

MINUTES
SPECIAL BOARD OF REGENTS MEETING

AUGUST 2, 2019

I. CALL TO ORDER

Chair Ben Kudo called the meeting to order at 9:02 a.m. on Friday, August 2, 2019, at the University of Hawai'i at Mānoa, Information Technology Building, 1st Floor Conference Room 105A/B, 2520 Correa Road, Honolulu, Hawai'i 96822.

Quorum (11): Chair Ben Kudo; Vice Chair Jan Sullivan; Vice Chair Wayne Higaki; Regent Simeon Acoba; Regent Kelli Acopan; Regent Eugene Bal; Regent Michael McEnerney; Regent Alapaki Nahale-a; Regent Michelle Tagorda; Regent Robert Westerman; and Regent Ernest Wilson Jr.

Excused (1): Regent Randy Moore.

Others in attendance: Vice President for Administration Jan Gouveia; Interim Vice President for Community Colleges Erika Lacro; 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; University of Hawai'i at Mānoa (UHM) Provost Michael Bruno; University of Hawai'i – West O'ahu (UHWO) Chancellor Maenette Benham; Associate Vice President (AVP) for Legal Affairs Gary Takeuchi; 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 the following written testimony:

- Two individuals submitted written testimony relating to the agenda item to appoint a permitted interaction group to investigate issues and make recommendations related to Mauna Kea governance:
 - Nanea Lo, in opposition
 - Manu Kaiama, offering comments
- Ruth Robinson PhD submitted written testimony in support of David Lassner in his role as UH President.
- The following individuals submitted written testimony in opposition of TMT: Cory Harden, Dr. Keoki Nalu Nunies, Thomas Kelleher, Andrea Kuuleiawapuhi Malohi, Heather and Jay Lyman, Ashley K. Kupau, Carley Fonville, Jenny Estrella, Elizabeth Bennett, Tyler Tanaka, Kahala Johnson, Lindsay Terkelsen, Aubrie Usui, Pamela Jones, Nohealani Hirahara, Adora Klinestiver, Alana Dias, Sina Pili, Carolyn Canubida, Christy Valledor, Kam Yai Pascher, Henry Pascher, Bronson Azama, Anela Evans, and Sarah Michael Hamid.

- The following individuals submitted late written testimony in opposition of TMT: Vernadette Gonzalez, Alex Miller, Beth Leeds, Kiki Kiki, and Summer-Lee Yadao.
- Amber Imai-Hong submitted late written testimony in support of the Office of Mauna Kea Management.
- The following individuals submitted late written testimony in support of TMT: Samuel Wilder King II, Chris King, Thayne Currie, Katherine Roseguo, and Mary McAndrew.
- Crystal Kia-Paul submitted late written testimony regarding the appointment of a permitted interaction group for Maunakea.
- Cynthia Franklin and Candace Fujikane submitted late written testimony opposing the formation of a permitted interaction group and opposing TMT construction.

The following individuals provided oral testimony related to Maunakea or TMT: Konia Freitas, Kekailoa Perry, Cynthia Franklin, Davianna Pomaikai McGregor, Masahide Kato, Lilikala Kameeleihiwa, Kahele Dukelow, S. Kaleikoa Kaeo, Kaimo Muhlestein, Kealani Sonoda Pale, Claire Chun, Nikki Kepoo, Kim Compoc, Katherine Achacoso, Joy Enomoto, Manu Kaiama, Tamara Paltin, Nanea Lum, Kaumualii Titcomb, Coline Aiu, Dayne M. Kaawalanole, Michael Vincent, Kaukeolani Naniole, Noenoe Silva, Rebecca Maria Goldschmidt, Michelle Lee Brown, Rosanna Prieto, Noelani Goodyear-Kaopua, Imai Kalani Winchester, Paige Kaohu Kawakami, Routh Bolomet, Bianca Isaki, Logan Narikawa, Ty Kawika Tengan, Kaimana Chock, Jane Au, Nicole Hyde, Raquel Aki, Sam Ikehara, Diliaur Tellei, Kalena Holani, Eomailani Kukahiko, Niegel Rozet, Ali Rozet, Haunani Kane, Jodi Malinaski, Aaron Do, Vicky Holt Takamine, Cheryl Burghardt, Williamson Chang, Candace Fujikane, No'u Revilla, Malia Michelle Kaio, Emmett Lee Loy, Kahelelani Cruz, Bruce Watson, Lorenz Gonschor, Demiliza Saramosing, Liana Hofschneider, Kimo Cashman, and several unidentified speakers.

