MEMORANDUM

February 5, 2016

TO: Randolph Moore
   Chairperson, Board of Regents

VIA: David Lassner
     President

FROM: Jan Gouveia
      Vice President for Administration

SUBJECT: APPROVAL OF AMENDMENTS TO RP 10.201, Interests in Real Property for the University of Hawai‘i

Specific Action Requested:

For reasons set forth below, the Board of Regents (“Board”) of the University of Hawai‘i (“University”) is requested to approve amendments to Regents Policy 10.201, Interest in Real Property (RP 10.201).

Recommended Effective Date:

Upon approval.

Procedural History:

In November 2013, the Board amended RP 10.201 to require that all real property transactions go to the Board for approval unless they are minor or administrative. More specifically, Sections III.B and III.C of the current policy were adopted to state as follows:

III.B. In general, the Board of Regents shall review and approve all real property transactions, including but not limited to the disposition, acquisition and receipt of...
real property. In addition, the Board of Regents shall review and approval all leases, licenses and other agreements involving the use and occupancy of real property, including amendments and extensions thereof.

III.C. However, the president is delegated the authority to approve all transactions under this section that are determined to be minor or administrative. On an annual basis, the president shall provide the Board of Regents with a list and description of all such actions that have taken place under this delegated approval.

See Attachment A for a complete copy of RP 10.201.

Prior to this act, the policy stated in its entirety as follows (See Attachment B):

Section 10-1 Interests in Land.

The President and his/her designee(s) are delegated the authority to approve all transactions involving the acquisition or conveyance of land and interests in land unless, after consultation with the Board the President determines that the acquisition or conveyance will have an impact on a program, require a change in Board policy, or may engender controversy, in which case prior approval of the Board shall be required.

Documents for the acquisition or conveyance of land and interests in land shall be executed on behalf of the University by any two of the following officers: the President, Vice President for Budget and Finance/Chief Financial Officer, the Executive Administrator and Secretary of the Board of Regents, or the Director of Procurement and Real Property Management.

Based on preliminary research, we believe this policy was effective as of April 2011.

Prior to 2011, the policy stated in its entirety as follows (See Attachment C):

Section 10-1 Interests in Land.

The Board shall approve all transactions involving the acquisition or conveyance of land and interests in land where the transaction exceeds a duration of one (1) year or where the estimated value of the transaction exceed fifty thousand dollars ($50,000). The President and his/her designee(s) are delegated the authority to approve all other transactions involving the acquisition or conveyance of land and
interests in land unless, after consultation with the Board, it is determined that the acquisition or conveyance will have an impact on a program, require a change in Board policy, or may engender controversy, in which case prior approval of the Board shall be required regardless of value of transaction.

Documents for the acquisition or conveyance of land and interests in land shall be executed on behalf of the University by any two of the following officers: the President, Vice President for Budget and Finance/Chief Financial Officer, the Executive Administrator and Secretary of the Board of Regents, or the Director of Procurement and Real Property Management.

Based on preliminary research, we believe this policy was effective as of October 20, 2005.

DISCUSSION

As set forth above, the Board’s policies on real estate transactions that require Board approval have ranged between two extremes: The 2005 version requiring Board approval for all transactions exceeding one (1) year or $50,000, and the 2011 version, which delegated all transactions to the President for approval.

The current version is a more balanced approach that requires Board approval for all real property transactions, unless they are "minor or administrative." While the intent of the Board is clear, implementation of this standard by administrators and staff throughout the campuses is challenging because it calls for a subjective determination. As a result, there is significant time and energy expended on documenting justifying, and approving an initial determination of whether a matter is "minor or administrative."

With the objective of providing greater definition around the Board’s intent for describing what transactions require Board approval, we reviewed matters that have been presented to the Board after the adoption of the "minor or administrative" threshold and have found no clear trends. We believe the Board’s intent is to allow the Administration to execute its operations efficiently while ensuring that the Board be apprised of any transactions that are significant. To accomplish this, we propose amendments to RP 10.201 that:

- Require Board approval for transactions involving the disposition/acquisition of real property in fee simple or leases that are longer than five (5) years; provided, however, the President has the discretion to present to the Board for approval any
transactions involving real property or an interest therein that may present a significant public interest.

- Delegate to the President and his/her designee the authority to approve all other real property transactions under this section including, but not limited to, shorter term leases, easements, rights-of-entry, and other agreements involving the use and occupancy of real property, including amendments and extensions thereof.

The amended policy will continue to require the President to provide the Board with a list and description of all such actions that have taken place under this delegated approval.

From a more transactional perspective, we are also proposing that the policy be amended to:

- Identify that all transactions approved by the Board will be executed by the President and one officer.
- Identify that all other transactions shall be executed by the President or his/her designee(s).
- Replace the requirement for surveys with a requirement for all supporting documents that the President deems appropriate to accompany transactions requesting Board approval.

