MINUTES

BOARD OF REGENTS MEETING

APRIL 18, 2019

I. CALL TO ORDER

Chair Lee Putnam called the meeting to order at 9:45 a.m. on Thursday, April 18, 2019, at Leeward Community College, Education Building, Room 201A/B, 96-045 Ala ike, Pearl City, Hawai‘i 96782.

Quorum (15): Chair Lee Putnam; Vice Chair Jeffrey Portnoy; Vice Chair Wayne Higaki; Regent Simeon Acoba; Regent Kelli Acopan; Regent Eugene Bal; Regent Ben Kudo; Regent Michael McEnerney; Regent Randy Moore; Regent Alapaki Nahale-a; Regent Jan Sullivan; Regent Michelle Tagorda; Regent Robert Westerman; Regent Ernest Wilson Jr.; and Regent Stanford Yuen.

Others in attendance: President David Lassner; Vice President for Administration Jan Gouveia; Vice President for Community Colleges John Morton; Vice President for Legal Affairs/University General Counsel Carrie Okinaga; Vice President for Academic Planning and Policy Donald Straney; Vice President for Research and Innovation Vassilis Syrmos; Vice President for Information Technology/Chief Information Officer Garret Yoshimi; Vice President for Budget and Finance/Chief Financial Officer Kalbert Young; University of Hawai‘i, Mānoa (UHM) Provost Michael Bruno; Interim UH-Hilo (UHH) Chancellor Marcia Sakai; UH-West O‘ahu (UHWO) Chancellor Maenette Benham; UH-Maui College (UHMC) Chancellor Lui Hokoana; Honolulu Community College (HonCC) Chancellor Erika Lacro; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

II. PUBLIC COMMENT PERIOD

Board Secretary Oishi announced that the Board Office received written testimony from Brian Powell, Chair of the UHM Faculty Senate (UHMFS), offering comments relating to the UHM reorganization plan.

Williamson Chang, provided oral testimony relating to managing disputes regarding Maunakea, noting that lines of communication need to be established. He noted his support for the second round of hearings on the proposed administrative rules, but suggested that the university conduct outreach with alumni and people outside of Hawai‘i and to use this as an opportunity to begin a dialogue.

III. REPORT OF THE PRESIDENT

President Lassner provided a report highlighting the following:

- President Lassner provided an update on the UHM reorganization, noting that UHM is now operating under the interim organization charts approved by the board last month. Administration intends to honor the will of the UHMFS to try to
do the remainder of the reorganization all at once. The re-merging of the Travel Industry Management (TIM) School with the Shidler College of Business and the merging of the College of Language, Linguistics and Literature and the College of Arts and Humanities with the School of Pacific and Asian Studies are being prioritized.

The proposals were developed collaboratively with participants from the affected units, although there is not unanimous support. The details of the proposed reorganizations are available online and the proposals are going through the formal consultation process in accord with applicable policies and procedures. The consultation process is expected to close May 13, 2019. Administration has requested the UHMFS focus on these proposals, with the goal of taking action before the beginning of the next academic year.

- The Phase 2 reorganization has commenced with five new mini-design teams in the areas of educational excellence; student success; research, scholarship, and graduate studies; enrollment management; and equity, climate, and conflict resolution. Each team includes representatives from within the units, stakeholders, and shared governance groups. Groups will work over the summer with the goal of having organization charts and functional statements for the new offices by the end of September. Informal consultation will take place in fall 2019 with the goal of creating a formal proposal by spring 2020 to complete the Phase 2 reorganization at one time as requested by the UHMFS.

Hawai‘i Graduation Initiative (HGI)

- The Legislature approved continuation of Hawai‘i Promise funding for the community colleges, but funding was not extended to the four-year campuses.

- The Legislature approved $455,000 for each of the next two fiscal years for the Hawai‘i Nutrition Employment and Training (HI-NET) program that serves about 290 students on four community college campuses. The added funding will allow UH to expand the program to serve approximately 1,000 students on all seven community college campuses.

Hawai‘i Innovation Initiative (HII)

- A press event was held with the Governor and the Natural Energy Laboratory of Hawai‘i Authority (NELHA) to celebrate the creation of a new sustainable aquaculture accelerator in Kona. These companies will develop aquaculture technologies in Hawai‘i that can advance the state of aquaculture in Hawai‘i and globally. VP Syrmos spearheaded UH’s participation in this endeavor, with NELHA, HATCH, Hawai‘i Strategic Development Corporation, and Hawai‘i Technology Development Corporation (HTDC).

