UH Management Areas

HRS § 304A-1901

- Lands Leased by UH from DLNR
  - Mauna Kea Science Reserve
  - Halepōhaku
  - Connecting roadway corridor
- Other lands that the University
  - leases, or
  - acquires control or jurisdiction
Current Conditions

Public Activities
• The VIS receives between 224,000 to 300,000 visits per year
• There are no activities rules to protect resources like Forest Reserve (HRS chapter 13-104) and Natural Area Reserve Rules (HRS chapter 13-209) did previously
• No protections from harmful activities, ensuring safety of large groups, or protecting flora and fauna and cultural sites
• No access point management tools

Commercial Activities
• In 2018, permitted tour operators accounted for 54,351 adults and 46 students
• Permitted commercial tour operators are required to:
  • stop at the VIS before proceeding to the summit
  • attend a Maunakea User/Resource Orientation
  • have insurance to protect the State and their passengers
• Rangers cannot cite unpermitted violators
• Approximately 70 suspected instances of unpermitted tour activities in 2018
• DLNR enforcement of unpermitted commercial activities in adjacent Forest Reserve may account for more than 50 percent decrease in unpermitted tours from the previous year (166 reported in 2017)
Major Milestones Completed

1998 Audit Recommends UH Rules/Regulations

2001-2002 Drafting Begins

2009 Act 132, Authority to Adopt Rules

2010 Drafting Restarts

2011 Drafting Halts TMT CDUP I Contested Case

2016 Governor Requests Rules Not Be Forwarded

2016-2017 TMT CDUP II Contested Case

2014 Drafting Restarts

Jan. 10, 2018 Gov. Allows Rules to Proceed

June 7, 2018 BOR Approval for Public Hearings

June 20, 2018 SBRRB Approved Rules for Public Hearings

July 10, 2018 Governor’s Office Approves Rules for Public Hearings

April 18, 2019 BOR Approves Public Hearings Round II

Oct. 18, 2018 BOR Approval to Make Changes to Draft

June 2019 Public Hearings Round II

Sept. 2018 Public Hearings Round I

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June 2019 Public Hearings Round II

Sept. 2018 Public Hearings Round I
Act 132
Legislative Authority and Purpose
Act 132 (2009), codified as HRS §§ 304A-1901, et seq.

Legislative Purpose
• Regulate public and commercial activities on Mauna Kea lands to:
  1. provide effective *protection of cultural resources*
  2. provide effective *protection of natural resources*
  3. help *ensure public health and safety*

Legislative Intent
• Types of regulated activities listed under Act 132 include:
  • General access to sensitive resource areas
  • Traffic and off-road vehicle management and control
  • Alcohol consumption
  • Recreational activities
  • Commercial tour activities
Protection of Cultural Resources
Protection of Natural Resources
Ensure Public Health and Safety
Act 132
Special Rule-Making Process Requirements
HRS § 304A-1903

• Strive for consistency with DLNR Forest Reserves and Natural Area Reserves administrative rules
• Consult with OHA regarding customarily and traditionally exercised practices
• Hold at least one public hearing on the Island of Hawai‘i
Act 132 (HAR § 304A-1903)
Strive for Consistency with DLNR Forest Reserves and Natural Area Reserves
Administrative Rules

Attachment “D” to BAM

Cross-referenced Items

• HAR Chapter 13-104, Rules Regulating Activities within Forest Reserves

• HAR Chapter 13-209, Rules Regulating Activities within Natural Area Reserves


• HAR Chapter 13-146, Hawai‘i State Park System

• HAR Chapter 13-60.8-5, Hā‘ena Community-Based Subsistence Fishing Area, Kauai

• CMP Management Actions
Public Outreach Categories

Outreach Methods
• Small Groups
• Individuals
• Open Houses
• Informal Comments
• Public Hearings

Native Hawaiians
• Faculty, Organizations, Individuals

Others
• Hawaii County Community, Business Organizations, Commercial Tour Operators, Public

