

W

JOSH GREEN, M.D.  
GOVERNOR OF HAWAII



MKSOA BOARD

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POMAI BERTELMANN  
NEIL HANNAHS  
PAUL HORNER  
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\*RYAN KANAKA'OLE  
KALEHUA KRUG  
\*BEN KUDO

LANAKILA MANGAUIL  
RICH MATSUDA  
NOE NOEWONG-WILSON

\*ex-officio

## MAUNAKEA STEWARDSHIP AND OVERSIGHT AUTHORITY (MKSOA)

19 E, Kawili Street, Hilo, HI 96720  
Telephone (808) 272-0259 Fax (808) 933-3208  
Website: <http://dlnr.hawaii.gov/maunakea-authority/>

### PUBLIC MEETING MINUTES

Thursday, August 8, 2024

10:00 am

Online via ZOOM and livestreamed via YouTube

#### AUTHORITY MEMBERS

**PRESENT, Zoom:** Chairperson John Komeiji; First Vice-Chair Noe Noe Wong-Wilson; Doug Adams; Paul Horner; Bonnie Irwin; Lanakila MangaUIL; Pomai Bertelmann; Kalehua Krug; Ryan K.P. Kanaka'ole; Second Vice-Chair Rich Matsuda;

**EXCUSED Members:** Ben Kudo; Neil Hannahs;

**MKSOA SUPPORT:** Jordan Ching, Deputy Attorney General (DAG); Pua'ena Ahn, Executive Assistant, Board Secretary (MKSOA); John De Fries, Executive Director (MKSOA); Lloyd Unebasami, Interim Administrative Services Officer (MKSOA); Bill Stormont, Project Director (MKSOA)

**GUESTS:** Greg Chun, Executive Director (CMS);

#### I. CALL TO ORDER AND WELCOME PROTOCOL

Chair Komeiji called the meeting to order at 10:02 am. Roll call of members present. Opening remarks by Member Bertelmann. 'Oli-'A'ala Lei Maile, establishes biocultural metrics, establishes water flow, specific time and purpose to enter into spaces, offer lens of interaction of strata in honor of land base we come from as we come into conversation.

Commemoration by Chair Komeiji of 1 year anniversary Lāhainā fires, played audio recording of a song in honor of the people of Maui. Due to technical difficulties, recording to be played at the conclusion of meeting.

#### II. PUBLIC COMMENTS ON AGENDA ITEMS

None.

**III. APPROVAL OF THE MINUTES OF THE MARCH 13, 2024  
COMMUNITY MEETING AND MARCH 14, 2024 REGULAR BOARD  
MEETING**

**MOTION:** Motion by 1<sup>st</sup> Vice-Chair Wong-Wilson to approve meeting minutes from July 11, 2024 Regular Board Meeting [subject to technical amendment]. Second by Member Bertelmann.

**ACTION:** The motion was unanimously approved.

**IV. CHAIR REPORT**

No Report.

**V. GOVERNANCE**

- A. VOTE- Creation of Project Management Timeline Permitted Interaction Group (PIG): To investigate project timelines and milestones related to MKSOA's startup and transition phases
- a. Appointment of Chair Komeiji, 1<sup>st</sup> Vice-Chair Wong-Wilson, 2<sup>nd</sup> Vice-Chair Matsuda, Member Hannahs to Project Management Timeline PIG- Reason for creation of PIG is to create goals, timelines and milestones for all projects on our collective figurative plate. Will lay out all projects on an app or document in relation to each others' respective timelines. Reason for Member Hannahs' inclusion is his extensive experience in timelines and organizational charting. Expected to meet and be ready to present report by September or October Board meeting at latest.

Member Irwin: Sunshine question, PIG would have to post report in September and then discuss in next meeting after?

Chair Komeiji: Correct. We will comply with sunshine requirements but want to have something for you to keep you in the loop soon.

**MOTION:** Member Adams Moved to create Project Management Timeline Permitted Interaction Group. Second by Member Mangauil.

