

AMENDED

**Notice of Meeting
UNIVERSITY OF HAWAI'I
BOARD OF REGENTS**

Board business not completed on this day will be taken up on another day and time announced at the conclusion of the meeting.

Date: Thursday, June 18, 2020

Time: 9:00 a.m.

Place: Virtual Meeting

In light of the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, this will be a virtual meeting and written testimony and oral testimony will be accepted in lieu of in-person testimony. Meetings may be monitored remotely via the livestream pilot project. See the Board of Regents website for information on accessing the livestream: www.hawaii.edu/bor. Mahalo for your consideration.

AGENDA

- I. Call Meeting to Order**
- II. Approval of the Minutes of the May 21, 2020 Meeting**
- III. Public Comment Period for Agenda Items:**

All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via the board's website through the testimony link provided on the [Meeting Agendas, Minutes and Materials](#) page. Testimony may also be submitted via email at bor.testimony@hawaii.edu, U.S. mail, or facsimile at (808) 956-5156. All written testimony submitted are public documents. Therefore, any testimony that is submitted for use in the public meeting process is public information and will be posted on the board's website.

Those wishing to provide oral testimony for the virtual meeting may register [here](#). Given constraints with the online format of our meetings, individuals wishing to orally testify must register no later than 8:00 a.m. on the day of the meeting in order to be accommodated. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

- IV. Report of the President and COVID-19 Update**
- V. Committee Reports**
 - A. Report from the Committee on Budget and Finance
 - B. Report from the Committee on Independent Audit

- C. Report from the Committee on Intercollegiate Athletics
- D. Report from the Committee on Planning and Facilities
- E. Affiliate Reports

VI. Agenda Items

- A. Consent Agenda
 - 1. Approval of Indemnification Provision in a Contract Between the City and County of Honolulu and the University of Hawai'i to Provide COVID-19 Testing
- B. Approval of Appointment of William Carthage Bergin to the Mauna Kea Management Board

VII. Executive Session (closed to the public):

- A. Legal and Real Estate Matters: *(To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations, and to consult with the board's attorneys on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities pursuant to Sections 92-5(a)(3) and 92-5(a)(4), Hawai'i Revised Statutes)*
 - 1. Consultation Regarding Hangar 111, Kalaeloa Airport, Barbers Point, O'ahu, Hawaii

VIII. Agenda Items (continued)

- A. Adoption of Board of Regents Resolution 20-01 Authorizing Hangar 111 Abrogation, Kalaeloa Airport, Barbers Point, O'ahu, Hawai'i
- B. Approval of Resolution Honoring University of Hawai'i Regent Michael T. McEnerney

IX. Announcements

- A. Next Meeting: July 16, 2020, location to be determined

X. Adjournment

DISCLAIMER – THE FOLLOWING ARE DRAFT MINUTES AND ARE SUBJECT TO FURTHER REVIEW AND CHANGE UPON APPROVAL BY THE BOARD

MINUTES

BOARD OF REGENTS MEETING

MAY 21, 2020

Note: On January 30, 2020, the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern, subsequently declaring it a pandemic on March 11, 2020. On March 16, 2020, Governor David Y. Ige issued a supplementary proclamation that temporarily suspended Chapter 92, Hawaii Revised Statutes, relating to public meetings and records, “to the extent necessary to enable boards to conduct business in person or through remote technology without holding meetings open to the public.”

I. CALL TO ORDER

Chair Ben Kudo called the meeting to order at 10:59 a.m. on Thursday, May 21, 2020. The meeting was conducted with regents participating from various locations.

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

Others in attendance: President David Lassner; Vice President (VP) for Administration Jan Gouveia; VP for Community Colleges Erika Lacro; VP for Legal Affairs/University General Counsel Carrie Okinaga; VP for Academic Planning and Policy Donald Straney; VP for Research and Innovation Vassilis Syrmos; VP for Budget and Finance/Chief Financial Officer Kalbert Young; VP for Advancement/UH Foundation (UHF) Chief Executive Officer Tim Dolan; UH-Mānoa (UHM) Provost Michael Bruno; UH-Hilo (UHH) Chancellor Bonnie Irwin; UH-West O’ahu (UHWO) Chancellor Maenette Benham; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

II. APPROVAL OF THE MINUTES OF THE APRIL 16, 2020 MEETING

Vice-Chair Sullivan moved to approve the minutes of the April 16, 2020, meeting, seconded by Regent Wilson, and the motion carried, with all members present voting in the affirmative.

III. PUBLIC COMMENT PERIOD

Board Secretary Oishi announced that the Board Office received numerous written testimony offering comments relating to the Maunakea management restructuring plan. While most of the written testimony received was in opposition to the management restructuring plan agenda item, there appeared to be confusion as to the action that was scheduled to be taken by the board as comments generally were directed at the issue of

the overall governance of Maunakea, which was not under consideration for board action, rather than the internal restructuring of various university entities that currently have oversight and management responsibilities for Maunakea. Written testimony offering comments on the Maunakea management restructuring plan agenda item may be found on the board website as follows:

[Written Testimony Comment Received](#)

[Written Testimony Comment Received2](#)

[Written Testimony Comment Received3](#)

[Late Written Testimony Comment Received](#)

[Late Written Testimony Comment Received2](#)

Board Secretary Oishi further noted that two individuals had registered to provide oral testimony. Mr. Hank “Hanalei” Fergerstrom and Rev. M. Kalani Souza.

Noting that he represented Na Kupuna Moku O Keawe, Mr. Fergerstrom stated that the organization opposed the approval of the Maunakea management restructuring plan. Mr. Fergerstrom commented that the process used to develop the proposed management restructuring plan appeared to lack transparency and openness as Na Kupuna Moku O Keawe, a Maunakea stakeholder, had neither been consulted on, nor received any draft of, the proposed plan and as such was unaware of its contents. Mr. Fergerstrom remarked that consultation and inclusion of all Maunakea stakeholders in any management issue regarding Maunakea is crucial and should be given utmost consideration by the board.

Chair Kudo clarified that there were two separate reorganization issues involving Maunakea management. The first issue, which is the agenda item under consideration by the board at this meeting, deals with administrative, organizational, and internal restructuring of the various entities of the university that currently are in existence and have oversight and management responsibilities for Maunakea. The second topic addresses the broader issue of the governance and management of the totality of Maunakea, which is not being considered at this meeting. Overall management and governance of Maunakea is an issue that will be subject to a lengthy process involving more than the board, including numerous government entities and stakeholders, and will include opportunities for input from a number of sources, including the community. Although the ultimate decision on the overall governance of Maunakea is not one that the board will make, he stated that the board initiated a process to begin understanding, assessing, and discussing various management governance alternatives, some of which were proposed to address criticisms raised regarding the governance of Maunakea. Chair Kudo noted the importance of these discussions to allow the board to advocate for changes in an informed manner.