21st Century Facilities (21CF)

- Three credible proposals have been received for the Atherton YMCA project and are being reviewed by the joint UH-University of Hawai‘i Foundation (UHF) team,
with the plan to select one proposal for exclusive negotiation. Regents will be briefed in more detail on the overall project status and selection at the next Committee on Planning and Facilities meeting scheduled for the week of May 1, 2019. For now, administration is working completely within the framework of previously-approved board actions. Executive management is leading and contributing on this project with UHF. There are multiple models for providing student housing capacity in P3 environments, and administration is keeping UHM Interim VC for Students Lori Ideta informed and she will be brought in when administration reaches the point of understanding the selected private partner’s approach to residential life services. VP Young has reported that based on the proposals received, the project is looking very promising.

- Administration receives daily inquiries from faculty, staff, community members, legislators, former regents, and a former governor inquiring whether UH is buying the St. Francis school property. This parcel is a once-every-century opportunity for UH given the size and adjacency to UHM campus. The property is owned by the Syracuse-based Franciscan Sisters, not the local school or its board. His management team has held numerous discussions regarding a potential transaction with parties from St. Francis. He and VP Young will be meeting with the leader of the Franciscan Sisters next month when she is in town. Administration has requested the Legislature provide some revenue bond authority in the budget for this transaction if it were to materialize. There is nothing concrete to report at this time, but administration will brief regents as the situation develops.

**High Performance Mission-Driven System (HPMS)**

- The UHM Men’s Volleyball team is ranked number 2 and will be playing in the Big West Conference Men’s Volleyball Tournament this weekend, and hopefully the National Collegiate Athletic Association (NCAA) Men’s Volleyball Championship in May.

- The Kapi‘olani Community College (KapCC) culinary team has been invited back to the National Finals of the American Culinary Foundation Competition this summer as one of only five teams in the country. He commended Chef Jason Peel and the students for this astonishing achievement.

President Lassner ended his report by sharing a video regarding UH’s participation in producing the first image of a black hole, which provides stronger proof than ever before of Albert Einstein’s Theory of Relativity. In 2017, eight telescopes in strategic locations around the world were focused at the same place in the Messier 87 galaxy for one week to gather data, including UH’s Submillimeter Array Telescope and the James Clerk Maxwell Telescope on Maunakea. These telescopes made up a planet-sized telescope to gather data, truckloads of disks were shipped to central super computers to process, and new algorithms developed to understand the data and eventually create the image. UHH Hawaiian language professor and cultural practitioner Larry Kimura named the black hole Pōwehi, a name sourced from the Kumulipo. At more than 70,000 views, this video is the most-viewed UH News video in history.
Report of the Host Campus

Vice Chancellor Della Teraoka welcomed everyone and shared some highlights of recent student achievements; the inaugural graduating cohort from the Special Education certificate program; efforts to reduce cost barriers to higher education including HI-NET, on-campus food pantry, and no cost textbooks; the parking lot photovoltaic project and other energy efficiency measures adopted by LeeCC that will bring LeeCC to 98% of its net-zero energy goal by late summer 2019; accreditation outcomes and commendations; growth of the Early College program with 14 partner schools; progress on the Acceleration Initiative; expansion of the number of 5-week online courses; and being recognized as a National Center of Academic Excellence in Cyber Defense 2-Year Education. VC Teraoka also discussed challenges facing LeeCC and strategies being undertaken to address enrollment, and graduation and transfer rates.

Regent Kudo arrived at 10:14 a.m.

VC Teraoka ended her report by mentioning two culminating events being held on April 27 and May 4 to celebrate LeeCC’s 50th anniversary.

Vice Chair Portnoy expressed concerns regarding there being no mental health counselor on campus this semester and urged administration to make getting a mental health professional on staff an immediate priority. VC Teraoka explained that filling the position was a top priority last year and an advertisement was placed. She was not sure where things were with the hiring process, but administration wants to fill the position as soon as possible. In the interim, UHWO has been providing support as needed.

Michael Cawdery, LeeCC Faculty Senate Chair, provided a handout summarizing the LeeCC Faculty Senate Chair’s priorities, executive committee priorities, and standing committee record and accomplishments.

Regent Nahale-a inquired as to how LeeCC builds the student-centered culture, and whether it was part of the recruiting process, an orientation component, or through systems in place. Chair Cawdery shared that he meets with colleagues one-on-one to discuss who LeeCC students are, their goals, and community needs, and having real honest conversations about whether the instruction quality is enough to get students where they need to go. There are centers on campus, academic services, and resources allocated to quality instruction, but sometimes the onus is on an individual faculty member’s commitment to quality instruction, but it can be difficult to motivate faculty who may not be interested in quality conversations. Getting quality faculty into the system also plays a big part of the process.

Regent Moore indicated that students that regents met with this morning were very complimentary about the quality of the instruction at LeeCC.

