

# AMENDED

APPROVED BY THE BOARD  
AT ITS MEETING HELD ON

JUL 8 2010

## MINUTES FOR THE MEETING OF THE BOARD OF LAND AND NATURAL RESOURCES

DATE: THURSDAY, MARCH 25, 2010  
TIME: 9:00 A.M.  
PLACE: 'IMILOA ASTRONOMY CENTER OF HAWAII  
600 'IMILOA PLACE  
MOANAHOKU HALL  
HILO, HAWAII 96720

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

### MEMBERS

Laura Thielen  
Jerry Edlao  
Dr. Sam Gon

Ron Agor  
David Goode  
John Morgan

### STAFF

Sam Lemmo/OCCL

### OTHERS

Julie China, Deputy AG  
Ed Stevens  
Stephanie Nagata  
President Greenwood  
Nelson Ho  
Jon Miyata  
Mary Begier  
Hilton Lewis  
Koa Rice  
Bob Goodrich  
Dean Au  
Paul Tallett  
Deborah Ward  
Fred Stone  
Myles Miyasato  
Eugene Nishimura  
Irene Nagao

Rose Tseng  
Ron Terry  
Barry Taniguchi  
Cory Harden  
David Byrne  
Vaughn Cook  
Nimr Tamimi  
Clarence Ku Ching  
Warren Frisbee  
Dr. Gregory Chun  
Masa Hayashi  
Kealoha Pisciotta  
Keo Von Gogh  
Wallace Ishibashi  
Don Weir  
Mark Nishii  
Harry Kalua

\*Requested a Contested Case Hearing.

{Note: language for deletion is [bracketed], new/added is underlined}

Chairperson Thielen described today's Land Board meeting process.

Ka'iu Kimura introduced herself as the Executive Director of 'Imiloa Astronomy Center, spoke about the Center and opened with a pule (prayer) in Hawaiian.

**Item A-1      March 27, 2009 Minutes - *TO BE DISTRIBUTED.***

The minutes were not ready.

**Deferred**

**Item K-1      Request for Approval of the Natural Resources Management Plan, Cultural Resource Management Plan, Public Access Plan, Decommissioning Plan, Project Development and Management Framework, and Approval of Delegation of Implementing Authority from the University of Hawaii Board of Regents to the Office of Mauna Kea Management, Pursuant to the Mauna Kea Comprehensive Management Plan**

**Copies of these documents may be viewed on-line at <http://hawaii.gov/dlnr/occl/mauna-kea-management-plan/mauna-kea-management-plan>.**

**These documents are also available for review at the Department of Land and Natural Resources, Land Division, at 76 Aupuni Street, Room 204, Hilo, or at the Department of Land and Natural Resources, Office of Conservation and Coastal Lands, at 1151 Punchbowl Street, Room 131, Honolulu, Hawaii**

***The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.***

Written testimonies were received and distributed to the Board.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) apologized that his back is to the audience and described the responsibilities of this office managing conservation land including reviewing and providing recommendations to the Land Board on whether or not to approve these plans. Mr. Lemmo shared some changes in the history of the Mauna Kea Management Plan citing the most drastic occurred as a

result of the 1998 State Audit for U.H. management areas on Mauna Kea. In the wake of this report U.H. took immediate proactive steps to address mismanagement concerns and highlighted in the auditor's report. In 2000, the Office of Mauna Kea Management (OMKM) and its affiliates Kahu Ka Mauna and Mauna Kea Management Board (MKMB) with its various committees were created as a non-U.H. based entity with management responsibilities looking at much broader issues - natural and cultural resource, but inclusive of astronomy. This proceeding doesn't represent the starting point of a new management effort. The active management of the Mauna Kea Summit and environs has begun and has been on-going since the creation of the Office of Mauna Kea Management and the subject matters prior to that as well. This doesn't represent an end point either. Additional studies, plans, consultation will continue to evolve as time goes on. Management policies and actions maybe adjusted in the future based on more information, technologies and values - this is what adaptive management means. All of the reports before the Board today refer to this concept of adaptive management which is a strong aim in all of this where as changes occur you may need to retool your policies and management actions.

Mr. Lemmo spoke on the Public Access Plan (PAP) built on the CMP (Comprehensive Management Plan) by more specifically addressing the issues, opportunities and management concerns regarding to public and commercial activities in U.H. management areas, also, including access by observatory staff. The PAP articulates a range of principles and policies for public access where Mr. Lemmo referred to Section 5 of the PAP regarding Guiding Principles. There are general policies on Access, policies on Public Safety and Emergency Response, on Education and Interpretation, on Traditional and Customary Activities, on Commercial Activities, on Enforcement, on Infrastructure and on continued Monitoring and Management of Human Impacts. Active management of public access is underway through the OMKM where OMKM rangers have been collecting data on the mountain since 2003 by collecting and sorting data on summit visitations by individual visitors, commercial operators and observatory personnel. They have recorded behavior by location and type of behavior. For example: identifying popular spots for snow play, hiking trails and hunting which are all in the PAP. This data enables OMKM to formulate new policies and specific management action to better protect public safety, natural and cultural resources and astronomy pursuits. Existing public access controls – it has been recognized that active management of public access is necessary at Mauna Kea for the protection of public health and safety noting that this is a high altitude venue that could cause altitude sickness, children shouldn't ascend to the summit beyond a certain age group, pregnant, accidents occur and its difficult to mobilize to get emergency personnel there. Health and safety is a huge concern. Management is necessary to protect the natural and cultural resource as well as the scientific pursuits for astronomy – operating within the guidelines of their lease. The level of management control on the PAP may range from minimal passive or a more heavy-handed approach by putting in a kiosk at Hale Pohaku although the plan recommends not putting in a kiosk right now. In the PAP – about 70% of all travelers to the summit are regulated to some extent to a contractual agreement giving the example of commercial operators which comprise a large portion of the summit visitors are regulated via permit conditions imposed on them. U.H. observatory personnel are also regulated by CUPs which they

must follow plus U.H. has internal policies regarding on how to behave and operate on the mountain. The general public is largely unregulated about 30%. The PAP also recommends a number of specific management actions to protect natural and coastal resources which looks at programs for education, training, signage, brochures, data collection needs to continue, access control involving rule making on the part of U.H. and some management recommendations regarding clearance to access scenarios – suggesting a shuttle system to reduce the traffic and people are supervised directly or directing people away from the summit to other areas at lower elevations. It was noted that lands within the U.H. Management Area are still subject to various DLNR laws including recreational access hunting which are set apart or reserved for BLNR from the 1968 general lease. Should DLNR agree to allow U.H. through OMKM to more actively manage public access, it appears U.H. is willing to adopt administrative rules before fully implement some of the recommendations of the PAP which currently has rule making authority via statute, but they must post with DLNR if they should decide pursue rules. Mr. Lemmo said that he thinks in the statute the legislation was passed giving the authority stated specifically that they have to work closely with DLNR on the rule making process to be sure everything they do is consistent with DLNR's policies, guidelines and practices, also DLNR has to be a partner in that process at some extent.

