



**Minutes  
Regular Meeting**

Mauna Kea Management Board  
Tuesday, May 4, 2004

Kūkahau'ula, Room 131  
640 N. A'ohoku Place  
Hilo, Hawai'i 96720

**Attending**

- MKMB:** Chair Arthur Hoke, 1<sup>st</sup> Vice Chair Rob Pacheco, 2<sup>nd</sup> Vice Chair/Secretary Barry Taniguchi, Heather Cole, Jim Kennedy, Barbara Robertson, and Harry Yada
- OMKM:** Arnold Hiura, Stephanie Nagata, Dawn Pamarang, and William Stormont
- Others:** Doug Arnott, Gary Fujihara, Klaus Hodapp, Yvonne Izu, Ron Koehler, Ron Laub, Mike Maberry, Bob McLaren, Tetsuo Nishimura, Antony Schinckel, Ruth Tsujimura, Christian Veillet, and Deborah Ward

**I. CALL TO ORDER**

Chair Hoke called the Mauna Kea Management Board (MKMB) meeting to order on May 4, 2004 at 10:30 a.m.

**II. APPROVAL OF MINUTES**

It was moved by Rob Pacheco and seconded by Jim Kennedy that the minutes of the March 23, 2004 and April 27, 2004 meetings of the MKMB be accepted. The motion was carried unanimously.

**III. DIRECTOR'S REPORT**

Director Stormont stated he does not have anything new to report since the April 27, 2004 meeting.

**IV. COMMITTEE REPORTS**

**A. Kahu Kū Mauna**

None

**B. Administrative Rules, Astronomy Education, Environment, Hawaiian Culture, and Public Safety and Conduct Committees**

None

**V. OLD BUSINESS**

**A. Project Status Designation for the Submillimeter Array's (SMA) Request to Install a Safety Platform on the SMA Hanger Building**

SMA is requesting permission to install a safety platform on its summit hanger building.

Project Summary

1. Purpose

- Provide safer and readily available access to instruments mounted on the hanger roof. Currently SMA uses a forklift to access the roof, but during high wind, snow, and ice conditions they are unable to service the instruments.
- Provide a more stable mount for instruments currently installed on the roof.

2. Description of Platform
  - Dimensions: 23' long by 10' wide.
  - The platform is designed to hold removable hand rails. Except for the side closest to the roof's edge, the handrails are not likely to be attached on a regular basis. The handrail nearest the roof's edge may stay up on a more regular basis for obvious safety reasons.
  - The platform will be positioned away from the edge of the roof reducing visibility from the ground.
3. Construction Activity
  - The platform will be pre-formed off the summit and will be transported in sections to the summit.
  - Instruments now mounted within the area of the proposed location of the platform on the roof will be removed and remounted on the platform.
  - The platform will be mounted 6" to 14" above the roof.
  - Installation will require mainly hand tools and may involve some welding.
  - There will likely be two extra vehicles driving to the site per day during construction.
  - Installation will require the use of one or possibly two forklifts.
  - No excavation will be involved.
  - Construction is anticipated to take two weeks.
4. Impacts
  - Construction activity will be primarily limited to the roof and dust is not likely to be generated.
  - There will be no radio frequency interference or lighting associated with this installation.
  - Noise will be minimal since heavy machinery will not be utilized in the installation.
  - Visibility from ground will be minimal; placement of the platform will be situated away from the edge.
5. Mitigation Measures
  - Contractor will secure, collect and properly dispose of all trash from the site.

#### DLNR Permit

Pursuant to Hawai'i Administrative Rules (HAR) §13-5-22 "construction or placement of structures accessory to existing facilities as identified in the exempt classes established in §11-200-8" do not require a permit from DLNR. The "construction or placement of minor structures accessory to existing facilities" is an exempt activity under HAR §11-200-8.