Rev. Souza commented on the approval of the Maunakea management restructuring plan noting the lack of transparency and involvement of indigenous peoples in the process. He stressed that lack of transparency erodes public confidence

and trust and that it would be in the board's best interest to be as transparent and forthright as possible, particularly with this contentious issue.

IV. REPORT OF THE PRESIDENT: COVID-19 UPDATE

President Lassner updated the board on the university's current situation with regard to the COVID-19 public health crisis noting that the situation remains dynamic which requires the university to continue to maintain flexibility. He stated that the ability of faculty, staff, and students of the university to rise to the occasion and adapt to unexpected challenges amidst a new teaching and learning environment allowed the educational mission of the university to move forward.

Despite numerous challenges, the university was able to successfully complete the spring semester and fulfill its obligations to its students. The success in the use of online and distance learning that allowed completion of the spring semester was not only experienced by the university itself but also by the university's early college programs. Through a collaborative partnership between the various campuses of the university system and the State Department of Education, 231 early college education courses were offered during the spring semester, 228 of which were successfully completed and 3 of which required cancellation for various reasons.

As expected, the university's graduating class of 2020 will be entering a job market that has been dramatically altered by the COVID-19 crisis. As university graduates face one of the most difficult job markets in modern history, serious consideration may be given to pursuing further educational opportunities through enrollment in graduate school which would increase a graduate's qualifications when the employment market improves. The administration is hoping that many of UH's graduates consider this track.

Similarly, Hawai'i's class of 2020 high school graduates will be facing extremely challenging times. The administration is viewing this as an opportunity to encourage the 45 percent of high school graduates who do not pursue higher education to consider changing their plans and attend a college or university in the fall. To this end, the community colleges have partnered with Hawai'i P-20 Partnerships for Education in developing the Next Steps to Your Future program (Next Steps) which is specifically designed to engage public high school graduates on all islands with higher education and career options. Mainly supported through private philanthropy, Next Steps is a summer onramp program that connects graduating high school seniors to available post-secondary education, training, and employment opportunities. Next Steps also includes the Hawai'i P-20 Summer Advising Initiative which links high school graduates with both general and personal advising to allow them to make informed decisions and take the critical steps needed to achieve their post-high school education plans. The Next Steps program has received tremendous interest from public high school graduates from the class of 2020 with over 580 students signed up for advising.

As part of the Next Steps program, the community colleges are also offering free, online Next Step: Career Exploration classes to Hawai'i's public high school graduates. Through these summer classes, students can learn how to navigate college; discover the education and training available at UH; determine whether to enroll in college, seek

employment, or both; explore career options; develop career plans; and identify next steps toward their career and life goals. Enrollment in these classes will also allow students to begin earning credits towards a college degree. Interest in this program has been strong with over 700 students registering for the program to date and 660 students scheduled to attend classes.

The university is forging ahead with plans to reopen campuses this fall and continues to take actions to ensure the health and safety of returning students, faculty, and staff. Since a safe return to campus can only take place when measures for physical distancing and hygiene are in place to lessen the risks of exposure, working teams have been assembled on each campus as part of the planning and preparation process. These working teams will address essential areas critical to meeting the unique needs of each campus for their anticipated fall reopening and will be using recently updated public health guidance from the Centers for Disease Control and Prevention (CDC) that is specific to the reopening of institutes for higher education (IHE).

The university's first summer session is slated to begin on May 26 with all courses being conducted online. Enrollment for the first summer session is strong with enrollment in both undergraduate and graduate level courses experiencing increases over the same period in 2019. The second summer session will provide the university with the opportunity to begin testing plans for a hybrid form of instruction which integrates both safe on-campus teaching with online instructional activities, a plan which the university is anticipating to fully implement in the fall.

As the world begins to emerge from the COVID-19 pandemic, it is expected that society will be facing a new normal until a vaccine or adequate treatment modalities are developed or herd immunity is achieved. Components of this new normal such as screening, testing, and contact tracing, as well as possible quarantining of individuals, are fundamental to any recovery efforts being undertaken and the university's intellectual, research, and instructional capacity is key to Hawai'i's recovery efforts. President Lassner announced that UHM and UHWO have partnered with the State Department of Health to provide training for an initial cohort of 200 individuals in contact tracing that will allow the state to meet its workforce needs for this effort. The community colleges will also be training more community health workers to assist individuals in the most disadvantaged communities which have tended to experience greater public health impacts from the COVID-19 pandemic. Additionally, JABSOM and the City and County of Honolulu have created a partnership to establish a testing lab which will serve multiple purposes including helping to increase testing among disadvantaged communities, driving innovation in the rapidly changing field of coronavirus testing and allow for pioneering of new testing methods that will assist Hawai'i and beyond, assisting with the university's requirements for testing within the UH community, and serving as a platform to enable the university to compete for federal research funding anticipated with regard to coronavirus and other infectious diseases.

The university also continues planning and developing strategies to prepare for and address multiple financial scenarios arising from the COVID-19 crisis and the impacts these scenarios will have on the university. While the full-scale impact of the COVID-19

crisis on the State's general fund is not yet known, all indications are that it will be significant and the university is anticipating budget shortfalls since general fund appropriations account for approximately half of the university's operating dollars. Although deposits for fall enrollment have increased at some campuses, actual enrollment and associated tuition revenue remain uncertain as students and families, both in Hawai'i and abroad, are weighing their options and making their higher education decisions later than usual. Uncertainty also exists on whether the federal government will provide additional stimulus funding and, if so, how these funds will be distributed to IHEs.

Citing reports that universities are contemplating various changes to their operations to mitigate possible COVID-19 outbreaks such as adjusting academic calendars to shorten the academic year or requiring reconfigurations to student housing, Regent McEnerney asked whether similar plans were being considered by the university. President Lassner replied in the affirmative. He noted that IHEs across the country have been sharing experiences and ideas on ways to mitigate the effects of COVID-19 but that different conclusions are being reached on a number of issues. While the university is not contemplating changing its semester dates, it is considering changing the ways in which classes are offered including a mix of online and in-person course instruction and adjusting class times. Additionally, every classroom on every campus throughout the system is being assessed to determine maximum capacity when taking into consideration CDC guidance and recommendations which will probably result in smaller class sizes.