The Natural Resources Management Plan (NRMP) described by Mr. Lemmo, provides an overview of the history documents, studies, reports that were prepared for Mauna Kea. The plan makes it clear that the discussion of natural resources cannot be focused only on areas within the Science Preserve because natural ecosystems operate irrespective of property boundaries – for instance the endangered palila in the Hale Pohaku area occurring at that elevation of the mountain, but we need to preserve areas outside of the Science Preserve at lower elevations or adjacent areas because each area depends on each other for co-existence, the ecosystem extends beyond boundaries. The NRMP has component plans; it has an information management and research plan which establishes baseline data – new species scenarios and establishes data collection and monitoring protocol, it has a threat prevention and control component plan – identify major threats to natural resources like from invasive species, provide specific recommendation to minimize habitat disturbance, minimize pollution, containments', erosion, solid waste, noise, etc. It has a natural resource preservation enhancement and restoration component plan which talks of restoration of areas that have been damaged like sub-alpine mamane habitat that is critical for the palila. It also suggests engaging in restoration work to help promote the wekiu bug. It talks about site restoration after the telescope decommissioning. There is an education and outreach plan and an implementation and evaluation plan. Mr. Lemmo noted that OMKM needs to be properly staffed and funded to do the baseline studies necessary to carry out conservation plans and the NRMP does provide a summary of staffing equipment used to carry out these functions. The NRMP provides a blueprint for ensuring the possibility for the maximum degree of conservation of resources at Mauna Kea. The plan is comprehensive that the plan does acknowledge that known baseline studies were prepared in possibly developing it. The plan provides a cookbook on what we need to do in terms of data collection, how to get it and how to continue getting it in an ever changing social and natural environment.

Mr. Lemmo reported on the Cultural Resources Management Plan (CRMP) included in Section 5, Implementation and Evaluation Plan, which is the backbone of the plan that identifies all the management actions that should be carried out – to protect the cultural and archaeological resources of Mauna Kea and ranks them in order of priority including information on the cost of implementing the specific action. They provided an overview of cultural issues and past archaeological or inventory surveys and a description explanation of what has been discovered thus far at Mauna Kea. An AIS (Archaeological Inventory Survey) has recently been completed for the entire Science Reserve which was submitted to DLNR several weeks ago and is currently undergoing a review. The next step is a Burial Treatment Plan and then an Archaeological Monitoring Plan. The CRMP identifies the Historic Preservation Review Process and this process is necessary to ensure that uses and actions that occur on Mauna Kea are considered by all authorities so that proper protection of the resources can concur. The plan identifies potential threats to cultural and archaeological resources such as off-road vehicle use, hiking and disturbance of cultural sites by visitors. One of the issues and challenges of the CRMP is the cultural uses for instance the construction of ahus – the construction of unwanted monuments can change the nature of the cultural landscape of Mauna Kea and is a major concern especially if monuments are erected by tourists referring to stacking of rocks and writing of names on black lava all over the west side of the Big Island which is a big problem. Another difficult issue is differentiating between contemporary and non-contemporary practices – what constitutes as a valid ahu constructed by someone with lineal connection to Mauna Kea as opposed to was erected by tourists visiting for a couple days. It's a difficult issue to talk about regulating uses which is the role of Kahu Ku Mauna who is part of the Office of Mauna Kea Management. One of their roles in the planning process is to consult with interested groups and come up with protocols and possibly a set of rules for how to behave properly within the Science Preserve which is a good thing and Kahu Ku Mauna is involved in the CRMP and recommendations that if they are able to implement it would be a positive step forward. The plan cited a successful example at Hawaii Volcanoes National Park and the adjacent NARS area that has a set of rules which are more specific than other areas in the State that are designed to protect its plants and resources. The success of efforts to manage cultural resources largely depends on U.H.'s ability to promulgate rules because those management actions might create new controls or procedures for public access and probably need to enforce those rules to properly implement. Not everything U.H. is doing up there requires rules. There are certain things in these plans that require rule making to successfully implement. The plan at the end makes affirmative statement on what it will do and what should be done on the mountain noting these things are subject to funding resources.

It was conveyed by Mr. Lemmo that the Decommissioning Plan (DP) is comprehensive and provides a clear step-by-step process to remediate observatory facilities on Mauna Kea clarifying that the DP does not provide a timeline or mandate the removal of any one observatory. Whether or when this occurs depends on the lease – what is in the lease, what leases are renegotiated and what happens with the general lease whether or not a new lease is issued. The DP sets up a framework for telescope removal that each observatory may use to ensure an orderly and financially feasible process for decommissioning reminding the Board that they asked for a financial component to the

decommissioning plan which is critical to provide insurance that if decommissioned they have the financial means to do it. A lot of recommendations were prepared on how to provide financial assurance in the plans. For future development by U.H. in terms of constructing future telescopes decommissioning indicates a total of 10 telescopes or observatories in the astronomy precinct by the end of the general lease period which is the end of 2033. There are currently 12 observatories in the precinct where there will be a reduction by two. The DP process starts with providing a notice of intent to decommission to the OMKM, environmental due diligence review, site construction approval plan, site restoration plan and provide OMKM with a decommissioning funding plan. The details of all these plans are well articulated in the DP. Decommissioning is initiated when a person decides to cease operations due to change in priorities, lack of funding or obsolesces when a sub-lease expires or when U.H. revokes its sub-leases. Mr. Lemmo thought the plan was very complete.

When OCCL presented this to the Board last year they were concerned with the University having the necessary commitments in place to implement the CMP although the OMKM is responsible for implementing the CMP ensuring adherence to provisions OCCL was unsure of the full development of the sub-plans and when this will be accomplished given the newest sub plan identified in the CMP. Mr. Lemmo believes this issue was clarified in the sub plans in the management framework the Board should consider whether to approve or not today. On April 16, 2009, the Board of Regents accepted the responsibility for implementing the CMP reminding the Land Board that this is another thing they wanted to see that is the commitment by U.H. to stand behind this plan where the BOR voted on it and accepted responsibility for the plan and all its elements. Staff believes the University has complied with the DLNR requirements in developing a Comprehensive Management Plan for Mauna Kea with the understanding that this is an on-going process reminding the Board that this has a history, present and future all happening on a continuum and its ever changing. This is the nature of planning. However, the land use and activities placed before you on these management areas are evaluated according to these plans and processes subject to future modifications based on adaptive management framework. Approval of the sub-plans should not to be construed as acceptance or approval of any pending future project plans or proposals contained in here. Such pending or future actions require a separate review consideration by the Board of Land and Natural Resources. Mr. Lemmo summarized that if the Board should approve these sub-plans today it doesn't necessarily bind you to anything that might happen in the future. These matters all need to come before the Department, and in some cases, back to the Board for some consideration. Based on this preceding analysis he is here to recommend that you approve these measures as were articulated by the Chairperson at the beginning of the meeting and he reiterated he is recommending the Board approve the University of Hawaii's Mauna Kea Comprehensive Management Plan Sub Plans – the NRMP, the CRMP, the Public Access Plan and the Decommissioning Plan, and he request to approve the delegation of implementing authority to the University of Hawaii Board of Regents to the Office of Mauna Kea Management. And, staff also approves the management framework that has been created within the U.H. system which has provided to the staff report.