In summary, we believe the above amendments to RP 10.201 appropriately balances the duties and responsibilities of the Board against the operational and administrative functions of the President.

For a complete redlined version of the amendments, please see Attachment D.

**Specific Action Recommended:**

In accordance with the above, the Board of Regents is recommended to approve amendments to Regents Policy 10.201, Interest in Real Property as set forth in final form in Attachment E.

Attachments A through E
Viewing Policy RP 10.201

Title
Interests in Real Property

Header
Regents Policy Chapter 10, Land and Physical Facilities
Regents Policy RP 10.201, Interests in Real Property
Effective Date: am. Oct. 20, 2005
Review Date: August 2019

I. Purpose
To set forth policy on interests in real property.

II. Definitions
No policy specific or unique definitions apply.

III. Board of Regents Policy
A. It is the board’s intent that the university’s policy, practices and decision-making regarding real property and interests in real estate, shall: (1) promote and support the mission and goals of the university in education, research, service and economic development; (2) advance principles and practices of sound environmental stewardship and sustainability; (3) ensure that alternative actions are considered, investigated and analyzed; (4) be fairly priced in the context of applicable fair market values and other relevant factors; (5) generate revenue from real property not critical to long range plans for the university to support the university’s core mission; and (6) be consistent with and support long range plans that have been approved by the BOR.

B. In general, the Board of Regents shall review and approve all real property transactions, including but not limited to the disposition, acquisition and receipt of real
property. In addition, the Board of Regents shall review and approval all leases, licenses and other agreements involving the use and occupancy of real property, including amendments and extensions thereof.

C. However, the president is delegated the authority to approve all transactions under this section that are determined to be minor or administrative. On an annual basis, the president shall provide the Board of Regents with a list and description of all such actions that have taken place under this delegated approval.

D. For actions that come to the board pursuant to this section, the board shall be provided with an analysis and supporting documentation that allows it to verify the fair market value and terms of the transactions, as well as the recommended action’s compliance with the intent of this policy. Actions involving the disposition or acquisition of real property shall be accompanied by a recent appraisal conducted by a licensed real estate appraiser. Actions involving the lease, license or other use or occupancy of real property, shall be accompanied by a recent survey of comparable rents and/or values.

E. In the event that a board approved transaction does not occur within one year of board approval, then that transaction shall be presented to the board with updated and current information prior to the transaction occurring.

F. Real property transactions under this section shall be executed on behalf of the university by two officers of the university.

G. The president shall promulgate executive policies to implement the responsibilities set forth in this Section 10.

IV. Delegation of Authority

However, the president is delegated the authority to approve certain transactions under this section. RP 10.201(C).

V. Contact Information

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References

A. http://www.hawaii.edu/offices/bor/

VII. Exhibits and Appendices

No Exhibits and Appendices found
Approved

approved as to Form: October 31, 2014
Cynthia Quinn
Executive Administrator and Secretary of the Board of Regents

Topics

No Topics found.
CHAPTER 10
LAND AND PHYSICAL FACILITIES

Section 10-1  Interests in Land.

The Board shall approve all transactions involving the acquisition or conveyance of land and interests in land where the transaction exceeds a duration of one (1) year or where the estimated value of the transaction exceeds fifty thousand dollars ($50,000). The President and his/her designee(s) are delegated the authority to approve all other transactions involving the acquisition or conveyance of land and interests in land unless, in consultation with the Board, it is determined that the acquisition or conveyance will have an impact on a program, require a change in Board policy, or may engender controversy, in which case prior approval of the Board shall be required regardless of value of transaction.

Documents for the acquisition or conveyance of land and interests in land shall be executed on behalf of the University by any two of the following officers: the President, Vice President for Budget and Finance/Chief Financial Officer, the Executive Administrator and Secretary of the Board of Regents, or the Director of Procurement and Real Property Management. (Oct. 20, 1978; Dec. 12, 1986; am: Oct. 18, 2002; am: Oct. 20, 2005)

Section 10-2  List of Actions Exempt from Filing of Environmental Impact Statement.

The "List of Exempt Classes of Action Pursuant to Rule 1:33a of the Regulations of the Environmental Quality Commission" is provided below and the President is delegated the authority to add to or delete from the list as operational needs change. (Feb. 13, 1976)

1. Class 1: operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
   a. Refurbish or renovate existing structures.
   b. Repair, overhaul, or replace equipment used for construction, transportation, scientific work, heating, and ventilating.
   c. Repair or repave roads, parking areas, walkways, ramps, and fences.
   d. Planning and implementing new programs and curricula in existing University facilities, including the creation of new degree programs, the establishment of small experimental programs, curriculum modifications for the expanded use of under-utilized facilities, but not requiring new structures.
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Section 10-2  List of Actions Exempt from Filing of Environmental Impact Statement.