The board recessed at 1:01 p.m. and reconvened at 1:30 p.m.

III. AGENDA ITEMS

A. Discussion on Board of Regents Committee Structure

B. Amendments to the Bylaws of the Board of Regents Article II.C.1. Duties of Officers, Article II.D. Standing Committees of the Board, Article IV. Meetings, and Article VI. Voting

C. Amendments to Regents Policy 9.202, Classification Plans and Compensation Schedules

Agenda items III.A., III.B., and III.C. pertain to the structure of the board's standing committees.

Chair Kudo proposed restructuring the board's committees in light of the reduction in the number of regents as a result of legislation that was recently enacted. He proposed eliminating the Committee on Intercollegiate Athletics and merging the Committee on Personnel Affairs and Board Governance (PA&BG) with the Committee on Planning and

Facilities. Chair Kudo further explained that he spoke with UHM Athletic Director Matlin, who was understanding of the elimination.

Several regents expressed general agreement with the proposed restructuring, but also raised some specific concerns. Regent Westerman referenced the proposed bylaws in the materials and concern regarding the elimination of the provision requiring regent representation from every island. He also wanted to ensure that Title IX would still be covered. Regent Bal expressed concern over the potential loss of the governance aspect of the PA&BG committee. Chair Kudo took note of the concerns and assured that the functions and responsibilities of the committees proposed to be eliminated would be absorbed into other committees.

Regent Wilson commented that the proposed structure aligns well with the assignment of the administration liaisons and Regent Nahale-a recognized Regent Emeritus Portnoy for his commitment to intercollegiate athletics.

Regent Acoba expressed concerns about the process by which changes to the board structure and bylaws were proposed and noted that actions should originate from the board and not the Board Secretary. He suggested that changes should originate from the board and referred to the PA&BG committee for consideration and to make a recommendation to the full board on changes in committee structure and affected bylaws before the changes were made without board approval. Regent Acoba also noted that the present committee structure could be maintained if each regent sat on three committees (resulting in five per committee) which most regents did now. Under the statute the audit committee could be staffed by four regents.

Chair Kudo noted that no committee meetings were held in August and there was a need to organize soon to allow the board to conduct its business. Regent Acoba explained several scenarios of the current committee structure and numbers of regents necessary to adequately cover the committees. He suggested further vetting should occur.

Regent Acoba moved to defer action on amending the bylaws and restructuring of committees and that the matter be referred to the PA&BG committee. Regent McEnerney seconded the motion. Regents Acoba, McEnerney, Nahale-a, and Westerman voted in favor of the motion. Regents Acopan, Bal, Kudo, Higaki, Sullivan, Tagorda, and Wilson voted against the motion. The motion failed.

Regent Sullivan asked Regent Bal, Chair of the PA&BG committee, whether he had any objections going forward with the proposal to restructure the committees. Regent Bal expressed hesitancy regarding the propriety of the process of vetting the proposal balanced with the time sensitivity regarding organizing the board to allow business to be conducted.

Regent Acoba asked the Chair to consider delaying changes to committee assignments to September in light of the circumstances of the change in composition of the board by the Legislature. Chair Kudo impressed upon the urgency of organizing in order to allow the board to conduct its business. Several regents suggested that the same membership under the current committee structure be maintained for the time being to allow the committees to conduct business.

Chair Kudo proposed holding a PA&BG committee meeting this month to consider the board's committee structure and make a recommendation to the full board.

D. Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to Maunakea Governance

Chair Kudo proposed creating a permitted interaction group to investigate issues and make recommendations related to Maunakea governance.

Clarification was requested regarding whether Maunakea should be referred to as one or two words. It was clarified that Maunakea is recommended per the UH Hilo School of Hawaiian Language.

Regent Acoba noted concerns raised by testifiers regarding the sunshine law and transparency, and further noted that a permitted interaction group is an exception to the normal deliberative process of the board that is normally open. He expressed concern that only certain members of the board would be allowed to meet with other people and his opinion that the process would not be beneficial in this instance because the meetings would not be open or recorded, they could engender suspicion, confusion, and rumor. He also expressed concern regarding the scope of the permitted interaction group and who would be engaged with the group and desired more specificity. He also expressed concern regarding the investigative scope of the permitted interaction which seemed open-ended and who would be engaged with the group, and desired more specificity.