Regent McEnerney noted that many students may not be returning to IHEs that they were attending in the spring semester, opting instead to attend local colleges and universities, and asked how the university planned to address the transfer of credits with other institutions for these students. President Lassner replied that he recently signed an agreement between higher education institutions across the country that deals with general education learning outcomes known as the interstate passport system. This agreement will allow for easier transfer of general education credits/requirements for students. Discussions between IHEs are still ongoing with regard to major coursework requirements as these are unique to each institution.

Regent Wilson commented that while much of the focus on the health and well-being of individuals during the COVID-19 pandemic has been on physical health, it was important to also consider the impacts the pandemic has had on the mental health of individuals and commended the university administration for not overlooking this issue. President Lassner assured the board that the importance of the mental health of individuals, particularly those associated with the university, is a constant topic of discussion among members of the administration.

V. REPORT OF THE UNIVERSITY OF HAWAI'I FOUNDATION

VP/UHF CEO Dolan provided a brief report on the fundraising efforts of UHF stating that he was optimistic about UHF's direction and effort in supporting the ten campuses of the UH System. He cautioned, however, that UHF will face challenges in its

fundraising efforts and in fulfilling its mission over the next fiscal year due to economic and financial uncertainties caused by the COVID-19 pandemic.

UHF began the fiscal year with a goal of raising \$75 million. UHF has raised slightly over \$70 million to date and fully expects to surpass its \$75 million goal by the end of this fiscal year. VP Dolan noted that it was encouraging that the high-volume, low-dollar donations that are usually garnered by UHF's annual fund drive through efforts such as phone calls, e-mails, and donation requests sent through the mail, experienced an increase of 15 percent over last year despite these fundraising efforts being hampered by the COVID-19 pandemic. He reiterated, however, that UHF is expecting fundraising during the next fiscal year to be difficult, particularly among major gifts donors where UHF acquires a majority of its funds. UHF also is continuing its efforts to capture the attention of ultra-high net-worth individuals and organizations that have not experienced as great a financial impact from the COVID-19 pandemic and may serve as a source of philanthropy for the university.

Mr. John Han, Chief Operating Officer for UHF, presented an overview of the finances for UHF as of March 31, 2020. He reported that UHF's net assets totaled \$540 million, which was a decrease of approximately \$3 million in comparison to the same period last year, and that net operating revenues for UHF were approximately \$11.2 million, which was an increase of approximately \$1 million over the same period in 2019. Mr. Han explained that much of the increase in net revenues resulted from an increase in fee revenue as a result of a 17 percent increase in non-specific, cash donations made to UHF. UHF incurred \$8.9 million in expenses, approximately \$800,000 less than last year, but it was stressed that the decrease in expenses was primarily due to 11 unfilled vacancies at UHF.

Mr. Han briefly reviewed UHF funds expended by various UH programs for the 2020 fiscal year highlighting the reasons for the slight increase in spending witnessed by the faculty and academic support program and capital projects program.

Given the number of vacancies at UHF and that Hawai'i is currently experiencing a high rate of unemployment, Regent McEnerney asked whether UH graduates were being recruited to work at UHF. VP Dolan responded in the affirmative but explained that a number of the vacancies are in roles that require particular skills and UHF is being very methodical in its approach to hiring individuals for these positions.

Regent McEnerney inquired as to how the relocation of UHF offices from Bachman Hall to facilities located on King Street has impacted its development. VP Dolan replied that, although UHF is currently located at off-campus facilities, most of its major fundraising activities are already embedded in academic programs located on campus. The main impact of being located at off-campus facilities for UHF is in increased expenses caused by rent payments.

VI. COMMITTEE AND AFFILIATE REPORTS

A. Report from the Committee on Academic and Student Affairs

Committee Chair Wilson gave a brief report on actions taken by the Committee on

Academic and Students Affairs at its recently concluded meeting noting that the committee met and considered recommendations made by the administration to change three programs: Bachelor of Arts in Public Health at UHM; Bachelor of Arts in Pharmacy Studies at UHH; and Graduate Program for Doctoral and Master of Science Degrees in Marine Biology at UHM, from provisional to established status and to establish one new program, Bachelor of Science in Cybersecurity at UHWO. The committee recommended approval of these actions by the board.

Chair Wilson also noted that the committee had been provided information from the UH Student Caucus for its spring 2020 update, as well as a video presentation. While the student caucus could not provide their presentation in person due to present circumstances, he recognized and acknowledged their outstanding work and thanked the students for sharing their thoughts and ideas with the committee and the board. He also thanked Regent Acopan for all her efforts and hard work with the UH Student Caucus.

B. Report from the Committee on Personnel Affairs and Board Governance

Committee Chair Tagorda provided a brief recap of actions taken by the Committee on Personnel Affairs and Board Governance at its recently concluded meeting. She reported that the committee met and considered two items including amendments to Regents Policy (RP) 9.212 with regard to Executive and Managerial (EM) Personnel Policies and amendments to RP 4.201, Mission and Purpose of the University, RP 4.202, Strategic Planning, and RP 4.203, Unit Academic Plans.

Committee Chair Tagorda stated that the proposed amendments to RP 9.212 would provide the board with greater oversight over salary adjustments for EM positions in excess of the usual percentage range of adjustments. She highlighted that the proposed policy changes would differentiate annual salary adjustments from other salary adjustments and require board approval for adjustments in excess of 5 percent of the base salary for EMs reporting to a position that reports directly to the board and for all EM appointments exceeding the maximum of the range in the salary schedule. She stated that the committee recommended approval of the proposed policy amendments.

The committee also reviewed and discussed proposed policy changes to RP 4.201, RP 4.202, and RP 4.203, as a follow-up to discussions that occurred during the February board meeting. Chair Tagorda stated the changes will conform these policies to the Integrated Academic and Facilities Plan that was previously adopted by the board and which the administration has already been using to guide its activities. However, she noted that changes to policies related to strategic planning may be subject to consultation. Accordingly, the committee recommended board approval of amendments to these policies subject to the administration conducting the necessary consultation by September 30, 2020.

A review and discussion on the committee's activities for the year also took place.

C. Affiliate Reports

There were no affiliate reports.

VII. AGENDA ITEMS**A. Consent Agenda**

1. **Approval to Change from Provisional to Established Status: Bachelor of Arts Degree in Public Health, UHM**
2. **Approval to Change from Provisional to Established Status: Bachelor of Arts in Pharmacy Studies, UHH**
3. **Approval to Change from Provisional to Established Status: Marine Biology Graduate Program for Doctoral and Master of Science Degrees in Marine Biology, UHM**
4. **Approval for the Establishment of a Provisional Bachelor of Science in Cybersecurity, UHWO**
5. **Approval of Amendments to Regents Policy 9.212, Executive and Managerial Personnel Policies**

Prior to voting on the consent agenda, Chair Kudo stated that Regent Tagorda had recused herself from voting on agenda item A.1, relating to the Bachelor of Arts Degree in Public Health at UHM.