Chancellor Rose Tseng representing the University of Hawaii at Hilo introduced herself thanking the Board for coming to Hilo to give the University the opportunity to describe how they met the conditions set by the BLNR last April. They at the Office of Mauna Kea Management and the Mauna Kea Management Board have worked diligently to prepare the four sub-plans to the CMP as well as the management and implementation of the brain work of the project for the Science Reserve. She recognized Kahu Ku Mauna Council for their guidance on cultural matters. President Greenwood and the Board of Regents have approved all these plans. Chancellor Tseng stressed that they recognize BLNR as the ultimate when it comes to activities on the summit of Mauna Kea and it is their (University's) firm intention to lift up to our responsibilities to give the lands that they manage the best possible stewardship. The University is ready to move forward to protect the mountain.

Ed Stevens representing Kahu Ku Mauna testified that they are a volunteer group of nine members who are cultural advisors to the OMKM, MKMB and the University of Hawaii. Kahu Ku Mauna reviewed the Public Access Plan and Decommissioning Plan, spoke to the consultants who developed and they like it. On the Cultural Resource Management Plan, they read it; it took a long time to finalize, but it is here and they seek the Board's acceptance. They reviewed and accepted the Natural Resources Management Plan. Kahu Ku Mauna recommended the Board to accept these plans and have it included as part of the Mauna Kea Comprehensive Management Plan. This is a good plan.

Ron Terry, Second President of the Mauna Kea Management Board testified that the four sub plans is the result of a collaborative effort among the director of OMKM, the consultants, Kahu Ku Mauna and the Environmental Committee which is a separate group of MKMB. These plans don't only satisfy technical requirements, but it represents the care and will of our community. These sub plans are important to the CMP and if they are properly implemented and adopted it will serve Mauna Kea.

Stephanie Nagata, Interim Director for the Office of Mauna Kea Management distributed a handout of her PowerPoint presentation to the Board and testified that the University of Hawaii at Hilo, OMKM, MKMB and Kahu Ku Mauna Council comprise of the management entities responsible for managing and protecting the resources on Mauna Kea. She pointed out the UH Management Areas on the maps reiterating some background regarding the CMP, completing these four documents and seeking the Board's approval. Ms. Nagata described who the consultants were on the Cultural Resources Management Plan and Natural Resources Management Plan. These two plans are comprehensive adaptive plans that provide management actions and recommendations that enable OMKM and MKMB to preserve, protect and enhance the cultural and natural resources on U.H.'s management lands on Mauna Kea. It identifies resources, uses and activities, the threats of the resources and provides management actions and recommendations to protect those resources. Both plans provide the need for continued inventory, monitoring the resources and conduct education and outreach activities. Educating the public, management staff and stakeholders approving the observatory on how to properly engage and access Mauna Kea. She reiterated Mr. Lemmo's comment of the inventory of archaeological resources. The purpose of the

Public Access Plan is to guide the University to address public access in full cooperation with the Department of Land and Natural Resources. The objective of the plan is to provide seven principles and policies to guide the University in development of administrative rules and management actions related to public access and commercial activities. It includes a review of resource data with respect to human activity and included data collected by OMKM rangers which date back to 2003. The lowest level of enforcement is the most practical for OMKM at this time. It was suggested the ideal situation is when people exercise a high level of personal responsibility for their own action. This is more likely to occur with education. People behave more responsibly the more they know about safety hazards, high elevation environment and understanding how these actions protect the areas special resources. This plan also provides a set of recommendations as a result of discussions. The PAP recognizes Mauna Kea is a shared responsibility between the University and DLNR that the University is subject to review by this Board. The Decommissioning Plan for the Mauna Kea Observatories was prepared by Sustainable Resources Group International, Inc. and the purpose is to establish a process for the eventual removal of observatories and site restoration. It also identifies the roles and responsibilities of DLNR, UH and observatories. And, it includes a Decommissioning Funding Plan and steps in the decommissioning process. The Master Lease and Subleases lack detail on the decommissioning requirements and process. This plan provides the steps for carrying out the decommissioning. The Decommissioning Funding Plan will ensure sufficient funds are available and provide some funding insurance. All four plans are considered as sub-plans to the Comprehensive Management Plan and are linked to it where each plan recommendation is connected by the CMP. The Management Framework for Project Development was put together by non-OMKMB to assist it in reviewing a project before it goes before the Board. Ms. Nagata spoke of the Master Plan Management Framework, Schedule for Processing Projects and Major Project Review and Approval Process. The consultants are present for questions.

Barry Taniguchi, Chairperson of the Office of Mauna Kea Management Board (OMKMB) clarified that the approval process is OMKMB's internal process and is still subject to all the rules and regulations of DLNR. In summary, the sub plans and Project Management Framework are valuable supplements to the CMP by providing added guidance for OMKMB and OMKM in carrying out their stewardship responsibilities in protecting and preserving Mauna Kea's unique resources. These plans are based on the adaptive management principle and subject to review and updating every five years. The sub plans comply with DLNR's environmental conditions. They have been protecting the mountain since 2000. The Board will hear from naysayers today that OMKMB invited to participate with them in developing the CMP and sub plans where some participated and some declined. He wants the Board to ask these people what have they done for the protection of Mauna Kea or what do they plan to do?

President Marcie Greenwood representing the University of Hawaii thanked the Board for coming to Hilo and colleagues on the Big Island for their hard work in preparing these plans. The OMKM, OMKMB and UH-Hilo will implement these plans reiterating UH's commitment to the stewardship of Mauna Kea as led from the Big Island. The University's 2000 Mauna Kea Sites Reserve Master Plan creates the OMKM, OMKMB

and Kahu Ku Mauna Council is already taking steps to protect the mountain. She reminded the Board that OMKM is the single entity to manage the comprehensive integrated plan for the Mauna Kea Science Reserve, subject to the BLNR guidance, the point of contact for the summit region, responsible for managing the Science Reserve, the summit road and the Hale Pohaku, responsible for establishing enforcing management policies within the parameters of the general leases and she asked to focus contact with the general public and be the referral and facilitating agency for issuing outside this authority related to the mountain. The BOR and the University of Hawaii are committed to funding the implementation of the CMP and its related sub plans. As of April 16, 2009 the BOR adopted a resolution that includes acceptance of this responsibility subject to the oversight of the BLNR and that it authorized and directed to the normal University of Hawaii channels. The UH – Hilo, the OMKM and the OMKMB to undertake the implementation of the CMP and to develop the sub-plans all conditions imposed by this Board, including any ancillary activities. In May 12, 2009, the BOR formally designated the OMKM as the lead entity for implementation and at this point she ensures that the University looks forward to fulfilling its stewardship responsibilities for Mauna Kea with the guidance of the BLNR. Thanked everyone for having her here today to affirm these things and share in this process.