IV. COMMITTEE AND AFFILIATE REPORTS

A. Report from the Committee on Budget and Finance
Committee Chair Moore summarized the committee report.

**B. Report from the Committee on Planning and Facilities**

Committee Chair Yuen summarized the committee report.

**C. Affiliate Reports**

**UH Student Caucus (UHSC):** Regent Acopan reported that the UHSC met on April 6, 2019, at UHMC and received presentations on open educational resources. Issues were raised regarding the ability for instructors to directly communicate with each other when students are having problems. She reminded them about the MySuccess (Starfish) communication system and possible Family Educational Rights and Privacy Act issues. Issues were also raised regarding class availability and students not being able to complete their degrees in a timely manner. She requested delegates collect information on what classes are not available and why students cannot graduate on time, and whether it was a matter of convenience, accessibility, low enrollment, or lack of faculty. She indicated that Emeritus Regent Higa connected with a post-doctoral researcher at the John A. Burns School of Medicine whose biggest concern is parking.

**V. REPORT ON AGB CONFERENCE ON TRUSTEESHIP**

Regent Tagorda reported that there were approximately 800 attendees from 46 states at this year’s Association of Governing Boards of Universities and Colleges (AGB) conference. Outgoing AGB President Richard Legon was recognized for his many years of service and new President and CEO Henry Stoever was introduced. She indicated that purpose of AGB is to help regents/trustees lead with confidence through resources provided by AGB. The ongoing Guardians Initiative helps promote higher education as a private and public good, and emphasizes the role of trustees and regents as advocates for higher education.

Attending this conference helped reaffirm what regents/trustees should do, and reinforced the importance of following best practices of peers across the country. A highlight for her was the opening session speaker Duncan Wardle, former VP of Innovation and Creativity at Disney, who framed what innovation looks like in higher education. Mr. Wardle challenged regents/trustees to ask provocative questions and have foresight regarding the disruption that will occur in higher education in the coming years and react and respond accordingly.

She attended a session on student retention, and the need for regents/trustees to be conscious of the student experience from initial communication through subsequent interactions with students and implementing institutional thinking systems and operationalize board initiatives to support students through the entire spectrum of the student experience.

A session on educational equity emphasized the need to focus on outcomes and experiences of faculty, staff and students, and being cognizant and responsive to how
social and cultural factors impede the success of institutions and be accountable for to
the equity factors that exist in higher education.

There was a lot of emphasis on the effectiveness of board governance, which made
her glad that similar conversations were being held within the committee and as a
board. A plenary session on board governance noted the importance of: having the
right people serve on the board, which is not something that can be controlled, focusing
on the right issues at the right time, and continuing professional development amongst
regents/trustees so the board is continually engaged and can have meaningful
discussions.

Her favorite quote was regarding the need for regents and trustees to “be on the
balcony and not the stage” by focusing on long-term perspectives with the best interest
of the institution.

Regent Bal indicated that this was his second AGB conference and it is a great
opportunity to see the similarities and striking differences between different boards at
public and private higher education institutions. He concentrated on governance
sessions because of his role as Chair of the Committee on Personnel Affairs and Board
Governance. One session focused on the responsibilities of regents/trustees and a list
of governance mishap factors was provided that included: failure to do homework, lack
of engagement, failure to act, failure of quorum, not understanding fiduciary duty, and
lack of board diversity.

Another session on governance assessment called for external, independent review
of the board’s performance. Upon inquiry, the presenters later indicated an internal
review assessed by a third party might be acceptable. The most controversial aspect of
discussions related to assessment of individual regents/trustees. The presenters
indicated that if individual assessments are done, there needs to be awareness of
potential ramifications, specifically with regard to public boards. AGB has done
governance reviews of higher education for North Dakota and Maryland. The attendees
discussed the practices of their governance boards, which is similar to what our
committee does.

There was another session on Institutional Crisis – Making Board Governance an
Asset, and a crisis counseling attorney noted the importance of having a crisis
management and communication plans. Five takeaways included: facts are king, the
truth will come out, legal and public relations are two competing masters, your response
may be as important as the crisis itself, and find unanimity.

The plenary session on board governance that he and Regent Tagorda attended
had very interesting panel members including Shauna Ryder Diggs, a regent from
University of Michigan and incoming AGB Board Chair.

VI. ITEMS FOR DISCUSSION AND/OR APPROVAL

A. For Action Consent Agenda
1. **Approval of Lease Agreement Between the State of Hawai‘i and the University of Hawai‘i Covering a Portion of Sand Island for Snug Harbor Relocation and Marine Education Training Center (METC) Facility Use Purposes, Honolulu, O‘ahu (Tax Map Key No.: (1) 1-5-041: portions of 006, 130, and 334)**

2. **Acknowledge Receipt of the Real Property Development Project Summaries for the University of Hawai‘i – West O‘ahu, Atherton YMCA, and Former Oceanic and Atmospheric Administration (NOAA) Site projects**

3. **Appointment of a Permitted Interaction Group to Review and Make Recommendations on Regents Policies Related to Investments**

Regent Yuen moved to approve the consent agenda, seconded by Regent Westerman.