The President is delegated the authority to add to or delete from the List of Exempt Classes of Action Pursuant to Rule 1:33a of the Regulations of the Environmental Quality Commission, as operational needs change.

Section 10-3  Use of University-Owned Facilities. The President is delegated the authority to promulgate practices and procedures governing the use of university owned or operated facilities.

Section 10-4  Child Care Programs. The President is delegated the authority to promulgate practices and procedures governing child care programs and use of such facilities.

Section 10-5  Parking and Operation of Motor Vehicles. The President is delegated the authority to promulgate policies and procedures for the parking and operation of motor vehicles on University campuses. (For the respective campuses, see Administrative Rules, Title 20, University of Hawai‘i, Chapter 12.)
Title
Interests in Real Property

Header
Regents Policy Chapter 10, Land and Physical Facilities
Regents Policy RP 10.201, Interests in Real Property
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I. Purpose
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   A. It is the board’s intent that the university’s policy, practices and decision-making regarding real property and interests in real estate, shall: (1) promote and support the mission and goals of the university in education, research, service and economic development; (2) advance principles and practices of sound environmental stewardship and sustainability; (3) ensure that alternative actions are considered, investigated and analyzed; (4) be fairly priced in the context of applicable fair market values and other relevant factors; (5) generate revenue from real property not critical to long range plans for the university to support the university’s core mission; and (6) be consistent with and support long range plans that have been approved by the BOR.

   B. In general, the Board of Regents shall review and approve all real property transactions, including but not limited to for the disposition, or acquisition and receipt of real property. In addition, the Board of Regents shall review and approve all leases, licenses and other agreements involving the use and occupancy of real property, in fee simple or by lease or equivalent interest with a term exceeding five (5) years, including amendments and extensions thereof provided, however, the President has the discretion to present to the board for approval any transactions involving real property that may impact a significant public interest.

   C. However, the president is and his/her designees are delegated the authority to approve all other real property transactions under this section that are determined to
be minor or administrative, including, but not limited to, leases or equivalent interests with a term of five (5) years or less in duration, licenses, easements, rights-of-entry, and other agreements involving the use and occupancy of real property, and any amendments and extensions thereof.

D. On an annual basis, the president shall provide the Board of Regents with a list and description of all such actions that have taken place under this delegated approval.

DEF. For actions that come to the board pursuant to this section, the board shall be provided with an analysis and supporting documentation that allows it to verify the fair market value and terms of the transactions, as well as the recommended action's compliance with the intent of this policy. Actions that come to the board involving the disposition or acquisition of real property shall be accompanied by a recent appraisal conducted by a licensed real estate appraiser. Actions that come to the board involving the lease, license, or other use of property, with a term exceeding five (5) years, including amendments or occupancy of real property extensions thereof, shall be accompanied by supporting documentation that the President deems appropriate.

EF. In the event that a board approved transaction does not occur within one year of board approval, then that transaction shall be presented to the board with updated and current information prior to the transaction occurring.

FG. Real property transactions approved by the board under this section shall be executed by the President and one other University officer, after review and approval by the Office of General Counsel. All other real property transactions shall be: (1) executed on behalf of the university by two officers of the university, the President or his/her designees and (2) subject to review and approval by the Office of General Counsel as requested by the President.

GH. The president shall promulgate executive policies to implement the responsibilities set forth in this Section 10.

IV. Delegation of Authority

However, the president is delegated the authority to approve certain transactions under this section, as set forth above.

V. Contact Information

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References

A. http://www.hawaii.edu/offices/bor/
VII. Exhibits and Appendices

No Exhibits and Appendices found

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<td>Cynthia Quinn</td>
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B. The Board of Regents shall review and approve all real property transactions for the disposition or acquisition of real property in fee simple or by lease or equivalent interest with a term exceeding five (5) years, including amendments and extensions thereof; provided, however, the President has the discretion to present to the board for approval any transactions involving real property that may impact a significant public interest.

C. The president and his/her designees are delegated the authority to approve all other real property transactions under this section including, but not limited to, leases or equivalent interests with a term of five (5) years or less in duration, licenses,
easements, rights-of-entry, and other agreements involving the use and occupancy of real property, and any amendments and extensions thereof.

D. On an annual basis, the president shall provide the Board of Regents with a list and description of all such actions that have taken place under this delegated approval.

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F. In the event that a board approved transaction does not occur within one year of board approval, then that transaction shall be presented to the board with updated and current information prior to the transaction occurring.

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