and Natural Resources Administrative Rules

Natural Areas Reserve

HAR 13-209-4, prohibited activities within the Natural Area Reserve

The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;

Forest Reserve

HAR 13-104-4, preservation of public property and resources.

The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g. natural stream beds) except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within or on forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board.
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board.
- (8) To distribute or post handbills, circulars, or other notices. Unofficial compilation:
- (9) To introduce any plant or animal except as approved by the Board.
- (10) To enter or remain within forest reserves when under the influence of alcohol, narcotics, or drugs, to a degree that may endanger oneself or endanger or cause annoyance to other persons or property. The use or possession of narcotics, drugs or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93] (Auth: HRS §183-2) (Imp: HRS §§183- 2, 183-17) §

Conservation District Rules

HAR 13-5-2 Definitions

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, Unofficial Copy §13-5-2 5-6 mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, noncommercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

§13-5-6 Penalty

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

Hawaii Revised Statutes

Conservation District

183C-2 Definitions

"Land use" means:

- (1) The placement or erection of any solid material on land;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Historic Preservation Program

6E-11 Civil and administrative violations.

(a) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter

human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section 6E-2, except as permitted by the department.

(f) Any person who violates this section shall be fined not more than \$10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2]

CR-5 Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.

PROPOSED OMKM POLICY for CR-5

The Placement and Removal of Offerings

1. Offerings shall not be placed on existing historic properties, roadways, pathways or existing structures or subleased properties.
2. Any offerings that present a health or safety issue shall be removed.
3. All applicable Hawaii state laws and regulations shall apply.

Maunakea Comprehensive Management Plan Action:

CR-7 Kahu Ku Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian cultural features.

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

"The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]"

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Mauna Kea Comprehensive Management Plan

The "Mauna Kea Comprehensive Management Plan" states:

"CR-7. Determining the appropriateness of constructing new Hawaiian cultural features .This is an extremely sensitive issue as most Native Hawaiians will be the first to say that it is not their kuleana to judge the cultural practices of another Hawaiian. However, the intent of this management measure is to develop a process to determine culturally appropriate protocols. Kahu Kū Mauna and/or the MKMB's Hawaiian Cultural Committee in consultation with families with lineal and historic connections to Mauna Kea, kūpuna, cultural practitioners, the Office of Hawaiian Affairs and other Native Hawaiian groups will work in collaboration to develop these protocols. Guidelines should be adopted to assist in formulating culturally appropriate protocols (e.g., to determine which kinds of features and locations are appropriate or inappropriate, as well as if and when a regulatory review process is necessary). Construction of new features will be evaluated to determine whether a CDUP is required. New construction not complying with the applicable protocols, the conditions imposed by guidance provided by Kahu Kū Mauna, MKMB, and/or the MKMB Hawaiian Cultural Committee or administrative rules, if/or when adopted, will be dismantled."

Mauna Kea Cultural Resources Management Plan

The "Mauna Kea Cultural Resources Management Plan" (CRMP), along with the "Mauna Kea Comprehensive Management Plan" (CMP) outline the types of management actions to be implemented by the Office of Maunakea Management (OMKM) on the University of Hawaii's (UH) managed lands on Maunakea.

The CRMP makes the following observations:

Construction of new Hawaiian cultural features (CR-7)

In addition to the modern use of ancient shrines, there are persons who are also constructing new shrines (kahu) and building less formal mounds (ahu) of stacked or piled rocks. Though most of the ahu, at least those located near roads, were probably erected rather recently to commemorate or memorialize a person or family's visit to the summit region, it is also possible that some ahu were built based on a religious belief and might therefore be viewed as a new or different form of shrine, especially since one meaning of ahu is shrine or altar (Pukui and Elbert 1971:8).

Stephanie 9/13/2016 10:08 PM
Comment [1]: What is this word?

Ahu built as shrines and those built for non-religious purposes are difficult, if not impossible, to distinguish based on morphological characteristics alone. This poses a major management problem that will require further discussions amongst Native Hawaiian cultural practitioners and land managers to determine what shrines are and what are not. For the purpose of this CRMP, new shrines are defined as those that replicate the older shrines in the sense that they have one or more upright stones. The management actions for what are inferred to be modern, non-religious rock piles or ahu are presented in Section 4.2.1.8.(CRMP 4.2.1.6)

Management Actions for Constructing New Shrines.