Board member Goode said he was curious about UH's intent to promulgate rules and asked does the University see itself exercising its ability with the Legislature to grant rules fairly soon? Ms. Nagata said it was a long process. He asked what the rangers do at Mauna Kea. Ms. Nagata said that the ranger program was established in 2001 with the intent of providing the eyes and ears of OMKM whose primary purpose is to interact with the public by providing information on how to visit Mauna Kea safely and responsibly and to educate them about the cultural, natural and scientific resources on the mountain which has been very effective. There are positive comments by those who visit the mountain as well as the observatory staff who works up there. It's beneficial for DOCARE staff that is limited in personnel. The rangers look out for activities in the Natural Area Reserve and have reported incidences. They are paid full time rangers. Member Goode asked whether the implementation of rules would help the rangers in their responsibilities and Ms. Nagata said right now the rangers can ask people not to do certain things and most people respect what the rangers tell them, but the rangers have nothing official to stand by their recommendations or actions. Chairperson Thielen asked if the University proceeds with rule making you are governed by the Chapter 91 rule making process and that requires public hearings and notices which was confirmed by Ms. Nagata.

Member Gon said his question is to understand what were the processes to which the approval went on the way up to the BOR by approving each of these instruments. His understanding is the OMKM reports to the Chancellor and therefore the BOR approval will reflect their considerations and Kahu Ku Mauna being the advisor to OMKMB would be folded into OMKMB's approval of these instruments and that is why there are two steps in this approval process. Each of those two steps, depending which plan must have had some discussion on certain issues or situations citing an example in the Cultural Resources Plan he noticed the feedback he gets from the community – practitioners and

various folks sometimes are not inconsistent and therefore it is interesting to hear from OMKM what the major issues were on the way to approval that were in your thinking to deal with those differences of opinions on the guidance and recommendation for any of the plans. Ms. Nagata said development of the plans took a long time and involved consultation and most of the comments they received on the plans were it was long overdue and to have some guidance for how the University was going to manage the mountain. Kahu Ku Mauna was actively involved in the development of the Cultural Resource Management Plan. The first step was the OMKMB then followed that by the BOR. Member Gon also asked what items were the most controversial or items that cited the most discussion on the way to approval because along the way those are the issues that will be the most contentious or most difficult to deal with in the implementation of the plan which is not a challenge to the approval of the Board. He is curious of the process of that and forecasting which issues are going to be most important for both the Board and the University in implementation. Ms. Nagata said she couldn't think of anything controversial when coming up with the development of the plan. Other than those who were opposed to the University being the party for developing the plan that the DLNR is the responsible party. The plans speak for themselves and she can't think of anything controversial.

Chair Thielen asked whether the representatives from the Council wanted to give their perspective on the process and that dialogue. Mr. Stevens said it is a sensitive issue. The unanswered question about public access as to what the limitations are going to be? Hawaiian practitioners are concerned that their fear is they will be shut out. The mountain does not close unless there is an emergency, but they need to focus on that issue. You can't say practitioners can do this, but others can't and that is difficult. They have to wade through that to come up with the right answer which he mentions because it could be a difficult subject to approach. Ms. Nagata said one issue is whether or not they would require mandatory orientation for those who visit the mountain. During the process of developing the Public Access Plan the general comment by those participating didn't think it was necessary, but educating people through outreach programs, materials or stopping by for information is the best way at this point. There are not a lot of situations occurring where they have instances that require a police officer. Most people are informed if they are doing something not quite right. Whether or not cultural practitioners' access will be denied, the Public Access Plan does recognize that Native Hawaiian rights are constitutionally protected, subject to abuse of government regulations, and they (OMKM) are willing to accommodate, but they may not always allow them access because of safety and health giving the example of ice on the road having to close it.

Member Edlao asked regarding health and safety concerns what is the plan for transporting if something does happen. Ms. Nagata said Pohakuloa Training Area is close by and they can be at the summit of Mauna Kea very quickly and they will work with the rangers to notify the County emergency services. There is a plan where an emergency evacuation vehicle is at the summit in case of an incident or accident.

10:20 AM RECESS

10:31 AM RECONVENED

Chair Thielen said she heard people who need to leave for other meetings and she asked testifiers to keep their comments to two minutes that she will indicate when its one minute and two minute then she may ask you to wrap up to allow everyone a chance to testify. They don't want to short change you, but if people at the beginning take a long time people at the end won't get the time to talk which is frustrating. People have submitted written testimony which the Board will read, but she asked testifiers to stick to the highlights.

Cory Harden testified that there are points and concerns with the naysayers who declined to participate because of legal advice with the court case. [He]She reiterated that the plan should be written by DLNR and not UH because UH's mission is science and research where DLNR is environmental and culture resources and that it is a conflict of interest for UH to write the plan. [Mr.]Ms. Harden noted that 'Imiloa doesn't present the negative aspects that occurred at the summit or by UH. That Mauna Kea needs more protection, not more concrete and observatories need to pay fair market rent.

Nelson Ho, Co-Chair for the statewide Sierra Club, Issues Committee on Mauna Kea, also Chair of the Hawaii Island Group of Sierra Club, testified that they reserve the right a contested case hearing should the BLNR approve the CMP sub-plans, timelines and project development. He noted that there is an appealed filed with the Intermediate Court of Appeals regarding the CMP that took place about a year ago. Sierra Club and Kahea feels the CMP sub plans are procedurally improper because it's still under consideration before the courts. The BLNR previously said that Sierra Club and other parties had no property interest in the conservation district comprised of the entire summit of Mauna Kea. It was not recognized they participated in a BLNR contested case hearing in 2004 and the outcome of that proceeding was the courts required that this whole CMP process take place. Their efforts collectively forced the CMP process to begin. They are now contending that it is being improperly done. KAHEA has submitted written testimony which is far more detailed than he is able to cover and Sierra Club would like to note that and other club members will present further details. Chair Thielen noted that the Board received KAHEA's testimony last night.

David Byrne submitted his written testimony as a long time resident of Hawaii who supports the four sub-plans of the Mauna Kea CMP, the Project Development and Management Framework and the Delegation of Implementation of Authority from the UH BOR to OMKM. The spiritual, cultural and environmental values can be integrated and are compatible with the scientific endeavors which benefit the Hawaii Island community. The plans have been defined, discussed, allows flexibility to adapt and the community's goals can be reached allowing consensus with cultural and scientific.

Jon Miyata, Vice-President of Hawaii Planning Mill, Ltd. distributed his written testimony and testified by reading from it hoping that the Board will approve the sub plans for the CMP.