**ACTION:** Motion carried unanimously.

**VI. ADMINISTRATION – Public Testimony taken (written or oral) on any of these items**

- A. Report of Executive Director De Fries- Thanks to the Board for the adoption of the

new PIG. Since prior to my joining the Authority, you often hear the term “transition period” but you don’t often hear the phrase “startup,” which is the reality of the situation. We are in the startup phase of the transition period, which has a whole body of work that is not captured in Act 255 that are encapsulated in the startup phase. Appreciative that the Board leadership will be present in creation of a core document that provides real-time updates and opportunities for comment and input. A number of urgent timelines and milestones are now converging.

- a. Status of Request for Proposals- Planning Consultant- Act 255 requires creation of management plan and master plan, one of the questions is whether they can be consolidated into one. Planning is such a sophisticated arena that draft Request for Proposals (RFP) has been created for retention of a consultant, and has been sent to members of Management Plan PIG, asked to respond with comments and recommendations by Aug 20.
- b. Search Process for Permanent Office- Currently working out of 2-workstation office at ‘Imiloa, grateful for it but our needs are expanding. Search for a more permanent facility is underway. A list from the Department of Land and Natural Resources (DLNR) of available properties around Hilo exists, including a former bank building, but we need to go through due diligence. We have the benefit of Project Director Stormont, who has knowledge of vacant DLNR buildings, concern is that some of these buildings have been vacant for so long that needed improvements would be prohibitively extensive. Therefore, our immediate focus is on that other building mentioned.
- c. Personnel Matters- Interim Administrative Services Officer- Going back 90+ days, we have decided to retain and Interim Administrative Services Officer Unebasami, who is now on his second 89-day hire cycle.
- d. UH Board of Regents (UHBOR) Meeting- Mahalo to UHBOR Chair Gabe Lee for his invitation, MKSOA presented on July 18. Member Kudo reported on status of Transition Working Group, which is going through an intense phase, more to come on that group during a later agenda item. Chair Komeiji was given the opportunity to explain how Act 255 is being interpreted by MKSOA, which is not fully aligned with UHBOR but sufficient to make meaningful progress. I had the opportunity to highlight the creation of Joint Management Committee (JMC), MKSOA Board has received memo regarding JMC. Will table further comment until Agenda Item IX. A. and B.

Member Adams: Regarding the RFP- coordinating with Management Plan PIG in an advisory capacity? Just want to confirm that the PIG is not standing in for the full Authority Board?

Executive Director De Fries: What staff is seeking is approval from the PIG to post the RFP.

Member Adams: That’s my concern. Not sure PIG has authority to make any decisions, I would ask our Deputy Attorney General.

Deputy Attorney General Ching: True, the PIG is not authorized to approve, that's for the Authority to do.

Chair Komeiji: Maybe that's what we'll do, have the PIG make suggestions to management and have the Board vote on it.

Member Adams: Does management have the authority to do issue an RFP without the Board's approval?

Chair Komeiji: That is one of the issues that's going to come up in the next agenda item, but we might as well talk about it now. To restate the question, what authority does management have to issue RFPs or enter into any type of contracts. Generally, there has not been an official action by the Board to allow the Executive Director (ED) to enter into a contract or issue an RFP. One of the things we're planning to do in the future is to have a discussion and put before all of you some type of policy which would allow the ED to proceed on RFPs and contracts and we would set whatever boundaries we think appropriate. One of these questions goes back to my belief, which can be discussed later, is that RFPs and contracts are actually management functions and not that of the Board. Management should be bringing these matters before the Board as an "fyi" but not every RFP they issue should necessarily have to come to the Board. But we'll create a policy that will create both boundaries and authority for the ED.

Member Adams: Given that most of these activities are going to run thru the agency that we're administratively attached to, just want to make sure that we don't have something kicked back to us, for example saying that management doesn't have authorization from the Board.