Regent Moore moved to approve the consent agenda, seconded by Regent Wilson, and noting the excused absence of Regent Acopan and the recusal of Regent Tagorda on agenda item A.1, the motion carried with all members present voting in the affirmative.

B. Approval of the Maunakea Management Restructuring Plan

Prior to the presentation, Chair Kudo reiterated that this agenda item involved the administrative, organizational, and internal restructuring of the various entities of the university that currently are in existence and have oversight and management responsibilities for Maunakea and did not address the overall governance of Maunakea. Given some of the confusion surrounding this agenda item, he stated that he would be recommending the deferral of this matter until the board's June meeting to allow for further consultation with stakeholders.

Dr. Greg Chun, Executive Director of Maunakea Stewardship, stated that the administration was requesting approval of the internal management restructuring and reorganization plan for Maunakea (Plan) and provided a brief summary of the report on the Plan presented to the board at its meeting on April 16, 2020, noting that the development of the Plan, as well as the report presented, was a required action under Board Resolution 19-03. He repeated that the Plan merely encompassed administrative, organizational, and internal restructuring of entities of the university that currently are in existence and have oversight and management responsibilities for Maunakea and did not address overall governance issues.

Dr. Chun stated that the Plan was developed using a systematic approach to gather information that was collected across a broad swath of stakeholder groups including government agencies, elected officials, private landowners, other stakeholders, and numerous interested parties. The process to gather this information involved over 89 meetings, presentations, and conversations between November 6, 2019, and April 16, 2020; stakeholder meetings conducted by consultants working on the Maunakea Master Plan (Master Plan) update which are ongoing; and feedback received over the course of eight public hearings which were held as part of the administrative rulemaking process regarding Maunakea. As a result of this methodical approach to gathering information and input on the management of Maunakea, the administration developed six key objectives that were used as a guide in the establishment of the Plan. These objectives included improving transparency and lines of authority and accountability across management units; organizing management functions around mission-critical activities; clarifying the university's regulatory, stewardship, and advocacy roles by separating these functions within the university organization; leveraging and optimizing existing networks and partnerships to maximize resources and expertise; broadening, diversifying, and elevating stakeholder input in decision making; and maintaining governance continuity to minimize disruption to the maximum extent possible.

Through this analysis and information gathering process, the administration learned that one of the major issues of the current internal management structure for Maunakea is its multijurisdictional nature which has created vagueness and confusion with regard to management policy, responsibility, and authority. To address this issue, the Plan seeks to take a more unified approach to the management of Maunakea. Under the Plan, the Office of Maunakea Management (OMKM), which is currently under the jurisdiction of UHH, and Maunakea Support Services (MKSS), which is currently under the jurisdiction of the Institute for Astronomy at UHM, would be combined into a single entity to be known as the Center for Maunakea Stewardship (Center) that would be placed within UHH and led by an Executive Director who would be directly responsible for oversight of all the operations of the Center and report directly to UHH. It was noted that the Plan seeks to execute a merger strategy for OMKM and MKSS that was called for in the 2000 Master Plan which is currently in effect and was developed with broad community input and vetted and approved by the board. While the Plan does not contain every concern, suggestion, or idea received during the information gathering process, it seeks to accomplish what is in the best interest of the overall mission of the university while achieving the right balance between stakeholder interests, the responsibility to properly steward Maunakea, the responsibility to the community, and legal commitments and requirements.

Chair Kudo mentioned that the internal restructuring and reorganization of university entities charged with management of Maunakea is a dynamic situation and that adjustments will need to be made as circumstances change. However, it is important that the university continue efforts to increase the efficiency and effectiveness of its management responsibilities regarding Maunakea and the Plan is an effort to accomplish this goal. While decisions on the broader issue of the overall governance of Maunakea may ultimately impact the university's management role, he stated that action on the internal restructuring and reorganization efforts needed to be taken now

because of the unknown timeframe for decisions regarding this broader governance issue which could possibly take years to complete.

Vice-Chair Higaki commented that he supported Chair Kudo's decision to defer this agenda item until the next board meeting and reported that MKMB and Kahu Kū Mauna were in the process of scheduling meetings to discuss this issue, as well as other issues involving Maunakea, and that he and Regent Nahale-a, who both serve on MKMB, can obtain feedback on the Plan from both groups.

Regent Nahale-a noted that much of the frustration surrounding Maunakea over the years has been the lack of clarity as to management authority and accountability and that he is confident that the new management structure contained in the Plan addresses this issue. He stated that he also supports Chair Kudo's recommendation to defer this agenda item until the next board meeting remarking that most of the criticism received on this agenda item mentioned a lack of proper engagement and consultation, as well as a lack of sufficient opportunities to provide input and feedback, on the Plan. He also stated that the one month deferral of this issue will allow relationships with stakeholders to be maintained and improved.

Regent Acoba also supported the deferral of this issue until the next board meeting. He indicated that the reorganization is not only internal. The actions taken on Maunakea are affected by the master plans. The reorganization changes the roles of the parties responsible for the management and oversight of Maunakea and also creates a new Center with an executive director and a deputy director in the future. He noted that organizations that the university was supposed to be closely working with on this issue such as MKMB, Kahu Kū Mauna, and the observatories, testified that inadequate consultation occurred and that additional time was necessary to fully vet the Plan and respond accordingly. Their letters raise matters not raised in the presentation of the reorganization plan that was made to the board at its last meeting. Process is important and the parties should have the opportunity to respond. The one month deferral will allow for such vetting and response.

Chair Kudo stated that this matter was deferred until the board's June meeting.

C. Legislative Update

VP Young provided a report on the actions taken by the Legislature to address the projected impacts of the COVID-19 pandemic as it reconvened on May 11 after a nearly two-month recess. He stated that the Legislature was expected to recess again on May 21 and reconvene in mid-June after the Council on Revenues presented its economic forecast for Hawai'i. It is anticipated that the economic forecast will be grim and that the State will face a serious reduction in tax revenues while also confronting new expenditure requirements to address the unanticipated consequences of the pandemic. As such, the Legislature will more than likely need to make adjustments and reductions to the State budget for the next fiscal year when it reconvenes in mid-June.