Vaughn Cook, attorney with Torkildson, Katz, Moore, Hetherington & Harris, is from Hilo, is involved with the Hawaii Island Chamber of Commerce and other organizations distributed his written testimony and testified that the CMP has brought community support from all sectors of their community – the vast majority support taking care of Mauna Kea who want protection and not mis-management that he will vouch for the people who worked on the plans as having the highest integrity. He asked for the Board's support and approval of the CMP.

Mary Begier, President of the Hawaii Island Chamber of Commerce had distributed her written testimony and testified thanking the Board for coming here. They will continue watching what happens on the mountain and will continue working with OMKMB and UH. This is not for money, but for the quality of life which contributes to jobs, the community and families. She is grateful for having the astronomy industry here.

Chair Thielen said she appreciated Ms. Begier for recognizing that the Board members are volunteers and apologized to the Board that she would normally introduce each Board member and proceeded to do so. The Board are all volunteers who on top of their full time jobs prepare for these lengthy meetings and she appreciates the time they put into it. The Chair noted that Big Island Board Member, Rob Pacheco, recused from this meeting as he did with the CMP because of the business that he runs on the Big Island. He is here in spirit and is a very good, active Board member for the Big Island.

Nimr Tamimi, President of the Kanoiehua Industrial Area Association distributed his written testimony and testified from it. He asked the Board for their approval of the CMP.

Hilton Lewis, Deputy Director of the W.M. Keck Observatory testified in support of the CMP and will continue working with OMKM. He noted that Mauna Kea is one of the best sites for astronomy and asked to move this forward.

Clarence Ku Ching who is a cultural practitioner on Mauna Kea distributed his written testimony and testified that he hasn't done any damage or done any negative impacts on the mountain. In regards to access, if it is safe for astronomers to go up to Mauna Kea then it should be safe for practitioners. The CMP and its sub plans do not comprehensively make up a plan, but a plan is a plan. He has a hard time believing that the Science Reserve is a conservation zone because it's starting to look as dense as Waikiki. The CMP and sub-plans make no mention of the conservation status of the mountain and its criteria on how astronomers are to comply with all the requirements of conservation zones. One criteria is to enhance its natural beauty is continued to be ignored. He objected to the process that DLNR used to establish the CMP, the 4 sub-plans – that this CRMP is involved in an application for a contested case hearing and he requested to apply for a contested case hearing on the Sub-plans. He asked to incorporate into his testimony for reference the testimonies of KAHEA, Kealoha Pisciotta, Keo Van Gogh, Debbie Ward Nelson Ho and Fred Stone. The Ka Ula Trail was not mentioned in the Public Access Sub-plan, but he was updated that it has been included.

Koa Rice is a cultural practitioner at Mauna Kea who testified that it is a special place and we can't get away from the cultural. Hawaiians have always been astronomers and will continue to be so. The CMP is a good thing in working together to make progress and she is in favor. She has never been denied access and the only time is when the road is icy which is not safe. It is important to keep the historical, cultural and astronomical aspects alive.

Warren Frisbee representing Local 745 testified he is a member of a struggling work force who is in support of the CMP.

Bob Goodrich, an astronomer from W.M. Keck Observatory for over 20 years testified in support of the CMP. The astronomy community appreciates other users' concerns at the summit with respect that the CMP codifies that in a comprehensive way and he supports it. A lot of work went into all the aspects of the plans by all the different groups and the guiding principles will serve it well for the future thanking everyone's efforts.

Dr. Gregory Chun, Vice-Chair of the Hawai'i Island Economic Development Board distributed his written testimony which he testified from in support of the CMP and its four sub-plans that will put into place the structure and framework processes for ensuring proper stewardship of Mauna Kea. This framework helps the collective community in getting the relationship with the mountain right because it ensures the various interests of the entire collective in going forward.

Dean Au representing the Hilo Field Office of the Hawaii Carpenters Union testified in support of the CMP and its four sub plans reiterating previous testimony of the hard work that went into them recognizing the importance of Mauna Kea's resources and noted development is inevitable. These plans allow for positive development on Mauna Kea for everyone and the environment. Please vote in favor.

Masa Hayashi, Director of the Subaru Telescope testified that the people of Hawaii Island fully support the CMP and the four sub plans, which he appreciates, that they could not build the telescopes without support. OMKM has improved management at the summit with their presence and management efforts at UH Hilo strengthens that. He expressed his full support for these plans then spoke about what would happen during a decommissioning of a telescope in the future.

Paul Tallett who represents his ancestors testified on the cultural resources at Mauna Kea and asked to save Mauna Kea by doing the right thing.

Chair Thielen asked Ms. Pisciotta that a couple people raised points on who should do the plan and if she has aspects of any changes that need to be made to the plan or things that the plan doesn't address would be helpful for the Board if she could pull that out from her written testimony.

Kealoha Pisciotta representing Mauna Kea Anaina Hou had distributed her written testimony and testified reiterating previous testimony regarding the filing with the court

of appeals that if the rule were upheld it would affect the process. She and the other parties are concerned with the Board delegating this authority because you carry the liability and the burden for what UH chooses to do or not do. The law says to retain control and protect the mountain as a conservation district has changed. Staff said they don't have the money to manage Mauna Kea and that is why they deferred to the University. They are proponents of resolutions that are calling for foreign governments at the summit to pay the money in rent because it is the law. These governments have been paying a \$1.00 for 40 years which goes to the general fund. UH is asking for \$2.1 million for management and legal counsel fees. Ms. Pisciotta referred to the CRMP page 2-18, last paragraph which she read that the Hawaii constitution doesn't afford special protection to contemporary cultural practices so it's hard for them to claim permanent protect traditional customary rights because they don't recognize it in the constitution. She related that a family ahu stone was destroyed by OMKM rangers and never been recovered that she read that she was doing a traditional thing, but she brought a foreign stone which is a common practice with navigators. There is a statement in the CRMP that completely discredits important Hawaiian genealogical record which you don't do because it affects 900 generations. She requested a contested case hearing.

Deborah Ward is a resident, retired faculty of UH Department of Natural Resources and Environmental Management and member of Sierra Club distributed her written testimony and testified relating her background with the OMKM Environment Committee since 2000 noting that she is not a naysayer, Sierra Club is. She strongly supports the CMP, but the sub plans don't adequately address hazardous materials. She doesn't agree with the delegation of authority from the BLNR to UH is incorrect because UH is the manager and developer. There are other ways to manage the mountain. No disrespect to all those who put a lot of hard work into these plans. The sub plans rely on the UH Master Plan. Ms. Ward reiterated the conflict with UH being the planner and developer. The budget concerns aren't addressed where the sub plans don't offer a cohesive management plan by offering funding to as the plans are written. The reason they keep coming back over and over is because UH always made promises and only promises, but UH goes to the Legislature for funding because they do not have any funding in place.