Regent Acopan indicated she did not have a problem with the materials provided on Atherton YMCA project but wanted to be sure that the concerns that have been raised regarding the scope of the project are being addressed.

President Lassner clarified that this agenda item is a statement that the board accepts the report it received in the Committee on Planning and Facilities, and administration intends to do another full status briefing at the next committee meeting.

Regent Nahale-a expressed concern about the process and the discussions that took place in committee about the role of regents, which was as important or more important than the Atherton issue itself. He found it concerning that there did not seem to be shared understanding of when real estate projects are required to come before the committee or board, and the issue was not resolved.

Vice Chair Portnoy noted that permitted interaction groups (PIG) are not subject to the Sunshine Law, and questioned why the discussions could not take place in a public committee meeting, which is a more transparent process.

Chair Putnam responded that the three board policies regarding investments are convoluted and more substantive reviews and revisions needs to occur. As extensive work needs to be done, the PIG could devote the time needed and accomplish things more efficiently than a committee that meets every other month. The PIG could look at the policies in depth and come up with recommendations for the Committee on Budget and Finance to review, and bring the revised policies to the board for approval. Regent Moore explained that the PIG process allows for transparency by offering time for the public and committee to review the report before discussion of the report at a subsequent meeting and taking action after that. The PIG process was successfully used with the incorporation of fossil-fuel divestment recommendations developed by regents, faculty and students, into the investment policy.

Vice Chair Portnoy requested the item VIA3 be taken off the agenda.

Regent Yuen withdrew his motion, Regent Westerman withdrew his second, and the consent agenda items were taken up separately.
1. **Approval of Lease Agreement Between the State of Hawai‘i and the University of Hawai‘i Covering a Portion of Sand Island for Snug Harbor Relocation and Marine Education Training Center (METC) Facility Use Purposes, Honolulu, O‘ahu (Tax Map Key No.: (1) 1-5-041: portions of 006,130, and 334)**

Regent Wilson moved to approve the lease agreement between the State of Hawai‘i and UH, seconded by Regent Yuen. The motion was put to a vote and carried unanimously.

2. **Acknowledge Receipt of the Real Property Development Project Summaries for the University of Hawai‘i – West O‘ahu, Atherton YMCA, and Former Oceanic and Atmospheric Administration (NOAA) Site projects**

Chair Putnam explained that during an earlier report, President Lassner briefed the board on potential projects being considered. These projects can progress before formal action is brought to the board. The real property development project summaries were an attempt to start a process where the board has the opportunity to understand the goals of the proposed project, parties involved, potential and resource implications and raise concerns early on in the process. It was noted during the Committee on Planning and Facilities meeting that process may not be fully consistent with existing board policy on real estate transactions. Issues raised during the meeting are under consideration and review, but the committee felt that the board should formally acknowledge receipt of information about the projects so the project can proceed with the expectation of formal status reports as projects develop.

President Lassner explained that administration was trying to determine if the format and methodology of the summaries were useful to the regents so they could employ it on other potential projects to keep regents informed.

Questions were raised regarding why this item needs a vote when the intent is only to acknowledge receipt of the summaries.

Regent Acoba explained that when he first joined, the board regents were asked to vote on a contract and he was not aware of any background information being provided. At some point, administration needs to inform the board of the project’s status or the board will run the risk of having to make a decision on a large project within a tight timeframe. These summaries are a way to formalize the process of informing the board early on, provide a record on potential projects, and serve as the basis for future action.

Vice Chair Portnoy moved to acknowledge receipt of the real property development summaries, seconded by Regent Wilson.

Regent McEnerney commented that the information in the summaries was useful, but questioned the need for a vote.

Chair Putnam indicated that she hoped the board could get to a point where everyone understands the process and how it should work, and incorporate revisions to board policy as needed.
Regent Yuen noted that working through the project review process was very educational and provided regents with a better understanding.

There having been a motion that was moved and seconded, the motion was put to a vote and carried unanimously with the exception of Regent Nahale-a voting against, and Regent McEnerney abstaining.

3. **Appointment of a Permitted Interaction Group to Review and Make Recommendations on Regents Policies Related to Investments**

Regent Moore moved to approve the appointment of an Investments Task Group, seconded by Regent Wilson.

