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Without administrative rules, UH lacks enforcement authority to protect the mountain's resources from the impacts of public and commercial activities.

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Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve

Report No. 14-07, August 2014

UH lacks critical rules but progress has been made on other prior recommendations

Rising 30,000 feet above the sea floor, Mauna Kea is a sacred and unique place that is highly valued by the people of Hawai'i and by astronomers, many of whom consider it one of the premier sites for astronomical research worldwide. The Mauna Kea Science Reserve includes a 525-acre astronomy precinct where 12 of the mountain's 13 astronomical telescopes are located. The reserve's remaining 10,763 acres are designated as a natural/cultural preservation area. In response to past concerns about the University of Hawai'i's (UH) and the Department of Land and Natural Resources' (DLNR) management of Mauna Kea and its science reserve, we conducted audits in 1998 and 2005. In this report, we found that UH and DLNR have made progress on implementing many of our previous major recommendations but that some issues remain unresolved.

UH has not adopted administrative rules to establish authority for its Mauna Kea management responsibilities

Our prior audit recommended that UH obtain rulemaking authority for the science reserve. In our follow-up, we found that in 2009, the Legislature granted UH authority to adopt and enforce rules governing public and commercial activities such as access to sensitive resource areas, recreational activities, and commercial tour activities. However, UH does not expect to adopt rules until 2017, due in part to avoidable delays in the rulemaking process. In the absence of rules, UH has relied on unauthorized permits and informal agreements to manage and assess fees on commercial tour activities, which totaled nearly \$2 million between FY2009 and FY2013. Until UH adopts rules, it cannot enforce controls for managing public access nor implement certain actions called for in its management plans, thus hampering its ability to fulfill its responsibility to protect the mountain's resources and ensure public health and safety on the mountain. We urge UH to hasten its rulemaking efforts and obtain Board of Regents' approval for the conditions and fee schedule included in commercial tour use permits.

UH and DLNR's updated plans, leases, and observatory permits provide an improved framework for protecting Mauna Kea lands

Our 2005 audit recommended that UH and DLNR create or revise key documents governing their management of Mauna Kea lands to address confusing management plans and outdated leases and permits. In our follow-up, we found that UH has developed several management plans that provide a comprehensive framework for managing and protecting Mauna Kea while balancing the competing interests of culture, conservation, scientific research, and recreation. We also found that contractual terms and other requirements currently preclude UH and DLNR from updating general leases, subleases, and permits; however, they have taken steps to ensure future agreements provide for adequate stewardship of the mountain and reflect current land management. UH and DLNR need to continue their joint efforts to establish and implement the foundation for improved stewardship of Mauna Kea lands.

Agencies' responses

UH agreed that it must complete the rulemaking process and seek Board of Regents approval for commercial fees. It expressed concern about our emphasis on the absence of rules, and cited the existence of other protections. Regarding permit fees for commercial tour activities, UH stated that in November 2006, the UH president authorized the UH-Hilo chancellor to issue temporary permits effective January 2007 and that the law requiring the UH Board of Regents to set fees in a public meeting was not in effect until 2009. UH disagreed that it lacks enforcement authority, contending its rangers are able to control public access. UH also argued that "open meetings" are not one of the permitted *ex parte* communications listed under DLNR's administrative rules and therefore such meetings could not have occurred without the contested case petitioner's agreement.

DLNR declined to comment on the report.