Chair Komeiji: Gentle reminder that we are exempt from [HRS] 26-35, which defines the relationship between administratively attached agencies, so there isn't a legal requirement. For practical reasons we are doing things the way they do, but the exemption from 26-35 gives us more leeway than most administratively attached agencies. That's a good discussion because the ED and I have had extensive discussions about the Authority and what authority he has, going back to his job description and the need for more clarity than it provides. We will be back to the Board with a policy on what authority the ED has as it relates to contracts and RFPs, etc.

Executive Director De Fries: To clarify, for this particular RFP, before there is a future policy, when we receive feedback from the Management Plan PIG, it will go through internal review by senior team, and bring it back to the Board, hopefully at the September meeting. Is that our common understanding?

Chair Komeiji: Yes, we will still have a discussion on what authority the ED has. The RFP itself, if you've never been involved in one is

like 20 pages long, a lot of boilerplate things, it's really long. But one of the things you'll have to focus on is the scope of what this potential consultant is being asked to do.

- B. VOTE- Long Term Transition Working Group (TWG): Request for Authority to enter into, and allocate funds for Special Deputy Attorney General contract.

Deputy Attorney General Ching: Members Kudo and Kudo have asked for counsel to assist with analysis of UH's various types of real and personal property which will be transferred at the end of the transition period, and have asked the Attorney General (AG)'s office for a Special Deputy Attorney General (SDAG) contract through Professional Services Procurement. What is being brought to you is requesting authority for the ED to enter into and allocate funds for this procurement. The way this would work is that the contract would be between the AG's office and the attorney, and MKSOA would be attached as the funding agency. The initial estimate for services is \$392,000 at least until the end of the transition period. However, this may or may not require additional funds, and we'll be monitoring the budget as it goes, and if more are required, we would bring it back to the Board as a request for a supplemental contract.

Chair Komeiji: For those who are unfamiliar with how this works, the AG's Office annually puts out a notice to attorneys who want to work with the State who then apply, AG then compiles a list of these attorneys according to their stated specialties and areas they would want to work in. So, when the need for an attorney came up, the AG's Office has a committee that identified 3 attorneys that they thought were qualified to undertake what we're asking, and then Deputy AG Ching, Members Kudo and Horner settled on one. We now need to figure out and work through any conflicts. Based on the earlier conversation we want to run it by you all and make sure you were comfortable with hiring an assist our side with evaluating how this transfer is going to happen.

Member Horner: Are we still on track for next TWG meeting?

Deputy Attorney General Ching: Need to ask Member Kudo.

Chair Komeiji: The TWG process has stalled a little bit while we were waiting for the attorney, there were a couple meetings that were canceled.

1<sup>st</sup> Vice-Chair Wong-Wilson: Trying to the understand process of hiring an SDAG versus hiring a consultant? The fact of having to comply with sunshine and agendizing the RFP might be the difference. This process of hiring an outside attorney seems a little easier.

Chair Komeiji: Yes, because we're working with the AG's Office off a list of prequalified attorneys, and we can do a Professional Services contract with the one who is determined to be the most qualified. In the other instance, for the Master Plan, we're going through a regular RFP process. DLNR has a similar list of contractors to the AG's. Because of the critical nature of this document and the process, we decided it was best from both a process and perception standpoint to open it up beyond that list.

1<sup>st</sup> Vice-Chair Wong-Wilson: So, we're not restricted to DLNR's list then.

Chair Komeiji: Yes, that's the bottom line. We would make a selection from any of the consultants who want to apply, that's the candidate pool.

Member Adams: To the previous question, both are procurement. Professional Services category is a streamlined procurement process. Because it's being brought up here before the Board, that was my concern with the RFP. My question is, What's the relationship between the SDAG and the AGs office?

Deputy Attorney General Ching: They would be the contractor serving the AG as client formally, for procurement reasons, but working with MKSOA as the funding agency, but the contract is managed by the AG's Office.

**MOTION:** 1<sup>st</sup> Vice-Chair Wong-Wilson Moved for Authority to provide authority for Executive Director to enter into and allocate funds for Special Deputy Attorney General contract. Second by 2<sup>nd</sup> Vice-Chair Matsuda.