Agencies
• MKMB, KKM, DLNR, OHA, ATG, Hawaii County Mayor

Post Hearing Draft
Public Outreach
2015 Open Houses

• June 14 and 17 Notices
  • Star Advertiser
  • Hawai‘i Tribune Herald
  • West Hawai‘i

• June 21, 24 & 25 Notices
  • Hawai‘i Tribune Herald
  • West Hawai‘i

• Surveys
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/1/2019</td>
<td>Letter from K. Crabbe to D. Lassner re MK Rules Public Hearing Testimony</td>
</tr>
<tr>
<td>4/4/2019</td>
<td>Consultation meeting with OHA.</td>
</tr>
<tr>
<td>3/13/2019</td>
<td>Letter from G. Chun to K. Crabbe re Request for Continued Consultation regarding MK Rules</td>
</tr>
<tr>
<td>3/4/2019</td>
<td>Consultation meeting with OHA.</td>
</tr>
<tr>
<td>10/18/2018</td>
<td>Written testimony of K. Crabbe to BOR re Agenda Item V.B.3 re UH Administration's request to revise draft rules based on public comments.</td>
</tr>
<tr>
<td>9/24/2018</td>
<td>Oral testimony of Sabrina Gramberg for OHA, offering comments at Hearing I, September 24, 2018, University of Hawai‘i Cancer Center.</td>
</tr>
<tr>
<td>6/7/2018</td>
<td>Oral testimony of W. Tanaka re Agenda Item C-4 summarizing the written testimony from OHA</td>
</tr>
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<td>6/7/2018</td>
<td>Written testimony of K. Crabbe to BOR re Agenda Item C-4 re UH Administration's request to hold public hearings.</td>
</tr>
<tr>
<td>5/15/2018</td>
<td>Letter from G. Chun to K. Crabbe re do not address lease agreements and land uses</td>
</tr>
<tr>
<td>4/13/2018</td>
<td>Consultation meeting at OHA re Draft Rules Consultation</td>
</tr>
<tr>
<td>4/12/2018</td>
<td>Email from J. Doane to G. Chun re ARs</td>
</tr>
<tr>
<td>2/26/2018</td>
<td>Email from G. Chun to J. Doane, et al. re AR’s</td>
</tr>
<tr>
<td>2/16/2018</td>
<td>Consultation meeting at OHA re Draft Rules Consultation</td>
</tr>
<tr>
<td>2/1/2018</td>
<td>Email from G. Chun to J. Doane re OHA Consultation</td>
</tr>
<tr>
<td>1/19/2018</td>
<td>Email from J. Doane to D. Lassner re Previous OHA Input on Maunakea Rules</td>
</tr>
<tr>
<td>1/18/2018</td>
<td>Consultation meeting between D. Lassner and J. Doane re Comment on Rules</td>
</tr>
<tr>
<td>6/9/2016</td>
<td>Letter from S. Nagata to K. Crabbe re Administrative Rules for UH Managed Lands on Maunakea</td>
</tr>
<tr>
<td>7/21/2015</td>
<td>Email from J. Freedman to S. Nagata re follow up from July 16 meeting</td>
</tr>
<tr>
<td>7/16/2015</td>
<td>Consultation meeting with OHA</td>
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<tr>
<td>3/22/2011</td>
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Public Hearing Notice and Comment Submission

• Public Notice
  • Statewide notice in newspapers
  • Email list of approximately 401 individuals
  • UH News Web Site
  • OMKM Web Site
  • Outreach with Agencies, Organizations, and Individuals
  • Consultation with OHA

• Comment Submission
  • public hearings
  • mail to Government Relations Office
  • in person at Government Relations Office
  • by email
  • online site set up for submissions
Formal Public Hearings

**September**
**24, 25, 26, 28, 2018**
• Locations
  • University of Hawai‘i Cancer Center
  • ‘Imiloa Astronomy Center of Hawai‘i
  • Waikoloa Elementary and Middle School
  • University of Hawai‘i Maui College
• 406 written submissions
• 92 individuals provided oral testimony at the four hearings

**June**
**3, 4, 5, and 7, 2019**
• Locations
  • Mānoa Elementary School
  • Waiākea Elementary School
  • Waikoloa Elementary and Middle School
  • Pōmaika‘i Elementary School
• 332 written submissions
• 133 individuals provided oral testimony at the four hearings
Native Hawaiian Traditional and Customary Rights

Haw. Const. Art. XII, Sec. 7
Traditional and Customary Rights
“The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.”