Actions taken by the Legislature since it reconvened as well as the status of a number of measures impacting the university, including budget-related bills, were briefly reviewed. VP Young noted that both the operating and capital improvement projects

(CIP) supplemental budgets were anticipated to be passed by the Legislature and sent to the governor for review and approval. While there were no dollar amount reductions to the university's general fund appropriations, the Legislature eliminated many vacant full-time equivalent (FTE) position counts from the university's budget. In total, nearly 758 FTE counts were reduced, which is equivalent to more than 11 percent of all general-funded FTEs available to UH. Although these positions were vacant, these reductions will inhibit UH's ability to hire and recruit personnel which may have an impact on services to students and the community.

The university's CIP budget request for approximately \$230 million to address capital renewal, progress on deferred maintenance, and funding for projects to modernize each of the campuses within the university system is also expected to undergo significant revisions as a result of the economic impacts caused by the COVID-19 pandemic. It is presumed that revisions will be made to the CIP budget once the Governor and Legislature further examine revenue streams and possible uses for bond appropriations relative to federal funding or additional stimulus funding. The university, however, provided the Legislature with a list of shovel-ready projects that would stimulate the state's economy when the worst of the pandemic passes.

He noted that, prior to the start of the 2020 legislative session, the board submitted a supplemental operating budget request of \$28.1 million in general funds. However, due to the decrease in State tax revenues and the uncertainty of Hawai'i's economic recovery, statewide reductions were implemented and none of the board's requests were approved by the Legislature.

Board and commission appointments made by the Governor that require the advice and consent of the State Senate were also being acted upon. VP Young specifically highlighted boards and commissions that were administratively attached to the university such as the Center for Nursing Advisory Board and Hawaii Medical Education Council noting that the nominees had passed initial confirmation hearings and were awaiting approval by the full Senate. Notably missing from these board and commission appointments, however, were nominations for the Board of Regents which the Governor has yet to provide to the Senate but which could be acted upon when the Legislature reconvenes in mid-June should those nominations be forwarded by the Governor.

Regent McEnerney questioned the nature of a negative figure of \$1,752,000 million contained in the CIP budget for renewal, modernization, and improvement. VP Young responded that this was a reduction in the amount previously appropriated by the Legislature for those purposes.

Regent Acoba asked what the Legislature would be covering in its June session. VP Young replied that all bills that were alive prior to the Legislature's recess in March could still be acted upon. While action on a number of bills that involve individual appropriations may still take place, given the anticipated economic outlook for the State, this is unlikely to occur. He reiterated, however, that the Legislature will more than likely be making amendments and adjustments to the 2021 fiscal year budget as more information on the economic forecast for the State becomes available.

D. Appointment of a Permitted Interaction Group to Investigate Issues and Make Recommendations Related to the University of Hawai'i's Strategic Response and Economic Recovery From COVID-19

Chair Kudo requested that the board approve the appointment of a permitted interaction group to be known as the COVID-19 Strategic Response and Economic Recovery Task Group (Task Group) whose purpose is to support and monitor the university's strategic response to the impacts engendered by COVID-19 upon the health and safety of the university community, the continuation of academic education and programs, research and technology infrastructure, revenues, operating costs and expenses, and the overall present and future viability of the university system. He stated that the magnitude and nature of the impacts of COVID-19 upon public and private IHEs throughout the United States is both significant and unprecedented and that the uncertainties presented by the COVID-19 pandemic have reshaped the higher education landscape across the nation. While the COVID-19 situation remains dynamic, it is not anticipated that a sense of normalcy will be returned to until a vaccine is developed. As such, it is important that the board engage more actively in the strategic planning by the university administration to better inform key board and administration decisions in the near- and long-term. The Task Group is intended to assist the board in this regard.

Vice-Chair Higaki moved to approve the appointment of the Task Group, seconded by Regent McEnerney, and the motion carried with all members present voting in the affirmative.

E. Approval of the Establishment of the Lakshmi Devi and Devraj Sharma Endowed Chair II in Women's Health at the John A. Burns School of Medicine (JABSOM) at UHM

President Lassner provided information on a financial commitment received from Santosh D. Sharma, MD, a distinguished Professor Emeritus in the Department of Obstetrics, Gynecology, and Women's Health (OBGYN) at JABSOM, in the amount of \$2,000,000 to establish the Lakshmi Devi and Devraj Sharma Endowed Chair II in Women's Health in recognition and honor of the parents of Dr. Sharma for their commitment to her education and personal growth as a young female in Kenya, Africa, at a time when young women had little access to higher education. He noted that this was the second such gift bestowed upon OBGYN by Dr. Sharma with the first donation of \$2,000,000 being provided in 2015.

Regent McEnerney moved to approve the establishment of the Lakshmi Devi and Devraj Sharma Endowed Chair II in Women's Health at JABSOM, seconded by Regent Moore, and the motion carried with all members present voting in the affirmative.

F. Approval of the Establishment of the Joanna Lau Sullivan Distinguished Endowed Professorship at the UH Cancer Center

President Lassner provided information on a financial commitment for the establishment of the Joanna Lau Sullivan Distinguished Endowed Professorship at the UH Cancer Center in recognition of the generous philanthropic support of the late Maurice and Joanna Lau Sullivan to various causes and organizations, particularly

those related to education, medical care, cancer research, and the arts. He stated that interest earned as of March 31, 2020, from the J and M Sullivan Endowed Cancer Fund (Fund) would be used to support a distinguished endowed professorship at the UH Cancer Center, noting that the Fund was created from a previous gift from the Maurice and Joanna Sullivan Family Foundation to support an endowed chair in cancer research.

Regent McEnerney moved to approve the establishment of the Joanna Lau Sullivan Distinguished Endowed Professorship at the UH Cancer Center, seconded by Regent Moore, and the motion carried with all members present voting in the affirmative.

G. Approval of Awarding of Title of Professor Emerita of Economics to Marcia Sakai

President Lassner spoke about former faculty member Professor Marcia Sakai and provided a brief background of the long and illustrious career of Professor Sakai, highlighting a number of her accomplishments and giving a brief synopsis of her outstanding scholarly achievements and contributions to the university, most notably, serving as Interim Chancellor at UHH. He noted that Professor Sakai had been unanimously recommended for the title of professor emeritus by faculty of the College of Business and Economics at UHH but that she did not meet all of the necessary criteria – mainly that she had not served as a full professor for the requisite number of five years. As such, the administration is requesting board approval of the professor emerita status for Professor Marcia Sakai.

Regent Nahale-a moved to approve the awarding the title of Professor Emerita of Economics to Professor Marcia Sakai, seconded by Vice-Chair Higaki, and the motion carried with all members present voting in the affirmative.

H. Approval of Resolution in Appreciation and Recognition of Michael McEnerney

Chair Kudo noted that this agenda item would be deferred to the June board meeting.

