I. CALL TO ORDER

Chair Ben Kudo called the meeting to order at 9:46 a.m. on Thursday, November 6, 2019, at the University of Hawai‘i at Hilo, Performing Arts Center, 200 W. Kawili Street, Hilo, Hawai‘i 96720-4091.

Quorum (12): Chair Ben Kudo; Vice-Chair Jan Sullivan; Vice-Chair Wayne Higaki; Regent Simeon Acoba; Regent Kelli Acopan; Regent Eugene Bal; Regent Michael McEnerny; Regent Randy Moore; Regent Alapaki Nahale-a; Regent Michelle Tagorda; Regent Robert Westerman; and Regent Ernest Wilson Jr.

Others in attendance: President David Lassner; Interim Vice President for Community Colleges Erika Lacro; Vice President for Legal Affairs/University General Counsel Carrie Okinaga; Vice President for Research and Innovation Vassilis Syrmos; Vice President for Information Technology/Chief Information Officer Garret Yoshimi; University of Hawai‘i at Hilo (UHH) Chancellor Bonnie Irwin; 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 numerous written testimony offering comments on agenda items relating to agenda items III.A. and III.B. Written testimony may be found on the board website as follows:

- Written Testimony Comment Received
- Written Testimony Comment Received 2
- Late Written Testimony Comment Received
- Late Written Testimony Comment Received 2
- Late Written Testimony Comment Received 3
- Testimony Received at Meeting

The following individuals provided oral testimony related to Maunakea or TMT: Dr. Henry Lee Loy; Keala Lee Loy; Lukela Ruddle; Wally Ishibashi; Roberta Chu, Chair of the Maunakea Management Board (MKMB); Doug Simmons, Director of Canada-France Telescope and Vice Chair of MKMB; Hilton Lewis; John O’Meara; Rich Matsuda; Jessica Dempsey; Keoni Turalde; Dr. Noe Noe Wong-Wilson; Jimmy Naniole; Moses
Kaho’okele Crabbe; Gerri Perreira; Kealoha Pisciotta; Healani Sonoda Pale; Fred Perreira Jr.; Keala Leong; Calvin Hoe; Deena Oana-Hurwitz; Jessica Luning; Kiana (Ku'ulei) Perreira-Keawekeane; Gene Tamashiro; Peter Young; Mark Panek; Lisa Malakaua; James S.; Nalani Goeas; Abraham K. Poai Jr.; Kris Kindschuh; Catherine Robbins; Tom Peek; Nelson Ho; Pumehana Howard; and Jim Albertini.

The board recessed at 12:49 p.m. and reconvened at 1:30 p.m.

Oral testimony continued with the following individuals providing comments related to Maunakea or TMT: Dave Wilson; Loke Aloua; Ilima Decosta; Tiele Doudt; Zion Tamashiro; Kaulana Stanley; Noel Tagab-Cruz; Lanihuli Kanahele; Maile Lavea-Malloe; Cody-Fay Alameda; Kyle Sabate; Punaha; Darren John Hauanio; Keikiokalani Billionaire; Hanalei Fergerstrom; Lanny Sinkin; Debbie Ward; Kamanawa Kinimaka; Ernelle Downs; Emily Peavy; Mala Landt; Carolyn Pellett; Grace Bezilla; G. Kamaka Mahi Gunderson; Presley Ke'alaanuhea Ah Mook Sang; Halealoha Ayau; Denise Kauwale-Medieiros; Kekai Lindsey; Greg Johnson; Tania Aubid; Keenan Cyrus Gonzales; Geronimo Huberas; Davin Vicente; Shiye Bidzill; Ana Kahoopii; Danny Li; Raven; Rich Schott; Millicent Cummings; Tanya Aynessazian; Lynal Nosaka; Kacie Kunioka-Volz; Scott Spencer; Keala Fung; Kini Burke; Cory Harden; Nāko'olani Green; Micah Stephenson; Shana Logan; Savannah Mariani; Kennedy Hanohano; and several unidentified individuals.

Regent Acoba and Regent Acopan left at 5:50 p.m.

The board recessed at 6:38 p.m. and reconvened at 6:46 p.m.