1. Guidance shall be sought with regards to the construction of new Hawaiian cultural features and the long-term management of these features.
2. The Kahu Ku Mauna Council, in consultation with other Native Hawaiian organizations, will develop protocols that will consider which kinds of features and locations are appropriate or inappropriate, and whether a review process should be instituted.
3. New constructions not complying with the established protocols and Chapter 6E and HAR 13-5-2 will be dismantled.
4. Newly built permitted shrines will be described and their locations recorded so that they can be protected by OMKM Rangers on patrol and checked as part of the ongoing monitoring program.

University Hawaii Administrative Rules

In addition, the rule making authority granted to the University of Hawaii regarding rules for the management of Maunakea state, in pertinent part explicitly that the UH's administrative rules must :

“Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources(DLNR) related to forest reserves and natural area reserves;” [§304A-1903] Mauna Kea lands[;] rules.

Therefore, any policy implemented by the OMKM needs to be consistent with the administrative rules of the Division of Forestry and Wildlife of the Department of Land and Natural Resources whose land (Forest Reserve and Natural Area Reserve) surround the UH managed lands on Maunakea.

The OMKM’s policies also need to comport with the DLNR’s administrative rules that apply to Conservation District Lands.

The OMKM’s policy on the placement and removal of offerings will be formalized by the adoption of administrative rules for UH’s managed lands.

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The following activities are prohibited within a natural area reserve:

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- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;

Forest Reserve

HAR 13-104-4, preservation of public property and resources.

The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g. natural stream beds) except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;

- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within or on forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board.
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board.
- (8) To distribute or post handbills, circulars, or other notices. Unofficial compilation:
- (9) To introduce any plant or animal except as approved by the Board.
- (10) To enter or remain within forest reserves when under the influence of alcohol, narcotics, or drugs, to a degree that may endanger oneself or endanger or cause annoyance to other persons or property. The use or possession of narcotics, drugs or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93] (Auth: HRS §183-2) (Imp: HRS §§183- 2, 183-17) §

Conservation District Rules

HAR 13-5-2 Definitions

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, Unofficial Copy §13-5-2 5-6 mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, noncommercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

§13-5-6 Penalty

- (d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

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Conservation District

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- (1) The placement or erection of any solid material on land;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Historic Preservation Program

§6E-11 Civil and administrative violations.

(a) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section 6E-2, except as permitted by the department.

(f) Any person who violates this section shall be fined not more than \$10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2

***Kahu Ku Mauna recognizes that the creation of new cultural features could include the stacking and piling of rocks. Therefore, the policy for CR7 applies to CR9.**

DISCUSSION:

The construction of Hawaiian cultural features is a sensitive issue. Many Native Hawaiians will be the first to say that it is not their kuleana to judge the cultural practices of another Hawaiian or to judge without knowing the reason for constructing a feature. The CMP discussion on CR-7 states the intent of this management action is to develop a process to determine cultural

appropriate protocols and to develop guidelines to assist in formulating culturally appropriate protocols, such as determining “which kinds of features and locations are appropriate or inappropriate as well as if and when a regulatory review process is necessary.

CR-7 states that Kahu Kū Mauna should “take the lead in determining the appropriateness of constructing New Hawaiian cultural features”. However, in reviewing this management action Kahu Kū Mauna agrees that it is not their kuleana to develop culturally appropriate protocols for constructing cultural features. Protocols are personal and private in nature and to develop a one-size-fits-all protocol is not appropriate. Further to question a person’s reasons for constructing a cultural feature may be viewed as niele or not another person’s business. More importantly the exercise of Native Hawaiian traditional and customary rights is constitutionally protected subject to reasonable regulation as permitted by law. Kahu Kū Mauna does not have the authority to regulate the traditional customary practices of other Native Hawaiians.

Legal consideration

A legal consideration is compliance with existing regulations. The University’s managed lands on Mauna Kea are classified Conservation District lands and fall under HAR 13-5 which governs land uses. Land uses are defined in the HAR and may be allowed depending on the type and subzone designation. The rules do not specifically address the construction of cultural features, however the construction of cultural features falls under this definition. Also, a cultural feature that remains as a permanent structure changes the land area.