§ 20-26-3 Applicability and implementation, generally.
(f) Native Hawaiian traditional and customary rights as recognized and protected under article XII, section 7, of the Hawai‘i State Constitution shall not be abridged.
<table>
<thead>
<tr>
<th>Rule Topic</th>
<th>Concerns Raised</th>
<th>Changes Based on Comments Received from Sept. 2018 Hearings and Additional Outreach</th>
<th>Non-Substantial Changes Based on Comments Received from June 2019 Hearings and KKM</th>
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<tbody>
<tr>
<td>Camping</td>
<td>People visiting Maunakea use camping type equipment to facilitate stargazing, e.g., for “protection from the elements.” This definition allows those items for non-camping uses.</td>
<td></td>
<td>• The definition of “camping” under HAR § 20-26-2, is revised for clarity. Like the Department of Land and Natural Resources’ (“DLNR”) Natural Area Reserves rules (HRS § 13-209-5), although camping is still prohibited, cultural practitioners may seek a special use permit.</td>
</tr>
</tbody>
</table>
| Traditional and customary practices | HAR § 20-26-21, was drafted in consultation with the Office of Hawaiian Affairs (OHA) with the intent of addressing OHA’s concern that native Hawaiian rights are protected. OHA staff approved of the section. However, there was strong opposition to this section during the hearings, due in part to the perception that it regulated native Hawaiian culture. | • Removed HAR § 20-26-21.  
• Regardless of whether it is explicitly stated, these rules are subject to the right of native Hawaiians to exercise protected customary and traditional rights as provided for in Article XII, section 7 of the Hawai‘i Constitution, consistent with the laws of the State of Hawai‘i.  
• Based on further public outreach and comments, a reference to Article XII, section 7, of the Hawai‘i Constitution was added to HAR § 20-26-3, entitled “Applicability and implementation, generally.” This language is similar to language in the “Island-Based Fisheries Rules” and “Ha‘ena Community-Based Subsistence Fishing Area, Kaua‘i” rules adopted by the DLNR. |                                                                                                                                                                                                                                                                                                                                                                                   |
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| Preservation of scientific and educational resources | • Concerns raised about routine maintenance activities in areas already covered by permits issued by DLNR.  
• There was strong opposition to the perception that cell phones and flashlights were banned. | • Added the following text to the definition of "commercial activity" under HAR § 20-26-2: “routine maintenance, operations, and construction.” This clarifies that these activities are not commercial activities.  
• Added text to limit prohibited uses to the most sensitive areas, under what is now HAR § 20-26-23. Clarified that cell phone use and use of flashlights are allowed. |                                                                                   |
| Public Safety                                   | • Use of the term “harass” under HAR § 20-26-34 is vague.                      | • Removed “harass” from HAR § 20-26-34.                                              |                                                                                   |
| Snow Play                                       | • Concerns raised about the restrictive nature of snow play.                    | • Revised HAR § 20-26-39 to allow more flexibility on what is allowed while ensuring public safety. |                                                                                   |
| Vehicles and transportation                     | • Concerns raised regarding safety north of Halepōhaku. Testifiers were opposed to the 4-wheel drive limitation.  
• Concerns raised regarding public safety and the use of appropriate vehicles above Halepōhaku.  
• Kahu Ku Mauna (“KKM”) raised concern that §20-26-28(b) was not clear. | • Removed 4-wheel drive prohibition; instead, the section now prohibits 2-wheel drive vehicles north of Halepōhaku, under what is now HAR § 20-26-28. Also, clarified provision related to the removal of abandoned vehicles.  
• Added restriction on the “Use of vehicles with two wheels propelled by pedals, for example, a bicycle, north of Halepōhaku, except by written approval,” under HAR § 20-26-30. | • §20-26-28(b) revised for clarity as follows: “The following types of vehicles may be impounded by an authorized agent at any time: (i) vehicles left unattended in closed areas, (ii) vehicles left for longer than forty-eight (48) hours, or (iii) vehicles causing a safety hazard which may be removed as soon as possible.” |