**DISCUSSION:** No further questions or discussion.

**ACTION:** Motion carried unanimously.

## **VII. FINANCE**

No report.

## **VIII. OPERATIONAL UPDATE: CENTER FOR MAUNAKEA STEWARDSHIP**

### **A. Report by CMS Executive Director Chun**

- a. CMS Report to UH Board of Regents (UHBOR), 7/18/24:  
Center for Maunakea Stewardship is required to provide 6 month updates to the Regents, part of that update focused on the transition to MKSOA. The 2022 Master Plan outlined a process for any project proposed on the Mauna, whether by the observatories, the University, or theoretically, an outside entity. We go through a review process that classifies projects as minor, moderate and major (Types A, B, C). As requested, MKSOA is now part of the review of Types B and C projects, which requires a permit or some form of approval from DLNR. When a project comes to CMS, we go through an internal review that results in a project proposal. The briefings I've provided to MKSOA on the underground fuel storage tank project is an example of the steps we go through prior to formalizing the proposal, including pre-consultation with our advisory groups. We have now inserted MKSOA into that process per our discussions. Once a project is approved, there are a number of steps CMS is involved in. What has been missing from this process, which is especially critical now that your management team on board, is how does MKSOA plug into other steps in the



process? And not just when we bring a formal proposal. More importantly, what this process does not capture is the fact that there are many things we should be coordinating on that don't require a permit, and don't require this process. There are programmatic things, things that we need to move forward on that are part of an obligation we have, but do not necessarily require a permit. What we've needed and now propose is a structure and a process for working with MKSOA management on other kinds of projects, and at different steps of the process when projects come through. What we are in discussions with your management team about is the establishment of a Joint Management Committee (JMC). To explain at a high level how this process would work, there would be a Maunakea Executive Management Board (EMB), comprised of two UHBOR Regents and two MKSOA Board members, which would replace the Co-Management Working group, different name same function. Next is the JMC, made up of CMS and MKSOA EDs and senior staff, meeting bi-weekly. We propose creating a charter that would define its purpose and how we are going to operate by September. JMC Focus is a list of things are important to discuss and coordinate on, not just B and C projects but strategic issues, Commercial Tour Operator permits, budgets, staffing, etc. Roles of each individual groups, and their respective organizations each have their own legal and regulatory requirements. Need to find a way that each organization respects each others legal obligations. Also need a way to respect each others delegation of authority. As described to UHBOR, CMS has a much more layered decision making process and layers of authority. MKSOA is a lot "flatter" than UH-CMS, each organization has to operate within their own respective delegation of authority, which don't quite line up exactly and we need to respect that. Any disputes or agreements that cannot be reached would go back to EMB, which is what was originally envisioned for the Co-Management working group, and if not resolved there, then the matter would be taken to UHBOR and MKSOA Board. CMS/MKSOA Joint Management Framework outlines what clearly falls into CMS or MKSOA kuleana. On June 28 I had to do my annual report to BLNR, Chair Chang stated that BLNR will hold CMS to what is outlined here as its kuleana. Act 255 clearly states what MKSOA kuleana is, in the details of Act 255 are other things could be added. In the middle is where common overlap is, that can be taken up by the JMC and then to UHBOR and MKSOA Board as needed. It's clear that even if a project or a matter is one or the other's kuleana, discussion and communication is critical. Shared kuleana are more complex and will likely span the 2028 deadline. Some issues cannot move forward without MKSOA completing some of its work. New PIG is really critical because that's where some of the middle ground issues start to get complicated in how we deal with them. Might not always be possible to move middle ground kuleana to one or the other because it may not be clear. TWG may also identify grey area

issues. This is a living document and a living breathing process. Trying to provide some organization and structure to guide the work of the JMC.