Although rules governing the Mauna Kea Ice Age Natural Areas Reserves (NAR) do not apply to UH’s managed lands, the NAR is an integral part of the cultural landscape of Mauna Kea. OMKM recognizes the cultural landscape encompasses the NAR and UH’s managed lands and political boundaries should not be a reason for parceling the cultural landscape. OMKM acknowledges the NAR rules which prohibits engaging in construction or improvement and removing, damaging, or disturbing geological features or substance. But OMKM also acknowledges that the right of Native Hawaiians to practice and exercise traditional and customary practices is constitutionally protected subject to reasonable regulation of such rights as permitted by law.

Historic Sites

Pursuant to HRS 6E-11, it is violation to injure, destroy or alter any historic property (an historic property includes, for example, any building, structure, object or site that is over fifty years old). The potential exist for the uninitiated to use rocks from an existing historic site for the construction of a cultural feature.

Preserving the cultural and natural landscape

Another major consideration is preservation of the cultural landscape. The building of new features should not be constructed without some thought for maintaining or removing them after the purpose for which they were built has ended. It is not OMKM's kuleana to maintain these features but rather the responsibility of the individual(s) who erected them.

The creation of new features that are visible to the public might encourage others who do not understand the nature or purpose of these new cultural features to engage in "copycat" behavior. Further, having cultural features in plain view can also result in vandalism or inadvertent disturbance or damage to the sites. Constructing the features out-of-site or a distance away from the road and historic sites will help to prevent disturbance to new and historic sites.

It is OMKM's responsibility to preserve not only the cultural landscape, but also the natural landscape and biological community. It is not uncommon to bring and leave flowers, leaves and other plant parts, sometimes with viable seeds, especially those that are easily distributed by wind. Food items left behind can attract vermin such as rats and mongoose, or undesirable arthropods, including ants. Often times man-made articles are left behind such as beer cans, crystals, and statues. These, plus plant material, and food items left behind eventually become trash or are blown about by the winds.

The BLNR approved Public Access Plan for UH's managed lands on Mauna Kea, contains a hierarchy of public access control with personal responsibility being the fundamental and lowest level of control. It states:

"As individuals we bring our own personal sense of responsibility and kuleana to Mauna Kea. This sense of kuleana is shaped by our upbringing and by the degree to which we have been taught to act with common courtesy, humility and respect both for nature and for other people...Although this sense of responsibility may not be shared equally by all members of the public, there is a foundation of personal accountability upon which to build. The most effective management tool is the ability of each individual to take responsibility for their own actions...."

It follows that the maintenance of newly constructed features should be the responsibility of the individual(s) who erected them. Items left behind that are not originally part of the natural landscape should be removed.

PROPOSED OMKM FOR BOTH CR-7 AND CR-9

Construction of new cultural features and /or the stacking of rocks

The construction of new cultural features and/or the stacking and piling of rocks is not allowed unless a permit is first obtained from the Office of Mauna Kea Management.

Guidelines for erecting and maintaining new cultural features such as, for example, shrines or alters:

1. Definition:
 - a. Cultural features is defined as Native Hawaiian cultural feature
2. New cultural features shall be placed out of plain sight, or a minimum of 100 yards from existing roads and in designated areas. Plain sight includes areas close to or adjacent to roads, parking areas unless hidden by natural features such as rock outcroppings or mounds.
3. New cultural features shall be placed at least 200 feet from existing historic sites.
4. New cultural features shall be made of natural materials from the surrounding area, but shall not be removed from existing historical sites. Removal, disturbance or damage to historic sites is a violation of state law, HRS 6E-11.
5. New cultural features are to be maintained by those who erected them.
6. Upon observation that the structure has been disturbed or damaged, OMKM shall contact the responsible individual.
7. Cultural features for which OMKM did not issue a permit shall be removed.
8. Material from dismantled non- permitted structures shall be disposed of.
9. All applicable Hawaii state laws and regulations shall apply.