Regent Nahale-a expressed frustration that the board that is ultimately responsible for the university has had no opportunity to weigh in on the activities occurring on Maunakea, and that most of the current members of the board have never taken a vote on anything related to Maunakea. He further added that he doesn't know of any agenda item that could be brought forward to the board to discuss and that a permitted interaction group might allow for discussion on the large complex issues that are being faced. Under the sunshine law, a board member cannot talk to more than one other board member on these issues; he expressed the desire for the board to be involved in conversations and invited other suggestions as to how that could occur. Regent Nahale-a feels it is important for the university system, the State, and the Regents to have discussions and debate, and likes the idea of a permitted interaction group to allow a critical mass of regents to investigate issues, decipher fact from fiction, and make a recommendation to the full board.

Regent Westerman agreed with Regent Nahale-a and asked how the board can gather information to make a decision and asked for counsel to explain the permitted interaction group. AVP Takeuchi provided an overview of permitted interaction groups, which is an exception to the sunshine law, which is less than quorum allowed to conduct business in a more nimble manner to discuss issues. Recommendations and conclusions must be presented to the board in an open meeting and the full board cannot act on it until at least one additional meeting.

Chair Kudo added that he served on four permitted interaction groups during his tenure on the board, including one formed shortly after the Stevie Wonder situation; that eventually resulted in financial guidelines that are now part of standard procedure.

Other permitted interaction groups were related to real-estate matters and public-private partnerships that resulted in recommendations to the full board. He reiterated Regent Nahale-a's point that permitted interaction groups help to facilitate dialog. The sunshine law makes dialog difficult, particularly in sensitive situations where things arise quickly; he added that more than two regents can't even participate in a conference call to have a discussion on certain issues.

Regent Wilson commented cited the amount of misinformation that is circulating related to Maunakea and that a permitted interaction group allows for a dialog that might help determine the accuracy of statements and to share that information with the full board.

Regent Higaki cited that the primary strategy for the permitted interaction group in this situation is that the group can remain nimble and to have meetings with more than two regents.

Regent Sullivan made a motion to approve the permitted interaction group as set forth in the action memo and asked that the task group report to the board at every board meeting. She added that it is good practice to keep the board informed and that the pace at which things occur have made it difficult for the chair to respond. Regent Wilson seconded the motion.

Regent Acoba reiterated his feeling that the scope of the permitted interaction group is too broad that it is difficult to determine what the group is specifically tasked to do. He cited the scope of the Investments Task Group as one that has a very specific scope of objectives. He added that there are lines of responsibility and accountability, and that the board should be cognizant of the role of the board to set policy and act through the president.

Regent Nahale-a expressed his appreciation for Regent Acoba's position and questions. He added that this is a current event and that communication and conversations need to occur with constituencies. He expressed his feeling that this exceeds the severity of the Stevie Wonder situation and that it is not acceptable to be a bystander, and that we should consult with the Office of General Counsel whenever questions arise as to the appropriate conduct of the permitted interaction group. Chair Kudo reiterated that the Office of General Counsel would be consulted.

Regent Tagorda questioned whether there is an opportunity to add other regents and noted that there has been a lot of input from students, and suggested that Regent Acopan be added as a member. Chair Kudo noted that the proposal currently includes five regents, but there is room for one additional member. Regent Acopan agreed to participate in the permitted interaction group.

Regent Sullivan amended the motion as previously stated to include Regent Acopan as a member of the permitted interaction group and Regent Wilson agreed. Regent Acoba voted against the motion, but expressed his hope for the group's success. Regent Moore was excused. All other regents voted in support and the motion was adopted.

IV. ANNOUNCEMENTS

Chair Kudo announced that the next board meeting is scheduled for August 30, 2019, at the University of Hawai'i at Mānoa.

V. ADJOURNMENT

There being no further business, Vice Chair Higaki moved to adjourn, and Regent Wilson seconded, and with unanimous approval, the meeting was adjourned at 2:31 p.m.

Respectfully Submitted,

/S/

Kendra Oishi
Executive Administrator and Secretary
of the Board of Regents