Executive Director De Fries: UHBOR was July 18, we convened the first JMC meeting on the 24<sup>th</sup>, we committed to meet every 2 weeks and met on 8/1 so as not to conflict with MKSOA Board meeting. ED Chun has also granted us access to their senior management team to get into the granular aspects of kuleana. The more we meet, the better understanding we have. UH is a mature institution with far more layers. Whereas MKSOA is in startup mode, and we want to keep the entire Board fully informed and updated, which is a different approach to how Boards typically function. Wanting to emphasize the importance of the new PIG, targeting to meet in early to mid-September with the new PIG. New project are coming fast, MKSOA is trying to find our footing, while CMS has a fluidity they need to maintain. What you're looking at now was not in place at the time of the UHBOR meeting.

Member Adams: I would assume that the MKSOA kuleana list will be framed out in more detail in time.

Chair Komeiji: The grey area should be whittled down as much as possible to allocate either to CMS or MKSOA

Executive Director De Fries: Chair Komeiji, you might want to comment on UHBOR Resolution 23-01 that goes back to August 2023, Member Kudo brought up the need for that Resolution to be revised or updated.

Chair Komeiji: Resolution 23-01 basically instructed CMS and UH to undertake certain actions. Certain of those actions are somewhat difficult to undertake due to the enactment Act 255. Member Kudo suggested UHBOR re-look at the Resolution, which I think the UHBOR wants to make appropriate changes in order to not put themselves in an untenable situation. Member Kudo is trying to work with them and assist in rewriting the Resolution. To comment on the two different institutions and the layering, they have to do what they have to do under their governing documents. What I'm trying to do for MKSOA is provide you with information that might not even get to the Regents. Having everyone informed here, to have you participate in decisions that the Regents don't even have to are critical to us moving forward. ED Chun may have the authority to do certain things, but we might want to take particular issues to our Board. The process may be slowed down a little bit but it's important to do so that way.

Member Adams: I haven't spoken to the other ex-officio members, but the other MKSOA board members serving in



addition to the Chair shouldn't be the ex-officio members.

Chair Komeiji: That's an issue we'll bring to all of you when we figure out who to recommend.

Member Mangaul: Is this the appropriate time to discuss specific items?

Chair Komeiji: Expressing concerns is appropriate so that they have guidance from you when they go back and meet.

Member Mangaul: Preset timelines preceding our formation brings certain things into question. Why would an entity that is not going to exist need to create a management plan/master plan that they won't be carrying on? I don't think we were created to just take over what UH puts on us if we are to continue on in the long term. Creating of a master plan should be in our arena. I know that goes up into the higher echelons and requires more discussion. The reason for our formation, although UH has been around for a long time, there is something to be said as to why care over the mountain is being removed from UH. I keep hearing "as fast as possible," but I'm skeptical of things being lined up to get done quickly before 2028. If a whole management plan goes through, created by UH, are we being mandated to carry on something? These are things we need to have discussion on, and I want to look toward the long term while never forgetting why we are here.

Chair Komeiji: My understanding is that we will be creating our own master plan, but we need to start now. That's what the discussion was about the RFP, because these things take a while. There may be items in the UH plan that we can adopt. I know that what Rich was doing with the PIG was identifying what people had concerns about, there might be 50 percent of what's in there that we might want to adopt, but that's going to be our decision. But we're not going to wholesale adopt everything that UH is doing. The conditions that UH is faced with are because UH holds the CDUP, based on the conditions by DLNR, which includes the TMT. The last time, CMS was told in no uncertain terms by the Chair of DLNR that "we are going to hold you to those conditions." Part of the challenge is that those are put on UH that we have no power or authority over. UH should be talking to TMT and DLNR about how the landscape has changed because of Act 255, what should we do about these conditions that are imposed on us? But that's not MKSOA's kuleana. Act 255 has taken away their ability to meet some of those conditions.

Member Mangaul: I definitely agree with that, it's not our responsibility to step into that, but the pressure is on UH to do these things, it is going to end up hitting the wall, which is the

transfer.