III. AGENDA ITEMS

A. Final Report and Dissolution of the Maunakea Governance Permitted Interaction Group and Approval of Resolution to Act on Items Relating to Maunakea Management, including Budget Items

Chair Kudo summarized the written Maunakea Governance Permitted Interaction Group (MIG) report. The findings and recommendations were as follows:

A. The MIG recognizes the complexity of the issues related to Maunakea and that Maunakea has become a symbol of Native Hawaiian self-determination. It also recognizes that the University has been criticized for past and present mismanagement of Maunakea.

B. The MIG recognizes that the Board has the ultimate responsibility to fulfill and carry out all of the recommendations, obligations, and duties identified in the Mauna Kea Science Reserve Master Plan (2000), Mauna Kea Comprehensive Management Plan UH Management Areas (2009), A Cultural Resources Management Plan for the University of Hawai’i Management Areas on Mauna Kea (2009), Natural Resources Management Plan for the UH Management Areas on Mauna Kea (2009), Public Access Plan for the UH Management Areas on Mauna Kea (2010), and Decommissioning Plan for the Mauna Kea Observatories (2010).
C. The MIG recognizes the need to collectively do better with regard to efficiency, effectiveness, and transparency in the functional structure of Maunakea management, and that this should be undertaken with urgency while considering the perspectives of multiple stakeholders.

D. While some progress has been made with regard to fulfilling audit findings and other deficiencies, progress has been slow in other areas, particularly in the decommissioning of observatory sites that were previously identified.

E. Maunakea is a special place to all of Hawai‘i, and Native Hawaiian cultural practices need to be acknowledged in planning for the use of Maunakea.

F. The MIG recommended:

- Adoption of University of Hawai‘i Board of Regents Resolution to Act on Items Relating to Maunakea Management (Resolution 19-03). Resolution 19-03 as introduced included twelve specific action items:
  1. Two (2) observatory sites known as the Caltech Submillimeter Observatory and Hokukea site shall be decommissioned no later than April 30, 2021. For purposes of this resolution, the term “decommissioning” shall mean the complete removal of all man-made structures at each respective site bringing each site to as close as feasible to its natural state prior to construction. These will be the first two of five observatories to be decommissioned.
  2. A schedule of decommissioning of these two sites will be laid out on a Gantt chart or other similar visual schedule for each of the above sites indicating function and timeframe for each major step in the decommissioning process to achieve completion on or by April 30, 2021. The schedule for decommissioning shall be presented to the Board of Regents on or before its February meeting 2020.
  3. A new educational telescope facility for the University of Hawai‘i at Hilo shall be established on already developed land at Hale Pohaku or elsewhere, as soon as can be permitted, with a target date no later than April 30, 2021 to ensure the prompt availability of a teaching telescope. The Regents shall support the funding of the planning, design and construction of the new educational facility.
  4. A third (3rd) observatory site known as the United Kingdom InfraRed Telescope (UKIRT) shall be decommissioned no later than December 2024. A Gantt chart or other similar visual schedule shall be provided to the Board of Regents by December 31, 2022. This will be the third of five observatories to be decommissioned.
  5. Since the fourth (4th) observatory site known as the Very Long Baseline Array (VLBA) observatory is already scheduled to be decommissioned by December 31, 2033, the last of the five sites to be decommissioned will be
identified and designated to the Board of Regents on or by December 31, 2022.

6. In collaboration with OMKM and MKSS, the ʻImiloa Astronomy Center shall develop a suite of educational programs regarding Maunakea including but not limited to Native Hawaiian culture, history, environmental and biological considerations designed for tour guides and drivers, employees, contractors, recreational users, scientists and observatory workers and visitors, as required by the Management Plans, by August 31, 2020. OMKM shall report to the Board of Regents on its plans and progress to implement said educational programs at its February meeting 2020. Administration shall make a budget request during the 2020 legislative session to fund this action item.

7. Administration shall make a CIP request during the 2020 legislative session for monies to plan, design and construct an educational center at Hale Pohaku and/or another appropriate site on Maunakea that will educate visitors on cultural, environmental and astronomy related topics relating to Maunakea.