Keo Von Gogh testified while going through the plans there was no Chapter 343, no cultural impact statement or assessment and there was no burial treatment plan or review conducted for any of the sub plans. These plans grant broad and sweeping powers to UH and hand selected people to make critical land use decisions to cultural and natural resources including burials. There was no carrying capacity for Mauna Kea regarding telescopes that there was one for the public. The cultural and natural resources are finite and none of the sub plans establish a carrying capacity on those plans. The greatest threat to the cultural and natural resources is destruction of the landscape due to the astronomy industry. The sub plans are silent on how they intend to halt the expanding astronomy footprint. The plans don't consider development with respect to resources affects the public and impacts Hawaiian cultural rights. UH and the authors of the CRMP claim to affirmatively protect Hawaiian customary rights, but reiterated previous testimony that those rights don't exist. Ms. Von Gogh referred to Mr. Taniguchi's comment regarding

naysayers. They are working hard sacrificing their time, jobs and families to protect the mountain from development because it is degrading the mountain.

Fred Stone, a resident of Big Island distributed his written testimony and testified against the plans asking the Board to vote no. He worked on Mauna Kea for the last 30 years and appreciates the BLNR requiring the University create the four sub-plans. They had asked for a sub-plan on cost of development and reconstruction, but there are four pages in the Decommissioning Plan and the Framework for decision making was submitted that gives a flow chart and that should be removed because it does not include BLNR in the decision making. It is not comprehensive without the above.

Wallace Ishibashi from Keaukaha represents the International Long Shoreman's Warehouse Union testified that all unions in Hawaii support the CMP and its sub plans. As a Native Hawaiian he respects all kupuna and religions, and he is Poliahu lineage that is sacred to the mountain. He said to correct the wrongs that were done in the past and these plans give them an opportunity to move forward to protect the sacred mountain.

Myles Miyasato represents the Operating and Development Department testified in support of the CMP because education is important. There are unintended offenses of disrespect because of lack of education or culture with respect to the land. He cited an example on Maui where a Japanese couple held their reception on top of a Hawaiian burial ground. The CMP is for visitors and residents and another reason to approve it.

Don Weir is a 20 year resident who testified that there was no control on Mauna Kea. He is employed on the mountain and has learned a lot about Mauna Kea from people in the community and from out of state. People are surprised there was no cost or control for going up there. These plans will provide education, but it will be expensive. The tour guide books will increase visitors. He asked to pass the CMP and the sub plans.

Eugene Nishimura, representing the Japanese Chamber of Commerce and Industry of Hawaii, distributed his written testimony and testified from it. OMKM will manage on Hawaii Island reiterating each sub plan. He asked the Board to support OMKM in their efforts to achieve these objectives.

Mark Nishii representing the Hawaii Carpenters Union from the Big Island testified in support of the plans for future generations and the need for jobs.

Irene Nagao representing the Association of Hawaiian Civic Clubs submitted written testimony and testified in support.

Harry Kalua is born and raised from Keaukaha testified that it took a year to seek a plan to be involved and those who participate in this meeting is hard work. Talking about this in the community everyday won't cost one penny. Volunteers do 110% of the work when you get paid you do 20%. Do this and it will be a win-win situation with everybody participating and appreciates the Board for being here. He wants future

generations to not have to say their great-grandfather never do nothing. It is a great responsibility to do the right thing.

Chairperson Thielen closed public testimony noting that because the Board is governed by the Sunshine Law they can only talk before the public at a public noticed meeting and they have not talked amongst themselves about the sub plans. They will move to Board deliberations where the Board may ask questions of staff, the University and people who testified, but it doesn't re-open public testimony.

11:55 AM RECESS

12:10 AM RECONVENED

Member Edlao asked that the first testifiers mentioned hazardous waste and crime and asked the University to address that wondering if there were any problems. Ms. Nagata said there were some minor spills in the past, but none recently. This issue has been raised continuously by certain individuals, but like most businesses spills are handled properly and there are guidelines. There has never been a need to call for police back-up and its surprising that it's very rare.

Member Edlao asked whether people are trained to clean up spills. Ms. Nagata said each observatory has trained staff and she noted that a Caltech Observatory pipe broke and fell through an opening in the floor and they took immediate action to do remedial work. Mr. Lemmo said that OCCL was involved in that procedure and they investigated and asked the observatory provide staff the test results of the effects of the spill which was done and staff paid close attention it and at the end they determined it was inadvertent where no damage was done. The observatory cooperated doing everything to fix the problem and staff closed the case. Mr. Taniguchi noted that Caltech is one of the older observatories scheduled to be decommissioned which was built during the pre-hazardous material days and since then construction is more cognizant of hazardous materials.

Member Morgan said there were two observatories identified in the report to be decommissioned in the near future and asked how many are scheduled to be decommissioned. Ms. Nagata said Caltech is scheduled for decommissioning in 2018 and according to UH IFA who is responsible for the research aspect of Mauna Kea most of the telescopes will be decommissioned in 2033. Mr. Lemmo said there are plans to recycle the telescope sites.

Member Agor said he was concerned with reaching out to the cultural practitioners that during development of rules he suggested making a greater effort to reach out to them. Ms. Nagata said they will make that effort and Mr. Stevens said Kahu Ku Mauna will be watching. Member Edlao asked whether the Board will have a say in on those rules. Ms. Nagata said they will work closely with DLNR in developing the rules. She was not sure on the legal proceedings and whether it will come before this Board, but BOR will need to approve. Chair Thielen said that rule making under Chapter 91 which governs all administrative rule making lays out a process that the draft rules has to go out for a

formal public hearing process and asked whether UH has rule making authority in other areas related to the University? President Greenwood confirmed the same process. The Chair said then it would go before the BOR as well. It's clear that the University's authority would be limited to the scope of authority you have in the lease and the term of the lease because the University wouldn't have the authority beyond that. It's only what has been delegated by this Board to the University where there would have to be close discussion with the Department to make sure the rule making that is being proposed by the University is within the terms of the lease from the Department. President Greenwood acknowledged that.

Member Gon said there was a comment during testimony indicating concern over ambiguities on contemporary cultural practice and there are a lot of contemporary practices that are traditional and customary and he wondered whether or not those concerns were well founded or what is your interpretation of the statement that was quoted indicating customary practices are not protected by the constitution and asked for clarification? Ms. Nagata said they worked closely with Kahu Ku Mauna Council on developing some policies related to these types of practices. It is a very complicated and emotional issue. She is not an expert. Kahu Ku Mauna Council was asked to provide in the CMP. Mr. Lemmo said he read the plans reference to Kapa'akai, PASH and those decisions which specifically set aside Native Hawaiian practices are protected under the constitution and he is responding because he read that in two of the plans. He thinks what they are saying is there is lack of specificity on what actual practices and activities are protected which he agrees. Member Gon said he agrees that there are all kinds of contemporary practices and asked what constitutes protected activities is not created in many cases. Member Agor said that he would like confirmation that any new construction projects would have to come before the Board (BLNR). Ms. Nagata confirmed that for major projects which constitute developing an observatory and excavating and also, developing an environmental impact statement. Minor projects that don't require an EIS like an emergency staircase. It would go to the Board for approval. Chair Thielen said that the trigger may not be the environmental assessment, but the trigger maybe the need for an environmental district use permit which would have to come before DLNR. Mr. Lemmo clarified that the plan does not change anything. Everything is subject to HAR requirements. If something you do doesn't require a permit it would apply to anyone in the conservation district. They may need a site approval for something, a Department permit or even Board approval and they are not treated any different. Member Goode said he hoped the rules will be done in two years and asked whether it was something OMKM could commit to. Ms. Nagata said they hoped to finish within two years. And Member Goode asked whether the Department will be consulted. The rules are subject to the review by the BLNR Ms. Nagata confirmed.