Maunakea Comprehensive Management Plan Action:

CR-8 Develop and adopt a management policy for the UH Management Areas on the scattering of cremated human remains.

Mauna Kea Comprehensive Management Plan

The Mauna Kea Comprehensive Management Plan states:

"CR-8. Management policy on the scattering of cremated human remains. The scattering of the ashes of cremated human remains and the burial of urns in the summit area of Mauna Kea are on-going cultural practices. These private affairs are not well known or documented, but they may impact historic properties. One recommendation is to adopt a policy similar to that recently instituted at Hawai'i Volcanoes National Park, with the following considerations: The scattering of cremated human remains requires a special use permit.

A death certificate is required to obtain a special use permit. Conditions of the permit include: scattering must take place in a such a manner and in such a location that the ashes will not be located and identified as human remains; no memorials, plaques, photos or flowers may be left behind; the permittee recognizes and is aware of the sensitivity of this activity and agrees to perform it in a discrete and private manner; all local, state, and county rules and regulations must be followed; violation of Mauna Kea Comprehensive Management Plan Section 7: Management Component Plans April 2009 7-10 the terms and conditions of the permit may result in the immediate revocation of the permit and/or other law enforcement action.⁵ However the ultimate determination will be based upon appropriate cultural consultation and applicable rules."

Mauna Kea Cultural Resources Management Plan

The "Mauna Kea Cultural Resources Management Plan" (CRMP), along with the "Mauna Kea Comprehensive Management Plan" (CMP) outline the types of management actions to be implemented by the Office of Maunakea Management (OMKM) on the University of Hawaii's (UH) managed lands on Maunakea.

The CRMP makes the following observations:

Scattering and Burial of Cremated Human Remains The scattering of cremated human remains and the burial of urns in the summit area of Mauna Kea is an on-going cultural practice, that although a private affair and thus not well known or documented, should nevertheless be regulated to prevent disturbance of historic properties and to avoid the situation of OMKM rangers having to respond to reports of disinterred human remains in the future Mauna Kea is, of course, not the only place in Hawai'i where the scattering and burial of ashes is taking place. Another well-known location is Hawaii Volcanoes National Park. . (CRMP 4.2.1.7)

The CRMP also makes the following specific recommendations:

Exhibit L19

A management policy on the scattering of cremated human remains, like that recently instituted at Hawai'i Volcanoes National Park, will be developed and implemented for the Science Reserve. The National Park requires a copy of the death certificate before a Special Use Permit is granted. The Special Use Permit contains a number of conditions.

1. A death certificate will be required to obtain a Special Use Permit to scatter ashes
2. Scattering must take place in such a manner and in such a location that the ashes will not be located and identified as human remains; interment is prohibited.
3. No memorials, plaques, photos, or flowers will be left.
4. The permittee recognizes and is aware of the sensitivity of this activity and agrees to perform it in a discreet and private manner.
5. All local, state and county rules and regulations will be followed. (CRMP 4.2.1.7)

DISCUSSION

In 2011 Kahu Kū Mauna discussed this CMP management action. Initially the office felt that this activity didn't need a permit, however, OMKM is reconsidering that we should require a permit to be consistent with DLNR rules. The reason being is that there are no physical boundaries that delineate UH's managed lands from DLNR lands, including the Mauna Kea Forest Reserve and Mauna Kea Ice Age Natural Area Reserve, which are adjacent to UH lands on Mauna Kea. Most individuals are unaware there are political boundaries much less where those boundaries lie.

Under frequently asked questions in the DLNR website it states "[g]enerally speaking, no environmental permit is required for scattering of cremated ashes on land, sea or from the air from the Department of Health, but this should be done discreetly and some distance away from the general public. Ashes may not be dispersed within a state forest reserve or watershed area..." However, in discussion with DLNR, they issue permits for the scattering of ashes.

The policy for scattering cremated human remains at Hawaii Volcanoes National Park states "The remains to be scattered must have been cremated and pulverized. The scattering of remains by persons on the ground is to be performed at 100 yards from any trail, road, developed facility, or body of water." Scattering must take place in such a manner and in such a location that the ashes will not be located and identified as human remains. No memorials, plaques, photos, or flowers will be left in the park."

