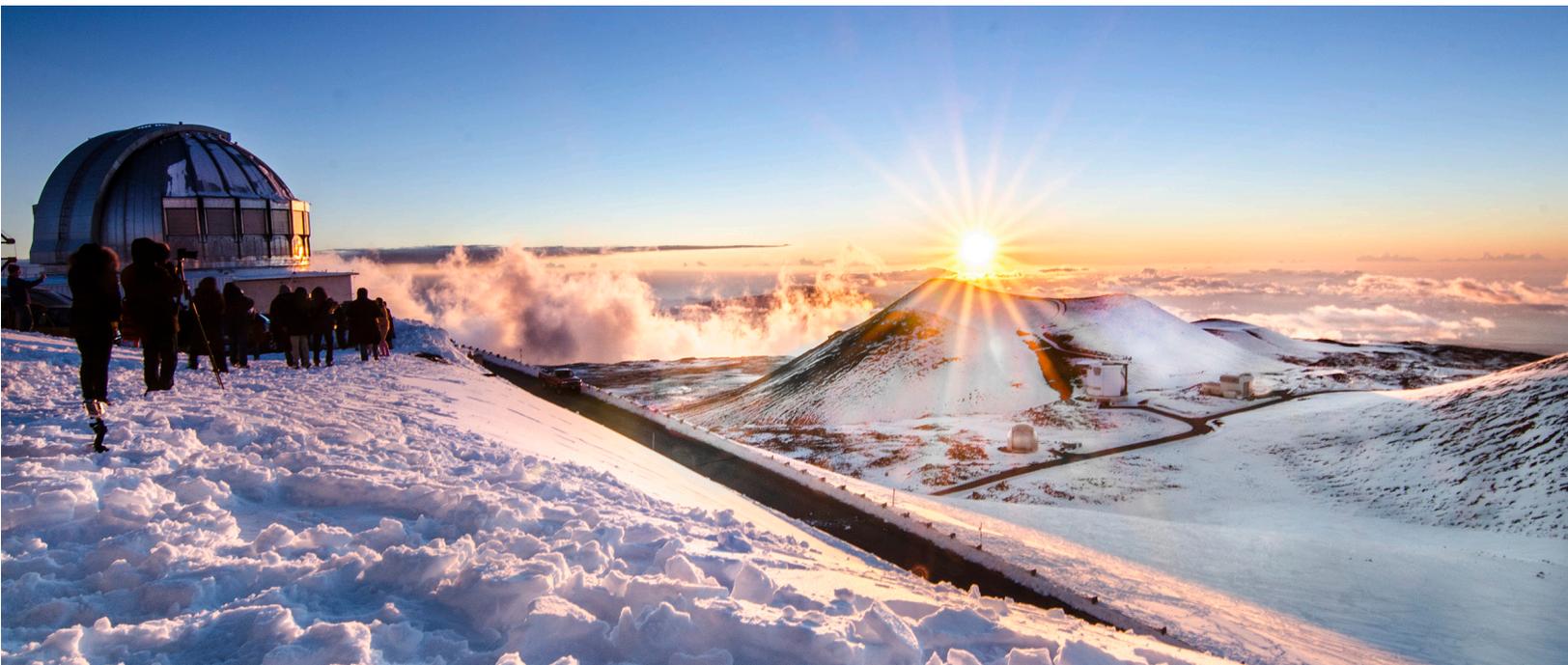

Follow-Up on Recommendations from Report No. 14-07, *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 17-06
July 2017



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<http://auditor.hawaii.gov>



Follow-Up on Recommendations from Report No. 14-07, *Follow- Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*

Section 23-7.5, Hawai‘i Revised Statutes, requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited department or agency. This report presents the results of our review of eight recommendations made to the University of Hawai‘i and the Department of Land and Natural Resources in Report No. 14-07, Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve, which was published in August 2014.

Why we did the 2014 audit

In the past, the Legislature expressed concerns about the State of Hawai‘i’s management of Mauna Kea and the Mauna Kea Science Reserve. Individuals as well as community and Hawaiian organizations

also voiced concerns regarding transparency, accountability, and equity by the University of Hawai‘i (UH) and the Department of Land and Natural Resources (DLNR). In 1998 and again in 2005, the Legislature requested that this office conduct an audit of the management of Mauna Kea and the Mauna Kea Science Reserve. In response to those requests, we issued a 1998 *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 98-6) and a 2005 *Follow-up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve* (Report No. 05-13). In 2014, this office initiated another follow-up audit to assess UH’s and DLNR’s efforts to address our previous findings and recommendations during FY2006 to FY2014. That audit was conducted pursuant to Section 23-4, Hawai‘i Revised Statutes, which requires the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

The Mauna Kea Summit and Science Reserve

The Mauna Kea summit area consists of conservation district lands managed by UH and DLNR. Mauna Kea lands leased to and managed by UH encompass three areas: the Mauna Kea Science Reserve at the summit, the mid-level facilities at Hale Pōhaku, and the Summit Access Road that runs from Hale Pōhaku to the summit. In 1998, 2,033 acres of the 13,321 acres originally leased to UH were withdrawn from the Mauna Kea Science Reserve and are now part of the Mauna Kea Ice Age Natural Area Reserve. Lands adjacent to the Mauna Kea lands managed by UH, such as the Mauna Kea Ice Age Natural Area Reserve and the Mauna Kea Forest Reserve, are managed by DLNR.