Board member Goode asked what University's overall commitment to funding and on-going responsibilities of these plans. President Greenwood explained that the Board of Trustees discussed this because much of the funding for the University is from the State General Fund and they are dependent on what is given at any given time – the state of the State's General Funds. In addition to that, there is research going on at the summit and they are looking to rely on some research funding to help with expenses. At the last BOR

meeting they did confirm the implementation plan which does have a budget of about \$2.1 million to implement what we saw. And, the University is seeking additional resources from the State and don't know the outcomes at this point. The University's BOR does understand that we are committed to implement this plan and they will have to find the resources even with a tight budget. Member Goode said they understand the budget issues, but he is glad to hear about the commitment and asked whether future sub-lessees – he don't know the status of those they may be talking to but currently there is talk of righting a wrong pointing to a lack of funding in the leases. Should you have a new perspective sub-lessee come before you would it be the University's position that its time to start charging fair rent. President Greenwood said that is a delicate question given the status of their leases, but as you heard OMKM is the entity looking at this. They have been looking at the development of these plans because that development and the Board's acceptance lays the ground work for what they will be negotiating of any perspective new projects that would go forward and it would allow them to describe actively what is needed, what they are looking for and what the basis of these might be. They are not far along in developing that although the amount of work this year to get to this point has taken up most of their resources, but they look forward working on those.

Member Gon said testifiers mentioned the carrying capacity of facilities at the summit of Mauna Kea in regards to the current discussion of the anticipated decommissioning and potential development for a total of around 11 observatories. He asked are we entering into an effective phase of what is currently there or did you want to purposely leave that door open in order to explore what the market will bear or what the public will allow? Ms. Nagata said the Decommissioning Plan talked about the future of astronomy on Mauna Kea. The thing with putting up observatories is it's not like a sub-division with a house 10 feet apart from each other with requirements with a view of the horizon for example. Also, the qualities of a particular site that there are technical terms like turbulence, etc. so you can't just put a telescope anyplace on the mountain. But the Master Plan which they are following envisioned that there was room for one large telescope, the TMT, which is the next generation large telescope. If there is anymore new developments on the mountain they will be recycling existing sites and not develop undisturbed lands. Development is only limited to the 525 acres astronomy precinct and will not go outside that. President Greenwood said that our concept of telescopes of what is there now today of technology is rapidly changing that what we call a telescope could be something different in 40 to 50 years. It might be the instruments could be smaller or fewer and we need to consider that.

Chair Thielen said on the follow up questions regarding the cultural access and practices - in the Public Access Plan, Executive Summary of Key tenets at the end of page i does talk about traditional and customary rights which she read. She thinks it does recognize that, but she heard in the discussions leading up to the specifics in these plans that some people didn't participate because of the pending litigation and there remains issues that need to be resolved with the input of the Council. Some of that consultation could take place in a safe or protected manner where people who are involved in pursuing their rights in other forms, an on-going litigation, can participate without compromising their litigation posture. She encouraged folks to pursue ways for those conversations to take

place and the counsel could serve as a venue for those side conversations rather than bringing it back to OMKM. Then she asked whether you folks are open to that? And to try to encourage that participation to have some consultation that may have been lacking in the last year asking for OMKM and OMKMB for comment. Mr. Taniguchi said that it's reasonable. What they need to stress is this plan will come back and if they come back saying you guys did this and we think you should be done and we think you're right on the plan. It's not like an architectural plan by putting up a building like this and it's going to be fixed. It is a living plan and they want input and any reasonable input would go forward. Like one speaker said trying to solve a problem 40 years ago and they want to do that but they got to start somehow, just don't bring up the 40 year old problem and say you got all this, they want to fix it. As long as he is Chair of the OMKMB they will accept any kind of input and if it's good and reasonable they will look at that. It's very frustrating.

Mr. Stevens said to go back to what was discussed asking what is contemporary cultural practice which is very sensitive because they cannot say type is wrong because who are we to judge today's practitioners that they may be the same practices done a thousand years ago, but today we look at it as contemporary. He doesn't think it is right to put it in that category that we should develop the some process or procedure for categorizing it. When a person is a practitioner and he puts this ahu and does so with these protocols that is no different from what was done a thousand years ago that they did the same thing. Today because it is more than 50 years old it's sanctioned as historic property, but today's practitioners can do the same thing without any difference, but yet who is to say it doesn't from here, but to look at it in a more positive light so it's sensitive and they need to work on it because they've had this come up before. And, their job in this whole process is to find answers.

Chair Thielen said (to Mr. Taniguchi) she understands the frustration but she also thinks especially in dealing with Mauna Kea and the importance of Mauna Kea with various people and the culture because it's not defined sometimes what the practice is. The consultation is very hard and sometimes the people who have a desire to consult either don't feel welcome or feel constrained for reasons that maybe we don't understand or maybe feeling it is something they can discuss openly in a public meeting. Recently, people spoke to her suggesting there should be safe areas for consultation, for discussion and then one of the roles the Council could serve is provide that safe area, that confidentiality, that forum and then be able to bring that information forward. The University is at a point that if the Board approves these today you'll be moving the next couple years on rule making. It is not just discussion. This is a very important point to send a message to people in the room who may have not been able to participate in the past year. Is there going to be a safe place for them to participate in this next year to have that understanding brought to the table when the University enters into the rule making phase?

Mr. Stevens said that is an excellent idea. The reason he says that is Hawaiians of today are no different than those in the past. They inherently hold everything close to their heart and they don't share because it's their mana'o (thoughts) whatever it is that they

hold dearly. You are right to hold discussions in an open assembly like this you are not likely to come out experiencing the true feeling about their position. A safe place is probably a very good activity and they should consider this. When they had consultation on the CMP where Kahu Ku Mauna heard such consultation with such people that they should be provided a safe place and thanked the Chair.

Chair Thielen said it does put an extra burden on them (Kahu Ku Mauna), but also on the OMKM and the University to be aware that when the Council comes forward sometimes there will be agreement on things, sometimes disagreement and sometimes you'll be back to that public form. People will take the public positions for whatever other reasons, but they have to respect there is disagreement, people will pursue that and to not make it personal and still try to make the rules or the plans have the best approach possible. If the Council is willing to play that role and OMKM and the University can give them that opportunity go have those outside conversations and listen with an open ear when they come back it will be very important.