VIII. ANNOUNCEMENTS

Chair Kudo announced that the next board meeting was scheduled for June at a date and location to be determined.

IX. ADJOURNMENT

There being no further business, Vice-Chair Sullivan moved to adjourn, seconded by Regent Moore, and the motion carried, with all members present voting in the affirmative, and the meeting was adjourned at 12:44 p.m.

Respectfully Submitted,

Kendra Oishi

DRAFT

Executive Administrator and Secretary
of the Board of Regents

Item IV.

Report of the President
and COVID-19 Update

**NO MATERIALS
ORAL REPORT**

Agenda Items:

A. Fiscal Year (FY) 2019-2020 Third Quarter Financial Report

VP Young provided the financial report for the third quarter of FY 2019-2020. He noted that although actual revenues through the third quarter were \$20.1 million, or 2.0 percent higher than projected, the year-over-year difference for all non-general fund types was minimal. He also noted that actual expenditures were \$39.6 million or 4.8 percent lower than expected with the exception of the Research and Training Revolving Fund which had expenditures that were \$2.0 million, or 6.0 percent, higher than anticipated. As these are third quarter figures for the current fiscal year, impacts from the ongoing COVID-19 pandemic have been minimal to date but impacts are expected to start being reflected in the fourth quarter report.

B. Budget Impact Update Resulting from the COVID-19 Pandemic

A report on both the current, as well as potential, fiscal impact of the COVID-19 pandemic on the university was presented by VP Young. He noted that declining revenues from all of the university's funding sources, particularly from the state general fund and Tuition and Fees Special Fund, will have significant impacts on university operations and that these fiscal issues are expected to continue through at least FY 2022. However, it was pointed out that uncertainties still exist with numerous variables, such as reductions in the university general fund and enrollment fluctuation, which could have either positive or negative fiscal impacts on the university.

Extensive discussion occurred between Regents and the administration regarding planning for what is expected to be severe financial impacts for the university. While scenarios have been developed based on varying degrees of anticipated fiscal impacts, Regents noted that the university needs to exhibit a sense of urgency to address this financial crisis and should not delay fiscal planning until absolute certainty with regard to variables that could affect the university's budget is achieved.

C. FY 2019-2020 First and Second Quarter UBS Legacy Endowment Fund Investment Performance Report

UBS representatives provided a report on the investment performance of the Legacy Endowment Fund (Fund). It was noted that the markets have experienced an unprecedented level of volatility over the past few months as a result of the COVID-19 pandemic but that overall, the asset allocation and financial performance of the Fund is on par with established benchmarks. There were no material changes or weaknesses in the management of the Fund. UBS has increased the Fund's equity asset allocation to the benefit of the Fund and continues to advocate for the keeping the Fund's allocation in equities at a minimum level of 60 percent to prevent risk exposure. It is anticipated that the markets will remain volatile for the foreseeable future, particularly due to fears about the economic impacts of COVID-19, trade issues with China, and the upcoming elections in the United States. UBS will continue to closely monitor the financial markets and adjust its investment strategies as more information becomes available with the ultimate goal of maintaining long-term investment strategies.

D. Committee Annual Review

Chair Bal referenced the annual review matrix provided in the materials packet and requested committee members to review the matrix and comment as needed.

Agenda Items:

A. Annual Review of the Committee Charter

Chair McEnerney explained that the Committee on Independent Audit is the only committee governed by statute, which together with the bylaws comprise the charter of operations for the committee. He asked if committee members had any questions or concerns regarding the committee charter and none were raised.

B. Approval of the Proposed Internal Audit Work Plan (Work Plan) for 2020-2021

Glenn Shizumura, Director of the Office of Internal Audit (OIA), explained that the proposed Work Plan was developed in consultation with the administration. He provided a breakdown of new, carryover, and follow-up projects for the 2020-2021 fiscal year noting that some of the new projects included in the proposed Work Plan dealt with revenue-generating operations such as the Warrior Recreation Center and Waikiki Aquarium.

In light of recent correspondence received by the board regarding certain Kamehameha Schools funded programs at the University of Hawaii – West O’ahu (UHWO), the committee engaged in extensive discussions on grant funding whether mechanisms were in place at the university level to ensure proper management, efficacy, and oversight of these grants. Discussions also occurred on whether the Work Plan should be amended to request additional audit work be completed on the Kamehameha Schools issue with the committee deciding that the Work Plan should not be amended.

Action: The Committee voted to approve the Work Plan as presented.

C. Review and Acceptance of the Draft Committee on Independent Audit Annual Report to the Board

Internal Auditor Shizumura explained that the annual report is prepared pursuant to Section 304A-321, Hawai’i Revised Statutes, and the board bylaws. This annual report also includes the OIA’s audit results for the fiscal year ended June 30, 2020, which summarizes the services provided during the past fiscal year and projects included in last year’s audit plan. He noted that the committee met all statutory and bylaw requirements.

Action: The Committee voted to accept the report.

D. Review and Acceptance of Certain Kamehameha Schools Funded Programs Pursuant to Senate Resolution 120 (SR120) 2019

It was noted that an external audit was conducted on the six Title III Program grants referenced in SR 120, but no audit was conducted on the two grants funded by Kamehameha Schools. As such, the committee directed OIA to conduct a review of the two non-Title III Program grants. Internal Auditor Shizumura gave a brief report on the findings of the requested review noting OIA’s suggested improvements to UHWO’s policies, processes, and procedures regarding these programs. He also stated that OIA was in receipt of both written and verbal correspondence from Kamehameha Schools indicating satisfaction with UHWO’s management of the funded programs.

Action: The Committee voted to accept the report.

E. Review and Acceptance of the OIA Report on the Status of Corrective Action Related to the Cash Receipts Process

Internal Auditor Shizumura reported that OIA previously evaluated the university's cash receipts process and identified issues and opportunities for improvements. He stated that all the issues identified in the evaluation have since been addressed and that all suggested corrective actions have been implemented to the satisfaction of OIA.

Action: The Committee voted to accept the report.

F. Review and Acceptance of the OIA Report on the Status of Corrective Action Related to Student Fees for Professional Programs

Internal Auditor Shizumura provided a brief overview of an OIA review of student professional fees conducted in 2018 that evaluated the establishment, administration, monitoring, and utilization of professional fees assessed by a variety of programs at UHM, which identified issues and opportunities for improvements. OIA has concluded that all suggested corrective actions have been implemented to the satisfaction of OIA.

Action: The Committee voted to accept the report.