8. The Mauna Kea Science Reserve Master Plan update will accommodate uses by Native Hawaiian cultural practitioners.

9. A reorganization and restructuring plan shall be presented to the Board of Regents as to all advisory, operating and funding bodies involved in the management of Maunakea by April 2020. The purpose of the plan is to improve the operations and management and make it more efficient, effective and transparent. The reorganization and restructuring plan shall be embodied into a governance document that is approved by the Board of Regents.

10. As part of the reorganization and restructuring plan, an in-depth analysis will be done to determine whether the management of the Maunakea Science Reserve would be better served if transferred to a governmental authority, or other third party entity or through alternate management mechanisms, e.g., conservation easement agreement. The results of this analysis will be presented to the Board of Regents by April 2020.

11. The University will cooperate with the Department of Hawaiian Home Lands (DHHL) to resolve any outstanding issues relating to the roadway infrastructure on Maunakea and will seek opportunities to assist DHHL in its efforts to fulfill its trust duties and responsibilities on the use of its Maunakea lands; and

12. As permitted by law, the University should pursue a partnership with an appropriate agency or organization whose primary beneficiary is the native Hawaiian community, to operate commercial shuttles and tours on Maunakea.

• The dissolution of the MIG.
Chair Kudo added that since the public posting of Resolution 19-03, numerous entities contacted the board regarding how the resolution could be improved, and the MIG agreed that certain changes should be made.

Vice-Chair Sullivan made a motion to make amendments to Resolution 19-03 as follows:

(1) In paragraphs (1), (2), and (3) of the first “be it resolved” clause, revise the deadline from April 30, 2021, to December 31, 2021;

(2) Deleting the language in paragraphs (4) and (5) pertaining to UKIRT and VLBA and replacing it with: “On or by December 30, 2025, a determination will be made on the decommissioning of three (3) additional observatory sites based upon compliance with existing or future permits or governmental approvals. If decommissioning is required, the three (3) observatory sites will be identified and reported to the Board of Regents by January 2026.”;

(3) In renumbered paragraph (8) pertaining to a reorganization and restructuring plan, adding requirements that consultation occur with additional groups including MKMB, Kahu Kū Mauna, ‘Imiloa Astronomy Center, existing Maunakea Observatories, and other community stakeholders; and

(4) In renumbered paragraph (9) pertaining to analysis of the reorganization and restructuring plan, adding similar consultation requirements with additional groups.

Regent Wilson seconded the motion.

Regent Moore noted that much of the testimony received regarding the resolution mentioned that discussion had not occurred with community groups or stakeholders, and suggested deferring the matter to allow for further input on the proposed amendments. Chair Kudo responded that discussions have occurred and that the amendments, specifically with regard to consultation requirements, were proposed to address these concerns. Chair Kudo added that the resolution is intended to provide direction to the administration to perform due diligence and report back to the board.

Regent McEnerney commented that several testifiers referenced not having sufficient time to review over 1600 pages of materials and clarified that the material is not new, as the majority of it was provided with the materials for the October 17, 2019, board meeting.

Regent Westerman appreciated the proposed amendments to reflect the concerns raised in testimony by including additional stakeholders, but was concerned that it did not include all of the necessary parties. Chair Kudo replied that the proposed language, “appropriate members of the Hawai‘i Island community,” would allow flexibility to include the necessary parties.

Regent Bal was supportive of the proposed amendments, but expressed sensitivity toward the testimony of the National Science Foundation (NSF). Chair Kudo explained
that the proposed language was provided to an NSF representative who indicated they were in concurrence and that they wanted to be included in the decision making process.

Regent Nahale-a and Vice-Chair Higaki expressed support for the proposed amendments but noted the sensitivity toward the selection and inclusion of community stakeholders. Chair Kudo noted the importance of providing direction to the administration in a timely manner to allow them to address the various issues, but is also sensitive to the testimony received; he added that he will work with the President and others with regard to community participation efforts.

Regent Moore reiterated the suggestion to defer this matter based on the process, not the content. Chair Kudo expressed frustration over the permitted interaction group process under the Sunshine Law and noted that it is not conducive to having a “town hall” type of meeting and that the law does not allow for a long-term permitted interaction group. Regent McEnerney agreed with Regent Moore’s suggestion, if it could be addressed at the November board meeting, but did not think it should wait until next year.