The Chair had another question on the revenue to support the implementation of these plans. She wasn't clear in the event of a new tenant or telescope or new project coming forward what entity within the University is the initial point of contact and is responsible for leading in those negotiations that may ultimate result in a lease or the renewal of an existing? President Greenwood said since OMKM is the initial contact point that the initial discussions would start there. As you know, these leases have not negotiated for 46 years. The University is working with the OMKM and their Board to try to begin looking at that process and they have to have it clearer on how that is done. It can't be done without the BLNR, but that is where it would start. All leases will go through the appropriate legal processes and will have to be approved by the BOR. Chair Thielen said that whatever entity comes forward with the proposed lease with the lease terms to the University would go through their administrative legal review and the BOR would approve and she asked are those in public meetings. President Greenwood confirmed they are. The Chair said and the public meetings of the BOR also have to meet the Sunshine Law with a posted agenda and notice which was confirmed by President Greenwood that the BOR have to obey all Sunshine Laws and people are allowed to testify in those meetings.

Chair Thielen said that this Board is familiar with the operations of the DLNR they also rely on the Legislature for general funding, but that has been a steady decline over the last decade. They have taken a step through their Recreational Renaissance Plan to recognize that they can develop revenues through non-general fund sources to dedicate them to public land management. It maybe premature to talk about new leases and new negotiations, but she asked does the University recognize that those leases do provide a revenue source to support the implementation of these plans. President Greenwood acknowledged that. The Chair asked is the University committed in having OMKM engaged in those discussions so it would have the opportunity for input on how to structure those leases as well. It was confirmed by President Greenwood.

There was some Board discussion on whether or not to go into Executive Session on legal questions. Chair Thielen said that Member Goode will run through his questions and if it's complicated enough they will go to Executive Session or if it's simple enough they'll have our Deputy Attorney General speak. Member Goode referred to written testimony from KAHEA indicating because they appealed the Third Circuit Court's decision upheld the BLNR's decision contested case in approval of the management plan. He asked because that is in the Court of Appeals that they are saying the Board should stay the decision is there legal precedence for that? Deputy Attorney General Julie China said the short answer is no, but if he wants a longer explanation they could go into Executive Session. Member Goode is satisfied with the short answer and said there was testimony from KAHEA regarding transfer of authority under decision of Kapa'akai vs. LUC. He doesn't want to run afoul with the decision, but in that particular case it maybe a private entity that the State could independently draw up some management type plans and asked whether this is a valid concern? Ms. China said it is not a valid concern, but she could detail more in Executive Session. Member Goode is satisfied with the short answer and other Board members were satisfied as well.

Member Morgan made a motion to accept staff's recommendation to accept the four sub plans and delegating authority. Member Agor seconded it.

Member Gon was considering whether or not there was a need to impose any additional conditions, but after the discussion and questioning he was inclined to leave the motion as is.

Member Goode made a motion to consider requiring that the first annual report that the BLNR receives at lease accomplished the initial draft of the rules in consultation with DLNR. He would like to ask the applicant to get the draft done in at lease a year.

Chair Thielen said there is a request for friendly amendment and asked the mover and second whether they want to consider the friendly amendment or consider more information first where Member Agor asked more information. The Chair said there is a request for 18 months with BOR and then the Council.

Mr. Stevens said supposing the plans are approved and the CMP is the document they will be following it will create a tremendous amount of work for everyone and he was afraid of the timetable the Board is trying to set. He was concerned with the need for funding that money was discussed earlier and they need the resources to do both that he cannot see delaying for three years which is not acceptable. Member Goode said he had one year, 18 months and three years that if they can do it in 18 months that would be wonderful. Mr. Taniguchi commented rather than a first draft, ask for a progress report on where they are because with a first draft they may not be ready to go out with a public document. Chair Thielen said the proposed amendment is trying to make sure the University prioritizes this when it sets out its timetable because the rulemaking is going to be important. She hears what Mr. Taniguchi is saying about getting to the final draft of the rules. One of the things DLNR has been doing recently is going out for informational meetings with maybe a framework, not necessarily at the draft rule stage,

but to get more dialogue on what we are thinking about and more back and forth and take that information back and finalizes any working drafts before going out for public hearing. Maybe an interim step requiring the University within the year before the first annual report to have informational public meetings which provide specific frameworks for these administrative rules for discussion and input. It is not the draft rule yet, but it is saying the University has to go out to the public and layout some framework on these rules to get public comment rather than having people wait two years then have a done deal with just a public hearing - informational meetings specific to the draft rules.

Member Gon said in addition to that in the revision in the conservation rules there was a phase when DLNR went out to stakeholders that would be affected by the revision of those rules with some proposed adjustments to the statements which were very useful. It didn't require a completely public venue, but it did provide feedback from stakeholders. He don't know if he'd only want the requirements of a set of public vetted foundational meetings, but the kind of progress we are talking about where you are establishing a set of draft statements maybe even generating from existing rules and regulations would have to be generated consistently and then gathering feedback from those stakeholders and partners that will likely be affected. Then within a year this Board will see a set of statements coming into solidity or in preparation for their public unveiling.

Member Goode explained we want to get this right because all too often he sees agencies given rule making authority and nothing happens and that creates quasi policy with the Department that changes sometimes frequently which is not good for the public. We need to get the rules done and he wants to see an annual report to see the progress and this is the one time they get to put something in it to get something done. He understands the financial realities and the procurement process, it's awkward. Have some progress here with something they can look to, specifically annual reports. President Greenwood said that the plans before them support the fact that they need to have clarity in rule making. She is being cautious with the time frame because they don't want to put the OMKM on the hook on something they might not be able to do within the time frame. The idea of having hearings, getting input and working with others makes a lot of sense to start making progress and they have no intention of doing nothing. But, if you could have whatever language you are thinking about to be flexible enough to allow them to demonstrate the progress to develop a process to be inclusive without being prescriptive with respect to time, that would be very helpful and they clearly understand their intentions. But, as mentioned, it takes an amazingly long time to get the procurement process done. Chair Thielen suggested a demonstrated progress in developing administrative rules that gives you some flexibility as in the how but that there is an expectation in the first annual report it's going to include discussion and evidence of demonstrated progress in preparing draft administrative rules.

There was some Board discussion on the duration of the demonstrated progress – one year.

Member Morgan moved as amended and Member Agor seconded it.  
The Board voted unanimously to approve the amended motion

**The Board of Land and Natural Resources (BLNR) approved the University of Hawaii's Mauna Kea Comprehensive Management Plan, Sub Plans and Project Development and Management Framework, and also approved delegation of implementing authority from the University of Hawaii Board of Regents to the Office of Mauna Kea Management, subject to the condition that the University demonstrate progress in the development of administrative rules for Mauna Kea by the second annual report.**

**Unanimously approved as amended (Morgan, Agor)**

**Adjourned (Gon, Morgan)**

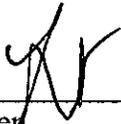
There being no further business, Chairperson Thielen adjourned the meeting at 1:03 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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Laura Thielen  
Chairperson  
Department of Land and Natural Resources