Regent Sullivan requested clarification on the purpose and specific goals for the task group. Regent Moore explained that the task group will review the appropriate role of regents with regard to investments, what regents should be doing and they should ask others to do, review asset allocation ranges, whether the board and ASUH should create a perpetual inflation-protected revenue stream of income that can be invested and used for the purposes for which the funds were established, and whether the three separate policies could be condensed into a single, more succinct policy. The task group recommendations will depend on task group discussions, and potentially may not be unanimous. Regent Sullivan expressed her expectation that the goals of the task group will be outlined and that progress reports would be made to the Budget and Finance Committee.

Chair Putnam referred to the scope of the task group and proposed task group leadership and members as contained in the action memo.

There having been a motion that was moved and seconded, the motion was put to a vote and carried unanimously with the exception of Vice Chair Portnoy voting against.

The board went into recess at 11:27 a.m. The meeting reconvened at 11:36 a.m.

B. **Approval to Request the Governor’s Approval to Hold Public Hearings Regarding Amendments to Hawai‘i Administrative Rules Title 20: (A) Chapter 10, “Delinquent Financial Obligations”; and (B) Chapter 12, “Parking and Operation of Motor Vehicles”**

VP Okinaga introduced this item and explained that it is one of the products of the ongoing project to streamline the university’s administrative rules.

Associate Vice President (AVP) for Legal Affairs Gary Takeuchi explained that these minor proposed revisions were a result of the recent approval of Phase 1 of the UHM reorganization, which eliminated the chancellor position. Some of the rules referred to responsibilities of chancellors and the proposed revisions clarify definitions accordingly. A revision is also being proposed for Attachment 1 of Chapter 12, Parking and Operation of Motor Vehicles, to adjust a fine from $260 to $100 to make it consistent with statute. AVP Takeuchi requested the board approve administration’s request to seek the Governor’s permission to take these changes out for public hearing.
Vice Chair Portnoy asked a procedural question as to whether administration was simply asking the Governor for authorization to hold a public hearing without commenting on the substance, or is the implication that by asking the Governor for permission to hold a hearing that the board has preliminarily approved the proposed rules. AVP Takeuchi explained that the request is to obtain the board’s approval to ask the Governor to hold public hearings, but if regents have substantive concerns regarding the proposed amendments that they should be raised before the public hearings are scheduled. After the public hearing, the rules will come back for formal board approval.

Regent Moore moved to approve request to hold public hearings related to Chapters 10 and 12 of the Hawai‘i Administrative Rules, seconded by Regent Acoba, and the motion carried unanimously.

C. Approval of Administration’s Recommendation to Hold a Second Round of Public Hearings on the Revised Draft of Chapter 20-26, Hawai‘i Administrative Rules, entitled “Public and Commercial Activities on Mauna Kea Lands”

Vice Chair Portnoy clarified that he is voting to allow a second round of public hearings and not endorsing the content of the rules.

Chair Putnam clarified that it is not inappropriate at this point to have a discussion if any of the regents feel very strongly about any part of these rules, or regents can vote no or abstain, but the action being considered today is to have rules go out for public hearing in the current form that was publicly announced and noticed.

Regent Moore commented that this is the second time the proposed rules have been before the board. Public hearings were held, lots of public comment was received, and the rules were revised to accommodate comments. If there are concerns about anything in the rules, then it should be discussed now. If a majority of regents do not think something in the rules is appropriate, we do not want to have to go out for a third round of public hearings.

Regent Kudo commented that as part of the rulemaking administrative procedure, rules can go through several iterations after public hearings. He asked if an assumption is made that this second round of hearings is the final round, and changes are made based on comments received, is the university precluded from making further changes originating from regents, staff, or legal recommendation, or would the rules have to go out for another round of public hearings because post-hearing changes were made to the rules.

Associate General Counsel (AGC) Jesse Souki explained that the minimum standards under Chapter 91, Hawai‘i Revised Statutes (HRS), is that a public hearing is held on a draft of the rules prepared by the agency, comments are received from interested parties and those comments must be reviewed and relevant changes can be made can be made to the rules. Section 304A-1903, HRS requires an extra public hearing to be held on Hawai‘i Island, which was done for the first set of public hearings,
but the rest of the process is the same. The changes from the first round of public hearings were taken into consideration and an informal comment period was also conducted. The team working on the rules reached out directly to individuals who made comments and further revisions were made. If the board approves this request and the rules go out for public hearings, if there are any significant changes then another round of public hearings will be needed. He noted that the rules have been in the making since shortly after 2009 when the Legislature granted authority for the Board of Regents to adopt rules on Maunakea, so many comments have been considered.

Regent Kudo inquired on the measure of a “significant” change. AGC Souki responded that determination is made on a case-by-case basis when the rules are reviewed by the Office of General Counsel (OGC).