OMKM feels the act of scattering ashes is a private matter. In addition, some might view this type of activity offensive to their personal or cultural beliefs. The phrase "some distance" is vague and it might be helpful to provide guidelines, such as a minimum of 100 yards as required by Hawaii Volcanoes National Park. While it is understandable that people would want to leave something to memorialize the spot where the ashes were scattered, such objects end up over

time as rubbish and can be blown about the landscape. In addition, flowers and plants have the potential for introducing invasive species which OMKM is charged with preventing; and food articles may introduce invasive species and also attract rats and mongoose which are threats to the native wildlife.

University Hawaii Administrative Rules

In addition, the rule making authority granted to the University of Hawaii regarding rules for the management of Maunakea state, in pertinent part explicitly that the UH's administrative rules must :

"Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources(DLNR) related to forest reserves and natural area reserves;" [§304A-1903] Mauna Kea lands[;] rules.

Therefore, any policy implemented by the OMKM needs to be consistent with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves whose land surround the UH managed lands on Maunakea.

The OMKM's policies also need to comport with the DLNR's administrative rules that apply to Conservation District Lands.

The OMKM's policy on the placement and removal of offerings will be formalized by the adoption of administrative rules for UH's managed lands.

Department of Land and Natural Resources:

- a. Division of Forestry and Wildlife issues permits for the scattering of remains on forest reserve lands.
- b. Burial Councils do not take up matters concerning the scattering of human remains.
- c. Natural Areas Reserves Systems issues a permit.
- d. Conservation and Coastal Lands regards the scattering of human remains an activity and not a land use, and therefore does not require a land use permit

Hawaii Revised Statutes

There are no statutes or rules that prohibit the spreading or placement of human cremated remains.

Department of Health allows the scattering of ashes provided it is done discretely.

PROPOSED OMKM POLICY for CR-8

Scattering of cremated remains

The scattering of cremated human remains, or ashes, is allowed provided the manner in which the scattering of the cremated remains is carried out discretely and away from public view and areas where the public frequents. The cremated remains must not be identifiable as human remains. Further, no memorials, including plaques, flowers, plants or plant material, food or religious symbols or personal objects are to be left in the area. The permittee recognizes and is aware of the sensitivity of this activity and agrees to perform it in a discreet and private manner.

1. Cremated remains must be scattered and not left or buried in a container such as a bag or urn.
2. No memorials, such as photos, personal objects, religious symbols, flowers, plant material, food, plaques, etc. shall be left at, near or on the landscap³
3. The scattering of cremated remains shall take place in areas away from public view and at a minimum of 100 yards where the public frequents including trails, roads, developed facility or body of water.
4. The scattering of cremated remains is prohibited in the vicinity of any ohelo berry bushes.
5. Cremated remains must be pulverized so as not to identifiable as human remains including bone fragments.
6. In the event that any cremated remains are discovered on any University of Hawaii at Hilo managed lands they will be buried and the location documented.
7. All applicable Hawaii state laws and regulations shall apply.

Maunakea Comprehensive Management Plan Action:

CR -9 A management policy for the cultural appropriateness of building ahu or "stacking of rocks" will need to be developed by Kahu Kū Mauna who may consider similar policies adopted by Hawai'i Volcanoes National Park

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

"The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]"

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Mauna Kea Comprehensive Management Plan

The Mauna Kea Comprehensive Management Plan states:

"CR-9. Management policy on the piling and stacking of rocks Ahu, which are created by placing single rocks or stacks of rocks on boulders and outcrops, dot the landscape in the summit area of Mauna Kea. Most of the 336 "find spots" recorded in the 2005-2007 archaeological survey are piled and stacked rocks. Such features, which are widespread in Hawai'i, may have as their basis a traditional cultural practice, but whose purpose and meaning have probably changed over time.

At the same time, there is reason to believe that a 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.