<p>| Audio devices and noise                         | • Testimony included many concerns that noise restrictions would limit chanting and singing. These noise restrictions were based on Forest Reserves rules (HAR § 13-104-13). | • The noise provisions intend to limit amplified sounds, which can impact resources. Revised prohibition on audio/noise to focus specifically on prohibited uses that impact resources, under what is now HAR § 20-26-33. |                                                                                   |</p>
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| Permits for public assemblies and meetings          | • Group and assembly permitting requirements were similar to those required by other land management agencies, like Haleakala National Park and DLNR Natural Area Reserves (HAR § 13-209-4) and Forest Reserves (HAR § 13-104-18(5)) rules.  
  • However, testimony included strong opposition to group and assembly permits, which were perceived as interfering with cultural activities, practices, and protests.  
  • The following requirement under HAR § 20-26-62 is overly broad, “indemnification of the university.” | • Removed "Group use" and "Permits for public assemblies and meetings" from the list of permits under HAR § 20-26-61. Instead of a permit, registration is required so that UH can ensure public safety and manage impacts to resources as required by Act 132 (2009) (also reiterated in the purpose section, HAR § 20-26-1).  
  • Definition of "Person" was revised so that it specifically includes "individuals eighteen (18) years of age or older." This is consistent with Department of Education policy. | • Removed indemnification requirement for group registration from HAR § 20-26-62(b)(6). |
| Violations, penalties, costs, administrative fines, sanctions, and collection | • Testimony included observations that fines, although set by statute (HRS § 304A-1904) and identical to DLNR fines, were too high.  
  • The difference between continuing and repeat violations was unclear.  
  • Indeterminate exclusion from UH management areas in the enumerated sanctions under HAR § 20-26-73 is vague.  
  • ACLU noted that verbal warning before issuing a citation “is confusing and self-contradictory.” | • Removed statutory fines from HAR § 20-26-73 and moved it to Exhibit A, where fines are categorized based on the specific violations.  
  • Distinguished and clarified “continuing violation” from “repeat violations” in HAR § 20-26-73 and Exhibit A.  
  • Based on further public outreach and comments, specifically reduced fines for failure to register large groups and moved commercial fines to the higher category. | • Revised HAR § 20-26-73(a)(2), by removing the undefined period of time of exclusion. However, a person violating the rules can still be excluded from UH management areas “until the violation has been corrected.”  
  • Revised HAR § 20-26-74 by removing warning provision. |
<p>| Appeal                                              | ACLU noted that the seven day period to submit an appeal was too short.                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                              | • The time to file an appeal under HAR § 20-26-75 was increased from seven to fifteen days. |</p>
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</table>
| Various Relating to the delegation of rules implementation by the President to a designee | Testifiers were concerned, including OHA, that a specific person/entity was not named for implementing the rules.                                                                                                 | • Revised references to "president or the president’s designee" to refer only to the "president."  
• The term "president" was redefined under HAR § 20-26-2, as follows: “President” means the president of the university, unless otherwise expressly stated or further designated by the board or the president.” |                                                                                                                                                                                                  |
| Tobacco and Smoking                                                       | KKM noted that §20-26-36 should include vaping or e-cigarettes.                                                                                                                                                   |                                                                                                                                                                                                  | • § 20-26-36 was added when Act 160, Session Laws of Hawai‘i 2018 banning smoking and tobacco use at UH. Act 160 has since been codified. § 20-26-36 was revised to reference the codified provision of Act 160, HRS § 304A-122, which addresses KKM’s concerns. |
Summary: Process & Next Steps

- November 6, 2019 BOR Decision Making
- SBRRB Post Hearing Report
- Attorney General Review
- Effective 10 days after filing with Lieutenant Governor
- Governor Approves