Regent Acoba requested that OGC review whether after the public hearing an agency itself can make changes and then adopt those changes without having to go back out for another round of public hearings. AGC Souki responded that it is too early to determine whether further revisions may be needed after this second round of public hearings, but if comments are received during this second round of public hearings then regents have the ability to change their minds and make further revisions, even if another round of public hearings is required.

Vice Chair Portnoy noted that the public notice does not suggest that the board is agreeing to the substance of the rules, just that the board is being asked to send the rules out for a second round of public hearings. If the board is being asked to discuss the substance of the rules, he questioned whether public notice was complied with, and proposed possible deferment of the item.

Regent Kudo commented that if regents need more time to consider the rules and make comments that might result in a significant change, then the board should take that time now.

Chair Putnam asked for clarification from OGC regarding what is appropriate at this time based on the agenda wording. VP Okinaga responded that the agenda wording is similar to wording used by other state agencies for the rulemaking process. The regents are approving this proposed draft to go out for public hearing; if regents recommend changes after the public hearing it might result in another round of public hearings. If regents currently have major concerns, they should be addressed now or the matter should be deferred for further consideration.

Chair Putnam noted that regents are also members of the public and as such could provide individual comment at a public hearing.

Vice Chair Portnoy noted that the State of Hawaii spent four years litigating a procedural error made by another branch of state government, and suggested it was best to postpone action for one month, make the agenda as specific as needed, and vote on whether the board approves the rules at the next board meeting to avoid a potential legal challenge of the rules.
President Lassner commented that similar discussions occurred when the rules went out for the first round of public hearings last year. The university and other agencies have used the exact language in accordance with Chapter 91 processes. After the initial round of public hearings, the board was advised in a public meeting that a second round of public hearings was needed. Both the initial draft and this proposed draft have been publicly posted, and press releases asking for public comment were made. Members of administration appeared on statewide public television this morning to invite public commentary on the rules for this meeting. He does not believe there is anyone who cares about these rules that does not understand that the proposed rules will either be amended to go out to public hearing or go out to public hearing as is.

Regent Nahale-a was not in favor of rushing the process or shortchanging opportunities for individuals to weigh in on this important matter, however, he is a proponent of moving forward because the rules are needed and long overdue. The comments from the first round of public hearings were fabulous and the public deserves the opportunity to weigh in again. A good faith effort was made on these rules and if regents can come to an agreement that the proposed rules are close enough that they can consider them fairly when they come back to us with public comments then we should move on them today. There are sensitivities about the Thirty Meter Telescope (TMT) and stewardship of Maunakea, but waiting will not help us get there. Having clear rules and letting the public know how the rules will be enforced will move us forward. He did express concern about the statement in the action memo that seemed to indicate that significant changes to the proposed rules were not expected. Getting public feedback is the purpose of the public hearings and it was unnecessary to project an outcome because the board is going to openly hear comments from the public and make a decision after that point.

Vice Chair Higaki commented that there has been lots of good discussion but noted that there has not been a presentation or motion at this point. He proposed moving forward with the presentation and going through the normal procedure before further discussions take place.

VP Okinaga stated that OGC does not believe there is a legal problem with the agenda item as noticed. In response to Regent Nahale-a’s concern, she noted that significant changes to the proposed rules were not expected because there has been so much formal and informal outreach, comments, and revision through multiple versions of the rules, and she noted the absence of testimony at the instant meeting regarding the rules, including silence from the Office of Hawaiian Affairs.

Regent McEnerney raised a question about the second set of administrative fines on Exhibit A, and why the wording for some fines was “not more than” instead of listing ranges that did not overlap. The violations seemed pretty serious and it looks like there technically could be no fines for each of the 3 violations. AGC Souki explained that the fines are based on the fines the Legislature established in Act 132, which is codified under Chapter 304A. The first set of rules contained what was in statute, and public comment received indicated the fines were high for public activities. In response to those comments, a fee schedule was prepared with ranges, and puts some discretion on the enforcing entity to develop citations based on the schedule and specify the fines.
Another comment received during the informal comment period was the desire for there to be a warning for public activities before a citation is issued, which was incorporated into the rules. The commercial activities fines are higher. Regent McEnerney expressed concern about the fine for firearms potentially being lower than one for snow play. AGC Souki explained that one of the requirements is that fines are consistent with the Forest Reserves and Natural Areas Reserves Rules, and the fines associated with similar violations.