PHOTO: THIRTY METER TELESCOPE (TMT)

An Eye to the Sky

PLANS TO BUILD the massive Thirty Meter Telescope (TMT) atop Mauna Kea have become a source of bitter controversy. In October 2014, Native Hawaiian protesters blocked crews from the construction site. The Hawai‘i Supreme Court later rescinded the TMT’s construction permit, and the \$1.4 billion project is

currently in the re-permitting process. If it is completed, the TMT will be the most advanced and powerful optical telescope on Earth. There is an ongoing contested case proceeding regarding the TMT’s application for a permit to build on the Mauna Kea summit.

What we found in 2014

In Report No. 14-07, *Follow-Up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*, we found that UH did not expect to adopt administrative rules until 2017, due in part to delays in the rulemaking process. In the absence of rules, UH was managing and assessing fees on commercial tour activities with permits and informal agreements unauthorized by the UH Board of Regents. We also found that contractual terms and other requirements precluded UH and DLNR from updating general leases, subleases, and permits.

What we found this year

Our follow-up on the implementation of recommendations made in Report No. 14-07, conducted between October 2016 and January 2017, included interviews with selected personnel, examining relevant documents and records, and evaluating whether UH and DLNR's actions appeared to fulfill our recommendations. We found that UH and DLNR have partially implemented four of the recommendations. Three recommendations remain open, and one is inapplicable at this time.

Exhibit 1: Audit Recommendations by Status



Source: Office of the Auditor

Our follow-up efforts were limited to reviewing and reporting on the implementation of our audit recommendations. We did not explore new issues or revisit old ones that did not relate to the original recommendations. The following details the audit recommendations made and the current status of each recommendation based on our review of information and documents provided by UH and DLNR.



DEFINITION OF TERMS

WE DEEM recommendations:

- **Implemented** where the department or agency provided sufficient and appropriate evidence to support all elements of the recommendation;
- **Partially Implemented** where some evidence was provided but not all elements of the recommendation were addressed;
- **Not Implemented** where evidence did not support meaningful movement towards implementation, and/or where no evidence was provided;
- **Not Implemented – N/A** where circumstances changed to make a recommendation not applicable; and
- **Not Implemented – Disagree** where the department or agency disagreed with the recommendation, did not intend to implement, and no further action will be reported.



ADMINISTRATIVE RULES

ADMINISTRATIVE rulemaking is one of the methods by which state agencies carry out their tasks. The purpose of rules is to implement laws, such as those relating to Mauna Kea lands, and to establish operating procedures for state agencies. Generally, statutes provide a skeleton, or superstructure, for state programs; agencies are then required to “fill in the details” and implement those programs on a day-to-day basis. Agencies have considerable discretion in applying the law, particularly where a controlling statute is expressed in general terms.

Recommendation 1

UH should adopt administrative rules governing public and commercial activities as soon as possible, but no later than 2017.

Partially Implemented

Comments

UH completed the drafting of administrative rules and was prepared to begin the necessary public hearing process. However, at the request of the governor, who must authorize the initiation of public hearings for the draft rules, UH has temporarily halted the process of finalizing such rules.

Target Date

Per UH, the estimated date of completion cannot be determined at this time.

Recommendation 2

UH should obtain the UH Board of Regents’ approval for the conditions and fee schedule included in commercial tour use permits issued by UH–Hilo via a Board of Regents open public meeting pursuant to Chapter 92, HRS.

Not Implemented

Comments

UH anticipates that a proposed schedule will be prepared and approved concurrently with the approval of the final administrative rules. A draft schedule has not been prepared yet as UH wants to take into consideration feedback received during the administrative rules process.

Target Date

Per UH, the estimated date of completion cannot be determined at this time.

Recommendation 3

UH should determine whether unauthorized fees collected since FY2007 should be returned to commercial tour operators.

Not Implemented - Disagree

Comments

UH continues to assert that the issuance of commercial tour permits was authorized by the Board of Land and Natural Resources and allows enforcement of permit conditions and the ability to set and assess fines for permit violations and non-compliance.

Recommendation 4

UH should complete Comprehensive Management Plan (CMP) management actions, the implementation of which under the CMP implementation plan is scheduled as “immediate,” as soon as possible, but no later than the end of 2016.