#### OMKM Recommendations:

1. Based on the following, OMKM recommends this project be classified insignificant:
  - The proposed installation will not significantly alter the exterior appearance or structure of the existing facility.
  - The impact to immediate surroundings and summit region is negligible.
2. If this project is classified insignificant, OMKM recommends SMA be allowed to proceed with the project.

#### Conditions

OMKM recommends SMA:

1. Notify OMKM when it will commence summit construction activities.
2. Adhere to the mitigation measures described in its proposal.
3. Allow OMKM rangers to visit and monitor construction activities.
4. Notify OMKM upon completion of the project.

#### Action

It was moved by Jim Kennedy and seconded by Heather Cole to classify this project insignificant and allow SMA to proceed under OMKM's conditions. The motion was carried unanimously.

## **B. Legislative Matters**

Update to Legislators. As discussed at the April 27, 2004 meeting, Board members agreed it would be helpful to generate correspondence to legislators describing the new Big Island, community based management structure of Mauna Kea. It was suggested that a draft be prepared and circulated among Board members for review and comment.

Senate Concurrent Resolutions. Director Stormont reported that both Senate Concurrent Resolutions 120 and 162 passed in the Senate and crossed over to the House, where they were not heard. Both SCR's are effectively dead.

Visitation and Tour for Legislators. Director Stormont announced the Office will be issuing an invitation to all legislative members to visit Mauna Kea this summer.

**C. Recommendation to Extend the Conservation District Use Application (CDUA) for the Outrigger Telescopes Project.**

At the April 27, 2004 meeting, Director Stormont gave a recap of the status of the NASA/Keck Outrigger Telescopes Project. A question was raised concerning whether it would be appropriate for MKMB to recommend to President Dobbelle that UH request another extension of the CDUA from the Board of Land and Natural Resources (BLNR).

Barry Taniguchi stated it was his understanding that if an extension is not requested and granted, a decision by BLNR has to be made by June 9, 2004. He further added that the public clamored for the EIS, OHA sued for an EIS, and NASA finally agreed to prepare one, so why not wait to examine its results? Everybody felt that the EIS should have been done to begin with, including this Office.

Status of the CDUA. Ms. Yvonne Izu, Deputy Attorney General assigned to the BLNR, was present to answer procedural questions and give a recap of the status of the case. Ms. Izu explained the application underwent a contested case process and the Hearings Officer made recommendations on both the permit and management plan. The BLNR is still deliberating on that application. Under the CDU laws, the BLNR has a certain amount of time to render a decision. If the Board does not take action within that time the application is automatically approved.

Extending the CDUA. Ms. Izu explained that upon the request of the applicant the CDUA may be extended 90 days. Any additional requests for extensions require the approval of the BLNR. There is no limit on the number of extensions. The University has requested several extensions. The last request has a deadline at June 9, 2004 at which time BLNR will need to render a decision. If no decision is made by June 9, the permit is automatically granted.

Federal EIS (FEIS) and State EIS and the CDUA Process. The next regularly scheduled BLNR meetings are May 14, 2004 and May 28, 2004. Pursuant to Sunshine Law requirements agendas require six days posting. However, according to Ms. Izu contested cases are not governed by Chapter 92 Sunshine Laws. Instead it is a Chapter 91 proceeding and the BLNR is not required to make decisions in open meetings. Generally, the BLNR will render signed written decisions.

Jim Kennedy asked if it was in the BLNR's purview to grant the permit subject to conditions, such as successful completion of the FEIS. Ms. Izu replied the BLNR has wide discretion regarding conditions imposed on a permit but such conditions must be clearly stated. When rendering a decision the Board is basically saying they have reviewed all the impacts and based on what they know it is or is not issuing a permit. If the BLNR decided to issue a permit even though it is aware there is a pending FEIS, such a decision could cause problems for the BLNR because it might be based on incomplete information regarding potential impacts.