The management policy for piling and stacking rocks could be similar to that recently instituted at Hawai'i Volcanoes National Park (Kubota 2005). A culturally trained staff person will be responsible for the culturally appropriate removal of rock piles that are made on Mauna Kea. Visitors to and users of Mauna Kea will be educated about the importance of preserving the cultural landscape, with particular attention to prohibitions on the piling and stacking of rocks." (CMP, 7-10)

The Mauna Kea Cultural Resources Management Plan

The Mauna Kea Cultural Resources Management Plan notes:

"The piling and stacking of rocks (CR-9)

Single rocks and mounds of piled or stacked rocks on boulders and outcrops dot the landscape in the summit area of Mauna Kea. The majority of the 336 "find spots" recorded in the archaeological survey of the Science Reserve as of 2007 are piled and stacked rocks. Such features, which are widespread in Hawai'i, represent a traditional cultural practice which undoubtedly has some time depth, but whose purpose and meaning have probably changed over time. At the same time, there is reason to believe that a large number of the single rock features and small concentrations of pile or stacked rocks on Mauna Kea are modern and that many were constructed by non-Hawaiian visitors in the last decade or so.

The proliferation of such features is undoubtedly a result in part of what is popularly known as the "copy-cat effect." The appearance in recent years of large numbers of rock piles at Hawaii Volcanoes National Park led the Park's committee of cultural advisors to view the construction of such features as a misguided practice resulting in the desecration of Hawaiian culture and, thus, a "cultural sacrilege" (Honolulu Advertiser Nov. 4, 2005). The increase in the number of rock piles and the implications for land managers was discussed in a draft interim monitoring plan developed by PCSI in 2006 (see Section 4.3.1)(CRMP 4.2.1.8)

Management Actions for Piling/Stacking Rocks

1. OMKM shall adopt a policy similar to the one developed at Hawaii Volcanoes National Park to remove modern rock piles that are deemed to reflect a misguided practice.
2. Commercial tour operators shall warn their customers that piling/stacking rocks is disrespectful "because the piles don't belong there" and that such behavior is prohibited. At the same time there should be a campaign to educate the public about the importance of preserving the cultural landscape. This could be done with an informational flier and posted signs where rock piles are most common, such as the area near the VLBA.

A culturally trained staff person shall be responsible for the culturally appropriate removal of rock piles that are made on Mauna Kea." (CRMP 4.2.1.8)

University Hawaii Administrative Rules

In addition, the rule making authority granted to the University of Hawaii regarding rules for the management of Maunakea state, in pertinent part explicitly that the UH's administrative rules must :

"Strive for consistency with the administrative rules of the division of forestry and wildlife of the department of land and natural resources(DLNR) related to forest reserves and natural area reserves;" [§304A-1903] Mauna Kea lands[;] rules.

Therefore, any policy implemented by the OMKM needs to be consistent with the administrative rules of the division of forestry and wildlife of the department of land and natural resources related to forest reserves and natural area reserves whose land surround the UH managed lands on Maunakea.

The OMKM's policies also need to comport with the DLNR's administrative rules that apply to Conservation District Lands.

The OMKM's policy on the placement and removal of offerings will be formalized by the adoption of administrative rules for UH's managed lands.

Department of Land and Natural Resources Administrative Rules

Natural Areas Reserve

HAR 13-209-4, prohibited activities within the Natural Area Reserve

The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement

Forest Reserve

HAR 13-104-4, preservation of public property and resources.

The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g. natural stream beds except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within or on forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board.
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board.
- (8) To distribute or post handbills, circulars, or other notices. Unofficial compilation:
- (9) To introduce any plant or animal except as approved by the Board.
- (10) To enter or remain within forest reserves when under the influence of alcohol, narcotics, or drugs, to a degree that may endanger oneself or endanger or cause annoyance to other persons or property. The use or possession of narcotics, drugs or alcohol within forest reserves is prohibited. [Eff 9/28/81; am and comp 10/15/93] (Auth: HRS §183-2) (Imp: HRS §§183- 2, 183-17) §

Conservation District Rules

HAR 13-5-2 Definitions

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, Unofficial Copy §13-5-2 5-6 mining, or extraction of any material or natural resource on land;

(3) The subdivision of land; or

(4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, noncommercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

§13-5-6 Penalty

(d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

Hawaii Revised Statutes

Conservation District

183C-2 Definitions

"Land use" means:

(1) The placement or erection of any solid material on land;

(2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;

(3) The subdivision of land; or

(4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Historic Preservation Program

§6E-11 Civil and administrative violations.