Regent Nahale-a agreed with Chair Kudo’s sentiment that the permitted interaction group constraints are not conducive to the process people desire, and added that he is inclined to move forward as long as Chair Kudo works closely with administration and if concerns about inclusiveness of the community are addressed. Regent Nahale-a requested that regular reports be provided to the board with regard to the groups being included in the discussions. President Lassner concurred and suggested that quarterly reports be provided.

There having been a motion that was made and seconded, a vote was taken, and the motion to amend Resolution 19-03 carried.

Vice-Chair Sullivan made a motion to adopt Resolution 19-03 as amended, and Regent Wilson seconded. Regent Moore noted that he would be abstaining and expressed concern about not having an opportunity to review the resolution as amended. All others voted in the affirmative and the motion carried.

B. Approve Adoption of Chapter 20-26, Hawai‘i Administrative Rules (HAR), entitled “Public and Commercial Activities on Mauna Kea Lands,” and transmittal to the Governor for Final Approval

Chancellor Irwin requested the board adopt Chapter 20-26, HAR, entitled “Public and Commercial Activities on Mauna Kea Lands, noting that 1998 audit findings highlighted the implementation of administrative rules as an important component in regulating public and commercial activities on Mauna Kea. She added that the university did not have the authority to adopt administrative rules until authorized by the Legislature in 2009. Chancellor Irwin emphasized that the proposed rules are not intended to hamper cultural practices. Two rounds of public hearings on the proposed rules were conducted in 2018 and 2019, and other opportunities for input were provided through various means.
Associate General Counsel (AGC) Jesse Souki provided an overview of the proposed rules which is intended to balance public and commercial activities with the need to avoid and minimize impacts to environmental, cultural, and scientific resources. He provided an overview of the milestones completed, legislative purpose and intent, the rulemaking process, public outreach and consultation, that included the Office of Hawaiian Affairs, process, the public hearing process, which included four hearings on Hawai‘i Island, Native Hawaiian traditional and customary rights, the concerns raised and addressed through the public comment process, and next steps.

AGC Souki noted that the purpose of group registration is to notify UH land managers that large groups of people will be present within UH management areas. Prior notice of large groups, ensures, among other things, the UH resources are available to provide emergency services and guidance to avoid impacts to cultural, environmental, and scientific resources, which is a concern with large groups in sensitive areas. This requirement is consistent with Department of Land and Natural Resources (DLNR) rules for lands adjacent to UH managed areas in the Natural Area Reserves (NAR) and Forest Reserve (FR) systems, except that DLNR rules require permits while the subject rules only require registration. He added that fines are set by statute and are not as high as those set by DLNR. He also noted that Lake Waiau is not in the UH-managed area.

Chair Kudo noted that numerous testimony was received expressing concern that the proposed rules would hinder cultural practices. He asked what assurances are in place that the rules will not be used in such a manner. AGC Souki replied that the rules do not define or regulate culture, no permits are required to access UH management areas, and the rules are consistent with existing NAR and FR rules. The proposed rules would require registration for groups of ten or more. Chair Kudo wanted to ensure that the rules are not misapplied. Chancellor Irwin suggested that policies could be put into place to ensure proper application of the rules.

Regent Moore expressed that a registration process is appropriate, but questioned why 15 days advance notice is required and that it seemed excessive. He added that he hoped an electronic registration process could be implemented.

Vice-Chair Higaki asked whether there is any data on how many groups of ten or more have accessed the area. AGC Souki did not have that information readily available and noted that the number came from the FR rules. Vice-Chair Higaki surmised that there aren’t many groups of ten or more that are not Native Hawaiian practitioners, and questioned the necessity of the group registration.

Dr. Greg Chun, Executive Director of Maunakea Stewardship, noted that the rules were intended to be agnostic to the purpose of the activity and to focus more on the potential impact to the resource, and that larger groups have potentially larger impacts. He added that it doesn’t happen often and that he was unsure of the proportion of cultural practitioners and other uses, and that uses he is aware of tend to be educational in nature.
Further discussion occurred regarding the group registration process. Some expressed appreciation for a registration process for health and safety purposes. AGC Souki noted that in an effort to be consistent with FR, consideration was given to a permitting process for groups of ten or more, but it was modified to a registration process in response to feedback from community groups that a permit process was too burdensome.