Ms. Izu explained the difference between the FEIS and State EIS and their relationships to a CDUA. The federal government has its own environmental evaluation process which falls under the National Environmental Policy Act (NEPA). Hawaii's EIS process falls under Hawai'i Revised Statute (HRS) Chapter 343. When federal funding is involved, such as in the case of Outrigger Telescopes project, the developer is required to do some form of federal environmental evaluation. With respect to a CDUA, only the conditions of HRS 343 are required. Even though the content of the federal and state environmental evaluations are essentially the same, each is subject to its own processing procedure. When OHA filed the lawsuit against the federal Environmental Assessment (FEA), it did not challenge the State EA.

No one challenged the State EA and it became final. It is the State environmental document that governs the CDUA. The BLNR is obligated to follow the HRS 343 law and not NEPA. Therefore, because there is an accepted HRS 343 document, the fact that there is a document still being prepared under NEPA does not obligate the BLNR to stop the process until the FEIS is completed. Mr. Taniguchi remarked that it does not prevent the BLNR from wanting to know what is contained in the FEIS. His personal recommendation is that the BLNR should be given the chance to review the FEIS. If the FEIS shows no significant adverse findings then the BLNR can render a decision without having any doubts or questions.

Harry Yada asked whether there would be a loss of time in the development process if UH requested an extension. His understanding is NASA cannot proceed with the project until the FEIS process is complete. Bob McLaren confirmed Mr. Yada's understanding.

Rob Pacheco stated that many groups asked for an EIS in the first place, and that this Office and Board are now asking IfA to request an extension so all the information is obtained before a decision is made. He felt that if information is forthcoming, it will help to make a better decision and we should encourage that. Heather Cole agreed that it was the right thing to do. Mr. Yada stated OMKM recommended an EIS at the beginning and this request is consistent with the original recommendation.

Contested Case Hearing and other appeals. A question was asked that if an extension of time was granted, would the whole contested case hearing start over again? Ms. Izu replied it would not. At the time the FEIS is completed the BLNR would review it and determine whether everything in the document was covered in the contested case hearings. If they were, the BLNR could continue its deliberation of its decision. However, if new information is presented, the Board has the option to tell the Hearings Officer to re-open the case only with respect to the new information presented; or the Board itself can hear what the parties have to say on the new information. Ms. Izu stated it is extremely unlikely BLNR will determine the information is so new they will re-open the entire contested case. Realistically, it takes a tremendous amount of resources for DLNR to open a contested case hearing.

Assuming a positive decision is made, Mr. Taniguchi asked if it could still be taken to Circuit Court and tied up. Ms. Izu commented any permit issued by the BLNR can be appealed first to the Circuit Court, then to the Hawai'i Supreme Court. She stated there is a standard condition in all CDU permits stating that the Board, in issuing the permit, has relied on the information that has been presented by the applicant. If the BLNR later discovers any of the information to be false, incomplete, or misrepresented, BLNR has the option to revoke, suspend, or modify the permit. Ms. Izu also stated that if the permit was approved and there is new information in the FEIS, someone could argue that the Board should re-open the case and revoke, suspend, or modify the permit.

Ms. Cole asked if the CDUA is extended and the FEIS contains a plan to mitigate any negative impacts, wouldn't that be the usual way a developer would handle the results of a FEIS, and wouldn't it apply here? Ms. Izu replied the BLNR has the responsibility to make a decision as to whether the resources are being protected. Mr. Taniguchi felt the mitigation report could then be a condition in the permit.

Deborah Ward commented she is in complete support of this request. She stated it was her understanding the public was not given an opportunity to respond to the management plan. She believes that the denial of opportunity can be resolved by going to court on appeal. Ms. Ward feels the state should be obligated to allow the public to review and respond to BLNR's conditions.

MKMB's and OMKM's role in the CDUA process. Dr. McLaren stated he understood the logic and commented that to date OMKM and MKMB have not been involved in the CDUA process. In fact, it has been the deliberate policy to let the applicant proceed and report back. At this point it seems that OMKM and MKMB are departing from that policy and are getting involved in the CDUA process, at least with respect to recommendations. Dr. McLaren added it might be a good direction to go, but it seemed precedence setting. The MKMB is beginning to accept some responsibility in the conduct of the CDUA process.