G. Review and Acceptance of the OIA Report on the Status of Corrective Action for Outreach College

Internal Auditor Shizumura noted that a routine audit of the Outreach College conducted in 2018 discovered a number of deficiencies that posed significant financial and operational risks to the university as well as a violation of board policy. OIA noted that corrective actions have been implemented to the satisfaction of OIA. While the Outreach College is currently in the process of implementing some of the minor initiatives and corrective actions recommended in the initial audit report, OIA does not foresee any issues with completing these corrective actions.

Action: The Committee voted to accept the report and requested OIA to provide an update to the Committee at its next meeting on the status of corrective actions currently in the process of being implemented.

H. Review of the OIA Emergency Response Plan (Plan)

Internal Auditor Shizumura reviewed the Plan stating that its purpose was to document OIA's process in evaluating and formulating a response to manmade and natural disasters and other emergency situations and provide a roadmap for the implementation of this response.

I. Enterprise Risk Management (ERM) Update

VP Gouveia provided an ERM update explaining that the disruption and impacts of the COVID-19 pandemic required a reassessment of the university's risk exposure. The university's vulnerabilities in areas such as enrollment, financial resiliency, and health and safety, which were already identified in its risk assessment, were brought to the forefront by the COVID-19 pandemic as it escalated and spread to Hawai'i. However, the ERM process of continually assessing risk served to better prepare the university to rapidly respond and

quickly adapt to the impacts of a very dynamic situation. She highlighted response efforts already undertaken to address the myriad of issues caused by COVID-19 as well as planned response efforts for the reopening of campuses in the fall.

J. Committee Annual Review

Chair McEnerney referenced the committee annual review matrix provided in the materials packet. He noted that questions were provided to committee members and asked that responses to those questions be submitted to the Board Office for compilation and provision to the next committee chair.

Agenda Items:

A. Title IX Update – University of Hawaii at Mānoa (UHM)

Lois Manin and Amanda Paterson of the UHM Athletic Department provided an update on Title IX and gender equity and reviewed the three-prong approach used to address potential inequities. Since 2015, the UHM athletic department has ensured that the percentage of women participating in athletics is within less than two percent of the overall women's undergraduate enrollment. Favorably, athletic scholarships awarded to female athletes in 2018-2019 was less than one percent in relation to the percentage of female student athletes. Also, the expenditures on facility improvements specifically for women exceeded those for men.

B. Academic Progress Report

University of Hawai'i at Hilo (UHH) Athletic Director (AD) Patrick Guillen and Dr. Ronald Cambra and Ms. Courtney Tsumoto of the UHM Athletics Department discussed their respective campuses. They reported on the academic success rates, missed class days, student-athlete retention rates, student-athlete graduation rates, and student-athlete origin. Notably, UHH set a record GPA of 3.077 in 2018-2019 for all athletes and a record GPA of 3.112 for fall 2019. At UHM in 2018-2019, an all-time high APR of 984 exceeded the national average of 983. In 2019, the cumulative GPA for UHM was 3.13, a new record. COVID-19 measures at UHM included virtual rather than face-to-face contact and guidelines for online contact with students such as online "room" meetings rather than a study hall.

C. Financial Update

AD Guillen and AD Matlin presented financial updates for UHH and UHM and of their respective budgets. AD Guillen projected a surplus of \$229,000 from reduced expenses, some of which were related to COVID-19, but noted that future challenges may include a reduced budget. He also spoke on possible merchandising opportunities with the bookstore and licensing opportunities.

AD Matlin reported that UHM revenues are equal to or better than UHM's peers. Athletics would generate a surplus if not for the unique expenses of subsidizing the travel costs of UHM football's Mountain West (MW) opponents. For example, in 2018, there would have been a \$4.3 million surplus without these expenses. Also, Hawai'i has the highest fringe benefits rate of the 13 MW at 62.5 percent, which is considerably higher than the MW average of 42.2 percent. Athletics adds significant economic value to the State (2015 Shidler Report) and also to the university, including significant marketing value.

D. Impact of COVID-19 on the Foreseeable Future of UH Athletics

AD Guillen and AD Matlin reported on the possible impacts of COVID-19. They noted that athletics had to maintain flexibility with contingency planning guided by the various athletic conferences and government agencies. AD Matlin stated that at UHM, facilities were closed, staff was encouraged to work remotely, practices and events were suspended, and continued fan engagement through a variety of social media means was emphasized. While COVID-19 ultimately determines the athletic timelines, the primary focus for UH athletics remains student health and safety, and the education of student athletes. Cost reductions are balanced with revenue and fundraising. The majority of revenue generation

is achieved through the fall sports even though the majority of collegiate sports take place in the spring. The executive team performs ongoing formulation of contingent scenarios in highly uncertain times. Preparation is for full competition but also reduced competition and limited schedules. On return in the fall, the emphasis is on maintaining minimal contact and social distancing.

E. Update on Legislation Related to Postsecondary Student Athlete Compensation for the Use of Name, Image, or Likeness (NIL)

AD Matlin reported that in April 2020, the NCAA Board of Governors announced their support of NIL compensation with the stipulation that the use of trademarked items such as conference and school logos not be allowed. Furthermore, the NCAA directed its divisions to begin modifying and modernizing relevant bylaws, policies, and rules to address this situation. He also stated that the NCAA realizes that a patchwork of laws that are unique to each state would result in the NCAA, and collegiate athletics in general, having difficulty functioning on a national level, and that in May 2020, the Power 5 conferences sent a letter to the United States Congress requesting consideration of federal legislation on NIL.

F. Committee Annual Review

Chair Acoba thanked both ADs for their excellent leadership in demanding times. He referenced the committee annual review matrix and asked for comments from committee members. Hearing none, Chair Acoba requested that the committee adopt the annual review by voice vote and all committee members present voted in the affirmative.

Chair Acoba stated that the athletic program, under RP 7.208, is part of the educational function of the university and fundamental changes in athletics are forecasted. Athletics is an asset of the university and requires continued focused attention and expertise that a standing committee provides.

Agenda Items:

A. Recommend Adoption of Board of Regents Resolution 20-01 Authorizing Hangar 111 Abrogation, Kalaeloa Airport, Barbers Point, O‘ahu, Hawai‘i

VP Young provided background on the deed for Hangar 111 which contained restrictive covenants that required the parcel to be used for educational purposes. The university has determined that other uses will best serve the interests of the university, which would require approval of abrogation and release of restrictive covenants. Approval of the abrogation of restrictive covenants would require the expenditure of \$11.2 million in Capital Improvement Project (CIP) funding already appropriated by the Legislature. Discussions occurred on the anticipated future use and revenue potential of the parcel and the method of financing the payment to abrogate the restrictive covenants.

Action: The Committee recommended Board adoption of Resolution 20-01 subject to additional information being provided and consultation occurring at the June Board meeting.