Member Irwin: The way I read this table is that UH and CMS are still subject to the current plans and documents, whereas under MKSOA is the new management plan. UH has to abide by the conditions we are currently under until such time as MKSOA has the plans and the rules to move all of this. The JMC is in place to prevent what I think you're concerned about, and I think that these collaborative groups on the Board and on the staff levels are key in order to make sure that this framework works.

Member Mangauil: Definitely, and I can see how things are going to need to be passed back and forth and end up in the middle, or is there going to be their master plan, our master plan, compare and contrast and cut off what doesn't work.

Member Adams: I don't think that the July 1, 2028 being the date of the transition time has to be the case, I would rather see something that's more phased in moving over what's on either side of the grey area. For the sake of the staff that is responsible for implementing what is occurring on the Mauna, the more clear, the better it will be for the folks who take care of it on a day-to-day basis.

Executive Director De Fries: The best estimate is that his new plan that the RFP is calling for doesn't get into its new form until December 2026, of what life will look like on the Mauna on July 1, 2028. One of the concerns I've raised is that between now and December of 2026, is that our staff is operating without a plan. We've recognized through this Joint Management interaction that there are certain elements to their plan that actually align very well with us: smaller footprint, enhanced conservation efforts, enhanced cultural department, etc. There are areas there that we resonate with, and that you resonate with as a Board. But we have to work through this period where we don't have the guardrails of a formalized plan, but we still need to move forward. What I appreciate about the middle ground is that even if we aren't responsible for it, if we don't pay attention to it then we inherit a series of trainwrecks.

Member Mangauil: That's what I'm concerned about, adding speed to that train.

Chair Komeiji: Good discussion, it's a very complex thing we're involved in.

- b. Fiscal Year 2024 (FY24) Annual Report to Board of Land and Natural Resources (BLNR), 6/28/24-: On June 28, gave annual report as required under UH Comprehensive Management plan on the status of the Management Plan itself. That report covered Fiscal Year 23, normally my presentation is scheduled in Jan,

this one was in June. We are already working on the FY24 report. There is a whole process we go through in order to compile that report. I will work on including your management team so they can see how we go about it. You have your annual report to the legislature, we have a somewhat different report we have to provide to the legislature. BLNR members did ask why MKSOA wasn't providing a report, but there is an expectation that some sort of reporting should be done to BLNR. There should be consideration of whether to report to BLNR.

Member Adams: Is there any sort of connection where the Lan Board has oversight over what we're doing?

Chair Komeiji: No, there is no requirement that we provide a report to them.

1<sup>st</sup> Vice-Chair: Nor was there a request.

**IX. JOINT MANAGEMENT COMMITTEE (JMC): CMS Executive Director Chun and MKSOA Executive Director De Fries- Public Testimony taken (written or oral) on any of these items**

- A. Proposed CMS-MKSOA Framework-
- B. Discussions to date related to individual and shared responsibilities between CMS and MKSOA-

**X. EXECUTIVE SESSION**

The Authority, if needed, convenes in Executive Session pursuant to Section 92-5(a)(3) to consult with the Board's attorney on questions and issues pertaining to the Authority's power, duties, privileges, immunities, and liabilities.

**XI. ANNOUNCEMENTS**

- A. NEXT AUTHORITY MEETING- SEPTEMBER 12, 2024, 10:00AM-12:00PM, DOFAW-HILO, 19 E. KAWILI ST
- B. COMMUNITY TALK-STORY MEETING- SEPTEMBER 12, 2024, 6:00PM-8:00PM, HALE 'OLELO- UH HILO, 113 NOWELO ST

**XII. ADJOURNMENT**

Chair Komeiji requested that Member Bertelmann Play "Lahainaluna" by Keali'i Reichel and for Board to reflect on community. Deepest aloha to the people of Lahaina

**MOTION:** 1<sup>st</sup> Vice-Chair moved to adjourn. Member Horner Second.

**ACTION:** The motion was approved unanimously.

Meeting adjourned at 11:28 am.

Approved \_\_\_\_\_