(a) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section 6E-2, except as permitted by the department.

(f) Any person who violates this section shall be fined not more than \$10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the environmental court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c

306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2

DISCUSSION

Ahu are cultural features (defined as Native Hawaiian cultural features, see CR-7 of the CMP) and not simply the “stacking of rocks.” Ahu are culturally significant and have as their basis a Native Hawaiian traditional cultural practice with purpose and meaning.

There is reason to believe that a 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. (CMP, 2009)

The management policy for piling and stacking rocks could be similar to that recently instituted at Hawai'i Volcanoes National Park (Kubota 2005). A culturally trained staff person will be responsible for the culturally appropriate removal of rock piles that are made on Mauna Kea. Visitors to and users of Mauna Kea will be educated about the importance of preserving the cultural landscape, with particular attention to prohibitions on the piling and stacking of rocks. (CMP, 2009)

Legal consideration

A legal consideration is compliance with existing regulations. The University's managed lands on Mauna Kea are classified Conservation District lands and fall under HAR 13-5 which governs land uses. Land uses are defined in the HAR and may be allowed depending on the type and subzone designation. The rules do not specifically address the construction of cultural features, however the construction of cultural features falls under this definition. Also, newly found stacks of rock that remain become permanent structures that change the land area.

Although rules governing the Mauna Kea Ice Age Natural Areas Reserves (NAR) do not apply to UH's managed lands, the NAR is an integral part of the cultural landscape of Mauna Kea. OMKM recognizes the cultural landscape encompasses the NAR and UH's managed lands and political boundaries should not be a reason for parceling the cultural landscape. Unlike the construction of cultural features, such as shrines and alters (refer to CR-7 of the CMP), OMKM agrees with the NAR rules which prohibits engaging in construction or improvement and removing, damaging, or disturbing geological features or substance.

OMKM believes that the stacking of rocks is a widespread activity and has strayed from its original purpose such as their use as markers which have been replaced with trail boundaries/barriers and signs. While OMKM acknowledges the right of Native Hawaiians to practice and exercise traditional and customary practices, rock stacking appears to have become a ubiquitous activity that is no longer steeped with a cultural purpose but may instead be a result of copycat behavior. Rock stacking appears to be more of a spontaneous activity versus the more deliberate construction of a cultural features such as a lele. Over

the years OMKM rangers reported stacks of rocks appearing along the side of the road side and on the summit. Another example is the numerous lettering and designs made by the placement of rocks along the roadways in Kona.

Historic Sites

Pursuant to HRS 6E-11, it is a violation to injure, destroy or alter any historic property (an historic property includes, for example, any building, structure, object or site that is over fifty years old). The potential exists for the uninitiated to use rocks from an existing historic site to construct a new stack of rocks. A few years ago an OMKM ranger reported a new stack of rocks on the summit, which is designated and registered as a traditional cultural property (tcp) with the State Historic Preservation Division. Some of the rocks used for this new structure were taken from a nearby historic property which is also on SHPD's list of historic properties.

Preserving the cultural and natural landscape

As stated above there was a large number of "find spots" recorded during the archaeological inventory of the Mauna Kea Science Reserve. Many of those were stacks of rocks are now permanent features that dot the cultural landscape.

Seeing stacks of rocks can encourage others who do not understand the cultural purpose of ahu to engage in "copycat" behavior.

ACTION:

The ubiquitous nature, the ease in stacking rocks, and the large number of them in the Mauna Kea Science Reserve, make it nearly impossible for OMKM to manage and control through a permitting process. The potential for further alteration to the landscape from the random and sudden appearance of stacked rocks is very high.

To comply with conservation district rules the OMKM policy is to prohibit the stacking of rocks including the placement of rock to form letters or figures.

- New stacks of rocks which are not permitted shall be removed .
- OMKM shall request a permit from DLNR to place signs with the symbol similar to the one designed by Volcanoes National Park indicating the stacking of rock is a prohibited activity.

Kahu Ku Mauna recognizes that the creation of new cultural features could include the stacking and piling of rocks. Therefore, the policy for CR7 applies to CR9 (see CR-7 for OMKM's proposed policy).