Partially Implemented

Comments

UH has implemented 20 of the 25 total CMP management actions. *(See appendix on pages 10-11 for the list of actions.)*

Target Date

Per UH, the estimated date of completion is December 2017. Feasibility of that date could not be determined based on the scope of our review.

Recommendation 5

UH should further its efforts to renew general leases for UH-managed lands on Mauna Kea by continuing to work with DLNR and proceeding with the Environmental Impact Statement (EIS) process under Chapter 343, HRS.

Partially Implemented

Comments

UH and DLNR assert that securing a new master lease would require an EIS. Such efforts were restarted at the request of the governor following protests against the TMT project, and work is ongoing.

Target Date

Per UH, the estimated date of completion cannot be determined at this time.

Recommendation 6

UH should renegotiate with existing sublessees to amend subleases to include provisions that address stewardship issues, as modeled by the provisions in the 2014 TMT sublease, following execution of the new general leases for UH-managed lands on Mauna Kea.

Not Implemented

Comments

UH asserts that a new general lease needs to be established before sublease agreements can be renegotiated.

Target Date

Per UH, the estimated date of completion cannot be determined at this time.

Recommendation 7

DLNR should continue working with UH to renew the general leases for the UH-managed lands on Mauna Kea and ensure the leases are substantially in the form DLNR's Land Division recommended for approval by the Board of Land and Natural Resources.

Partially Implemented

Comments

UH and DLNR assert that the preparation for seeking a new master lease includes preparation of an EIS. Such efforts were restarted at the request of the governor following protests against the TMT project, and work is ongoing.

Target Date

Per DLNR, the estimated date of completion cannot be determined at this time.

Recommendation 8

DLNR should use additional stewardship-related conditions contained within the TMT observatory permit as a template in all new observatory permits issued for the summit of Mauna Kea.

Not Implemented - N/A

Comments

The TMT observatory permit has been voided. As a result, this recommendation cannot be addressed until the ongoing contested TMT case is fully resolved.

Appendix

Comprehensive Management Plan (CMP) Management Actions Still Open

1. Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.
2. Kahu Kū Mauna shall take the lead in determining the appropriateness of constructing new Hawaiian cultural features.
3. Develop and adopt a management policy for the UH Management Areas on the scattering of cremated human remains.
4. A management policy for the culturally appropriate 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.
5. Develop and implement a signage plan to improve signage throughout the UH Management Areas (interpretive, safety, rules and regulations).

Implemented CMP Management Actions

1. Kahu Kū Mauna shall work with families with lineal and historical connections to Mauna Kea¹, cultural practitioners, and other Native Hawaiian groups, including the Mauna Kea Management Board’s (MKMB) Hawaiian Culture Committee, toward the development of appropriate procedures and protocols regarding cultural issues.
2. Conduct educational efforts to generate public awareness about the importance of preserving the cultural landscape.
3. Develop and adopt guidelines for the visitation and use of ancient shrines.
4. Develop and implement a historic property monitoring program to systematically monitor the condition of the historic district and all historic properties, including cultural sites and burials.
5. Consult with Kahu Kū Mauna about establishing buffers (preservation zones) around known historic sites in the Astronomy Precinct, to protect them from potential future development.

¹ The spelling of the mountain changed to one word in 2014. However, “Mauna Kea” is still used for legal and historical documents, *University of Hawai‘i Style Guide*.

-
6. Develop and implement a burial treatment plan for the UH Management Areas in consultation with Kahu Kū Mauna, MKMB's Hawaiian Culture Committee, the Hawai'i Island Burial Council, recognized lineal or cultural descendants, and State of Hawai'i Historic Preservation Division.
 7. Limit damage caused by invasive species through creation of an invasive species prevention and control program.
 8. Reduce threats to natural resources by educating stakeholders and the public about Mauna Kea's unique natural resources.
 9. Increase communication, networking, and collaborative opportunities to support management and protection of natural resources.
 10. Conduct baseline inventories of high-priority resources, as outlined in an inventory, monitoring, and research plan.
 11. Conduct research to fill knowledge gaps that cannot be addressed through inventory and monitoring.
 12. Develop and implement education and outreach program.
 13. Develop parking and visitor traffic plan.
 14. Coordinate with DLNR in the development of a policy regarding hunting in the UH Management Areas.
 15. Educate management staff and users of the mountain about all applicable rules and permit requirements.
 16. Reduce impacts from operations and maintenance activities by educating personnel about Mauna Kea's unique resources.
 17. Develop and implement a debris removal, monitoring and prevention plan.
 18. Evaluate need for additional public restroom facilities in the summit region and at Hale Pōhaku, and install close-contained zero waste systems if necessary.
 19. Conduct energy audits to identify energy use and system inefficiencies, and develop solutions to reduce energy usage.
 20. Establish a reporting system to ensure that the MKMB, DLNR, and the public are informed of results of management activities in a timely manner.

This page is intentionally left blank.