Chancellor Sakai requested the board approve administration’s recommendation to hold a second round of public hearings on the revised draft of the administrative rules for the university’s managed lands on Maunakea. She provided a historical overview of the process and revisions the rules underwent to date. The proposed changes in the revised draft primarily address concerns regarding Native Hawaiian traditional and customary practices, permit requirements for large groups, limits on use of cell phones and flashlights, access by 4-wheel drive vehicles, and structure of fines, more fully summarized in Schedule B. Should this matter be approved, the same number of public hearings will be held in the same areas as last time. Comments and testimony received will be fully considered, and further revisions made if necessary. If no substantive revisions are necessary, the goal is to bring the final draft to the board for approval and submittal to the Governor.

Office of Maunakea Management (OMKM) Director Stephanie Nagata provided a presentation on the significant revisions made since the previous draft as summarized in Attachment B.

Regent Westerman departed at 12:13 p.m. Quorum was maintained.

Regent Sullivan asked for clarification on whether the modification for use of bicycles by written permission was intended to be part of the permit process. Ms. Nagata responded that it was more of a registration. AGC Souki explained that permit or written permission is defined in the definitions section of the rules. It does not necessarily fall under that section, and could be a different process that is developed by the enforcing agency. He added that this does not fall under the permit process and is intended to be a written permission.

Regent Sullivan moved to approve the administration’s recommendation to hold a second round of public hearings on the revised draft of Chapter 20-26, Hawai’i Administrative Rules (HAR), entitled “Public and Commercial Activities on Mauna Kea Lands” [MKR Draft III], seconded by Regent Nahale-a.

Regent Sullivan indicated the comments that she was about to make were not part of this action but were important. She acknowledged the hard work done by everyone who worked on these rules, which are long overdue. Assuming the rules move forward, the university has to be ready to implement them. The management of Maunakea needs to evolve. She encouraged everyone to read the audit report on Maunakea from December 2018 because it is instructive and interesting. If the university wants to manage Maunakea in a unified, thoughtful, efficient, and culturally-sensitive manner then we need to look at the organization of how Maunakea is being managed, which
cannot be done well without making changes. Multiple agencies at UHM and UHH are involved and OMKM receives approximately $2 million and Maunakea Support Services (MKSS) receives $4.5 million, with expenses being spread among the two agencies. There needs to be some comprehensive, unified, management body that can implement the rules in a thoughtful way.

Regent Sullivan asked President Lassner when, if at all, he planned on bringing a proposed new management structure for the management of Maunakea. President Lassner responded that he agreed with everything that was said. He met with the Maunakea Management Board (MKMB) regarding changes to their bylaws that would unify the management program and bring in a stronger cultural component and they are very open to that. What action is required by the Board of Regents is unclear because MKSS is an extramurally funded program and does not exist on any organization chart. A meeting is scheduled for May to discuss detailed MKMB bylaw amendments. These bylaws do not require approval by the Board of Regents, but he is happy to involve the full board in reviewing them.

Regent Sullivan noted that the board approved the creation of OMKM, and with multiple agencies involved she felt that administration needed to look at the whole organization and asked what the timeframe for doing so would be. President Lassner responded that he would work with OGC to determine what the appropriate process with the board might be. The goal is to have the new structure in place around July.

Regent Moore commented that incorporating a more unified management of Maunakea would be good, and suggested that remarks by Professor Chang during public testimony about the communication aspect of management of Maunakea were appropriate and would help create better understanding and dialog. Chair Putnam added that it would be useful for the board to have a better understanding regarding the crisis management and crisis communication strategy administration has in place.

Regent Acoba asked for clarification from OGC on whether we can move forward given the statement in the action memo about not expecting significant revisions to Draft III. VP Okinaga responded that she tried to address that issue earlier, and would rather explain it for the record than try to revise board materials that have already been posted publicly. Chair Putnam suggested that the minutes reflect stated concerns over that sentence in the action memo.

Regent Sullivan clarified her intention for the motion was what she read into the record as the action, nothing more. Chair Putnam added that the only action being approved is administration’s recommendation to hold a second round of public hearings on the revised draft of Chapter 20-26, HAR, entitled “Public and Commercial Activities on Mauna Kea Lands” [MKR Draft III].

Vice Chair Portnoy stated that he will vote to approve sending out the rules to public hearing but indicated he is not in any way ratifying the proposed rules and reserves the right to vote at the appropriate time on the final set of rules.
Regent Bal indicated that the traditional and customary practices seem to be the main issue, and it has been acknowledged that constitutional rights will not be abridged. Anticipating another set of rules and the opportunity for public comment, he asked how solid OMKM thinks the rules are, and whether OMKM expected to receive complaints that would lead to the need for significant changes to the rules. Ms. Nagata responded that a number of comments are expected, but she noted that currently without rules there are no limitations on individuals who want to exercise traditional practices as long as those practices are not criminal or severely impact resources. Those individuals have 24/7 access to the mountain and the rules do not impact their ability to exercise their practices. President Lassner noted that the changes to this section of the rules were the most significant. Complaints and concerns will be received no matter how the rules read. Greg Chun, Chair of MKMB conducted a number of informal consultations with UHM faculty that helped guide the university on this particular approach. These individuals were not in support of TMT, but willing to engage in discussions.