Vice-Chair Higaki suggested removing the registration process altogether. Regent Nahale-a suggested that an alternative would be to exempt cultural practitioners from the registration process. Dr. Chun noted that the rules are intended to ensure the protection of cultural and natural resources, regardless of the nature of the activity. Regent Nahale-a and Vice-Chair Sullivan expressed support for removing the registration provisions from the rules. Regent Moore suggested that there be a simple sign-in process for people accessing the area to allow an opportunity to educate those who are unfamiliar with the area.

Questions were raised as to whether removal of the group registration process in the proposed section 20-26-62, HAR, would constitute a “substantial” change that would require additional public hearings. VP Okinaga explained that the rules will be reviewed by the Department of the Attorney General who will make a recommendation as to whether revisions are considered substantial.

Regent Nahale-a reiterated his concern about barriers to cultural practitioners. VP Okinaga stated that the provision was never intended to be about cultural practitioners and suggested including language referring to cultural protections under the constitution. She added that the provisions were also intended to manage groups, as well as to protect the safety of personnel, in addition to visitors.

Vice-Chair Higaki stated that he would not support the proposed rules if the group registration provisions remained. Chancellor Irwin recommended removing section 20-26-62, HAR. AGC Souki requested that if the provisions are removed, that the board allows for latitude to remove any associated references within the document.

Regent Moore moved to approve the rules with an amendment to section 20-26-62, HAR, to read: “Any group larger than ten (10) members shall be required to sign in in advance prior to proceeding past Hale Pohaku.” [emphasis added] The remainder of the language in the section would be deleted. The motion also included a requirement that the president report back one year following implementation. There was no second. The motion failed.

Vice-Chair Sullivan suggested the following language instead: “Any group larger than ten (10) members shall be required to sign in at a location designated by the president or his designee.” VP Okinaga noted that enforcement may be an issue and that the point of having notice in advance is to ensure the availability of sufficient staff.

Vice-Chair Sullivan made a motion to adopt the draft rules with an amendment to section 20-26-62, HAR, by replacing that section with: “Any group larger than ten (10) members shall be required to sign in at Hale Pohaku or by another convenient means...”
as designated by the president,” and any other conforming changes that would result from the amendment. Regent Wilson seconded the motion.

Vice-Chair Higaki expressed that although it is important to implement rules, he felt strongly that he could not support the passage of the rules with the provisions in section 20-26-62, HAR. Regent Nahale-a added his belief that the board should have a unanimous vote on this issue and that the board should be united in earning back trust. Vice-Chair Higaki stated that he would be willing to vote in favor of the rules if that section is removed entirely.

Vice-Chair Sullivan agreed with Regent Nahale-a and also desired unanimity on this matter. She subsequently withdrew her motion and Regent Wilson withdrew his second.

Vice-Chair Higaki moved to approve the adoption of the rules with the deletion of section 20-26-62, HAR, with the necessary conforming changes that would result from the deletion. Vice-Chair Sullivan seconded the motion. Noting the excused absence of Regent Acoba and Regent Acopan, the motion carried with all present voting in the affirmative.

C. Approval of Change Order to Repair Roof Damage to the Coude Building Caused by High Winds

President Lassner explained that this is a routine matter and that administration is requesting the board’s approval of an amendment to a construction contract that will put the cost of the project over $5 million, which is the limit of delegation to the president for such projects. Specifically, this project is to conduct repairs to the 2.2-meter telescope facility located near the summit of Maunakea. President Lassner further explained that the project was nearly complete when high winds caused the Coude Building roof to tear off completely and caused residual damage, thereby resulting in additional project costs.

Vice-Chair Sullivan moved to approve, Vice-Chair Higaki seconded. Noting the excused absences of Regent Acoba and Regent Acopan, everyone present voted in the affirmative, and the motion carried.

IV. ADJOURNMENT

There being no further business, Regent Moore moved to adjourn, and Vice-Chair Higaki seconded, and with unanimous approval, the meeting was adjourned at 8:55 p.m.

Respectfully Submitted,

/S/

Kendra Oishi
Executive Administrator and Secretary
of the Board of Regents