Mr. Taniguchi replied he did not appreciate the implications of Dr. McLaren's statements and wanted to clarify that MKMB and OMKM are not changing "policy" but instead, we just want the right thing to be done. We are not recommending the CDUA be approved or disapproved, nor are we for or against astronomy. All MKMB is saying is to let the FEIS come out before the decision is made.

Mr. Pacheco added that OMKM and MKMB were created to provide for public input on the management of the mountain. MKMB's consideration of a request to extend the CDUA is consistent with the purpose of the creation of the Board.

Dr. McLaren asked for clarification, if the CDUA is extended, how long should it be extended? Mr. Taniguchi replied at the very minimum, the extension should be long enough for the draft FEIS to be issued and enough comment period to review it. He emphasized since NASA can't proceed anyway why not wait until it is finalized.

Dr. McLaren asked if following the publication and opportunity to review the draft FEIS, the BLNR made a

decision, would that satisfy the MKMB's perception of addressing the public's concern? In his personal opinion, Mr. Taniguchi replied it would. Chair Hoke added it is more than just the timing. Segments of our community do not trust what has happened in the past, and, therefore to him, this is an attempt to convey to the public the MKMB is representing them.

Dr. McLaren asked if Board members read the Hearings Officer's report. Board members replied they have either read all or at least some of the report, or have been briefed on it.

Mr. Yada stated the comments made on perception are really at issue here. At this point, the UH needs to at least provide indications it is willing to go the extra mile regarding all that has brought us to this point, that which has taken place prior to the Master Plan, the Master Plan process, and the formation of this Board. An indication that UH is willing to do the right thing and go the extra mile to make sure things are done right are what is most important at this time. He felt the most regrettable thing about this is that the whole process has not been the way we'd like it to be. If we were able to turn back time to before the process started, UH might have done things differently. Mr. Yada believes it is time that we change it. It's not a reflection of what may be the merits, or about the EA, EIS, or the impact of Keck. It is UH saying they're going to take the extra step and do it the right way. That UH is going to take every piece of information that needs to be considered in this case and not try to get a decision by default. We don't want a tainted decision; we want a real decision based on all things considered.

Dr. McLaren then asked if the Board was convinced that this will achieve that. Mr. Yada replied he knows if we don't do it, it will achieve the opposite. Mr. Taniguchi added there is a difference in doing things right and doing the right thing.

Mr. Pacheco commented that the Board is not asking for the right to extend, but is recommending to the president that IfA submit a request to extend. It is hoped that the document is out there first and foremost before a decision is made.

#### Action

It was moved by Barry Taniguchi and seconded by Heather Cole to send a letter through Chancellor Rose Tseng to President Dobelle recommending that UH request another extension of the CDUA from the BLNR pending the completion of the draft FEIS. The motion was carried unanimously.

#### **VI. ANNOUNCEMENTS**

Deborah Ward asked if the Board will act on the issue from the last meeting requesting guidance on disassembly or renovations of facilities. Ms. Ward also stated one of the recommendations made by the Hearings Officer was that within two years the OMKM and university come up with a summit-wide management plan. She asked if the Management Board will be directing the OMKM to start working on that. Ms. Wards feels that would be a good faith effort on the part of the university. Board members stated the management plan is being thought of, but it also costs money to do it and there are no resources available now. The Office and Board represents the management plan for the mountain; it is a function that sits with the Office and Board.

#### **VII. NEXT MEETING**

Unless otherwise notified, the next meeting is scheduled for June 22, 2004, 10:00 a.m.

#### **VIII. ADJOURNMENT**

Chair Hoke adjourned the meeting at 11:30 a.m.

Respectfully submitted:

Signed by Barry K. Taniguchi  
Barry K. Taniguchi, Secretary, MKMB

July 20, 2004  
Date