Regent Wilson requested clarification on the motion that was made. Regent Sullivan clarified that the motion was to request the board approve administration’s recommendation to hold a second round of public hearings on the revised draft of Chapter 20-26, HAR, entitled “Public and Commercial Activities on Mauna Kea Lands” [MKR Draft III].

The motion having been moved and seconded was put to a vote.

Regent Acoba indicated that he voted with the motion insofar as it puts out the rules for a second public hearing, but not any of the action memo or printed recommendation from administration.

The motion carried unanimously, with the exception of Regent Westerman who was excused.

D. Approval to Elevate the Donor Recognition Naming Opportunity for the Hon Kau and Alice Lee Endowed Faculty Fellowship to the Hon Kau and Alice Lee Distinguished Professorship at the University of Hawai‘i at Mānoa Shidler College of Business
E. Approval of the Establishment of the First Insurance Company of Hawai‘i Distinguished Professorship in Insurance at the Shidler College of Business, University of Hawai‘i at Mānoa
F. Approval of the Re-Naming of the First Insurance Company of Hawai‘i Distinguished Professorship at the Shidler College of Business, University of Hawai‘i at Mānoa

Provost Bruno gave an overview on all three items related to the UHM Shidler College of Business and noted that these professorships continue to elevate the college and attract some of the best faculty.

Regent Moore moved to approve all three agenda items, seconded by Vice Chair Higaki, and the motion carried unanimously.
Chair Putnam indicated that agenda items VI.G., Legislative Update, and VI.H., Performance Evaluation Process for the President of the University of Hawai‘i, would be taken after Executive Session.

VII. **EXECUTIVE SESSION (closed to the public)**

Upon motion by Vice Chair Higaki, seconded by Regent Bal, the board unanimously approved convening in executive session to consult with the board’s attorneys on questions and issues pertaining to the board’s powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(a)(4), Hawai‘i Revised Statutes (HRS), and to consider the hire, evaluation, dismissal, or discipline of an officer or employee, where consideration of matters affecting privacy will be involved, pursuant to Section 92-5(a)(2), HRS.

The meeting recessed at 12:53 p.m. Regent Acoba recused himself from the quarterly status report on litigation portion of executive session.

Vice Chair Portnoy departed at 1:19 p.m., Regent Kudo departed at 1:57 p.m., and Regent Yuen departed at 2:07 p.m. Quorum was maintained.

The meeting reconvened at 2:09 p.m. Chair Putnam noted that the board went into executive session to discuss legal matters and personnel matters as indicated on the agenda.

VIII. **ITEMS FOR DISCUSSION AND/OR APPROVAL (cont.)**

A. **Personnel Actions (A-1 for Approval)**

Regent Wilson moved to approve the personnel actions on Attachment A-1, seconded by Vice Chair Higaki, and the motion carried unanimously with the exception of Vice Chair Portnoy, Regent Kudo, Regent Westerman, and Regent Yuen, who were excused.

G. **Legislative Update**

VP Young provided an update on legislative measures of interest including budget bills, UH legislative initiatives, measures relating to the board and governance, measures relating to UH operations, and board nominees.

VP Young noted that although the primary legislative appropriations bill, House Bill No. 2, had been signed into law, there are still some outstanding components such as the capital improvement program budget. He highlighted Senate Bill No. 33, which modifies the Film Production Income Tax Credit and includes provisions relating to UHWO and the HTDC entering into an agreement relating to a parcel of land, and noted that the bill is prescriptive in its nature and they are working with the Department of Business, Economic Development, and Tourism on the bill.

Chair Putnam requested VP Young provide another legislative update at the May board meeting.
H. Performance Evaluation Process for the President of the University of Hawai‘i

Chair Putnam announced that at the next board meeting, the president would provide in open session an update on his progress in relation to the three roles of chief executive officer of the board, the University of Hawai‘i System, and the University of Hawai‘i, Mānoa, as identified in the recently revised Regents Policy 2.202, Duties of the President, as preparation for discussion in Executive Session in July for evaluation of the president and to establish shared goals and priorities moving forward.

IX. ANNOUNCEMENTS

Chair Putnam announced the next board meeting is scheduled for May 16, 2019, at Windward Community College.

X. ADJOURNMENT

There being no further business, Regent McEnerney moved to adjourn, and Regent Wilson seconded, and with unanimous approval, the meeting was adjourned at 2:32 p.m.

Respectfully Submitted,

/S/

Kendra Oishi
Executive Administrator and Secretary of the Board of Regents