B. Impact of COVID-19 on CIP and Repair and Maintenance (R&M) Projects

VP Gouveia reported that there has been little to no impact on the budgets or schedules of current CIPs as a result of the COVID-19 pandemic although there have been isolated incidents where items such as furniture, fixtures, and equipment experienced delays in delivery. Two major projects experienced delays that could be attributed to COVID-19 including the Creative Media project, which will experience a delay of five weeks, and the PBS relocation project, which will experience a delay of approximately six weeks. She noted that COVID-19 pandemic has resulted in R&M projects experiencing accelerated project schedules due to minimal campus activity over the past several months. However, a majority of the bids being received for upcoming projects are higher than expected and CIP funds for the current fiscal year have only been partially released in part due to the negative economic impacts of COVID-19.

C. FY 2019-2020 3rd Quarter CIP Status Report as of March 31, 2020

VP Gouveia provided a brief report on the status of CIPs through the third quarter of FY 2019-2020 stating that all projects are moving forward as planned with no significant issues. Two projects – the Coconut Island utilities rehabilitation and replacement and the Leeward Community College theater repair and refurbishment – have been completed pending finalization. She highlighted several significant CIP projects that were currently in progress and three new projects – the demolition of Snyder Hall at the University of Hawai‘i at Mānoa (UHM); re-roofing and other improvements at Bilger Hall at UHM; and the renovation of modular buildings at the School of Pharmacy at the University of Hawai‘i at Hilo.

D. University Land-Related Strategic Initiatives and Partnerships Program FY 2019-2020 3rd Quarter Update

VP Young presented updates on several P3 projects noting the following:

Summary of June 4, 2020 Meeting

- The UHWO - University District Project is currently in limbo and the administration is reevaluating the project and determining how to proceed on its restart.
- The Atherton Project is currently in the design phase and is moving forward as projected with a target to achieve financing by the end of 2020.
- The NOAA Graduate Student Housing Project is just beginning; the pre-construction agreement with Greystar has been finalized; and a market demand survey is currently being conducted.
- The Kaimuki/Leahi Hospital Parcels Project is currently being evaluated and an appraisal has indicated that the fair market value of the fee-simple interest for the parcels in the aggregate was \$15 million.

E. Real Property Transactions Update

VP Young provided an update on the status of several real property transactions noting the following:

- The Waiale'e property transfer to the Agribusiness Development Corporation (ADC), which was previously authorized by the board, did not occur as ADC expressed that it was no longer interested in acquiring the property, and the administration is reevaluating the disposition of the property and considering potential alternatives.
- The university has been attempting to transfer the Kauai Fruit Disinfestation Facility property to the State Department of Transportation and is continuing negotiations to obtain a release from restrictive covenants which would allow the transfer to occur.
- The university procured an appraisal on the St. Francis School property, submitted an offer to purchase the property, and is awaiting a response from the seller.
- A number of real estate transactions need to occur between the Honolulu Authority for Rapid Transportation and the university including construction rights of entry, grants of easements, relocation of university assets, use and occupancy agreements, and the negotiation of a master use and development agreement.

VP Gouveia provided an update on the Green Tariff Program (Program) noting that negotiations are ongoing and the administration anticipates completion on agreements in the next two months. It is also expected that HECO will file its docket with the PUC by the end of 2020. She also provided an update on the AES Solar Project at UHWO which is moving forward with no significant issues. Construction on this project is scheduled to begin at the end of 2021.

F. Committee Annual Review

Members were referred to the committee annual review matrix provided in the materials packet. It was suggested that amendments to better align committee activities with the bylaws and Regent Policies be considered next year.

Item V.E.

Affiliate Reports

**NO MATERIALS
ORAL REPORTS**

2024



UNIVERSITY of HAWAII SYSTEM

UNIVERSITY OF HAWAII BOARD OF REGENTS

Office of the Vice President for Research and Innovation

20 JUN 12 P3:13

RECEIVED

June 12, 2020

20 JUN 12 P3:17

MEMORANDUM

TO: Benjamin Kudo, Chairperson, Board of Regents

UNIVERSITY OF HAWAII PRESIDENT'S OFFICE

VIA: David Lassner, President (with signature)

VIA: Kalbert K. Young, Vice President for Budget and Finance/Chief Financial Officer (with signature)

VIA: Carrie K. S. Okinaga, Vice President for Legal Affairs and University General Counsel (with signature)

FROM: Vassilis L. Syrmos, Vice President for Research and Innovation (with signature)

SUBJECT: Request to Approve an Indemnification Provision in a Contract between the City and County of Honolulu (the "City") and the University of Hawai'i (the "University") to Provide COVID-19 Testing (the "Contract")

SPECIFIC ACTION REQUESTED:

It is respectfully requested that the University's Board of Regents ("Board") authorize the University of Hawai'i ("University") to accept an indemnification provision in a contract to provide COVID-19 testing services to the City and County of Honolulu ("City"). This request is made pursuant to Hawai'i Revised Statutes Section 304A-110, appended as "Attachment 1" to this memorandum.

RECOMMENDED EFFECTIVE DATE:

The University is authorized to execute the Contract with the City and accept the obligation to indemnify set forth therein, immediately upon Board approval.

ADDITIONAL COST:

There are no additional costs associated with this request.

PURPOSE:

Board approval is requested so that the University may enter into a sponsored research agreement with the City and provide the City COVID-19 testing services and research reports.

BACKGROUND:

A. The Project

The State of Hawai'i (the "State") and the City have "flattened the curve" of COVID-19 cases by implementing work-from-home policies, traveler quarantines, social distancing, and other public health response measures. As the State and the City reopen the local economy, increasing numbers of people will begin to circulate and congregate in stores, recreational areas, restaurants, religious establishments, schools, and other sites.

Having a local capacity to provide rapid and timely diagnostic COVID-19 testing is a critical component of a pandemic response strategy and an economic rebuilding plan. Public health and healthcare infrastructures must be sufficiently prepared for the potential of additional cases of COVID-19.

This research contract, in the approximate amount of \$4 million, will help establish the John A. Burns School of Medicine ("JABSOM") Tropical Medicine Clinical ("TMC") Laboratory as a hub of COVID-19 testing innovation in Hawai'i. The TMC Lab will expand the clinical testing resources in Hawai'i by providing COVID-19 diagnostic testing surge capacity, supplementing population surveillance testing, and increasing antibody testing across O'ahu. The project will integrate testing results into the State's only R1 biomedical research organization to help develop new COVID-19 testing technology and develop an overall population testing strategy for the City.

Research benefits anticipated from this Project include the following:

- Supporting innovative novel COVID-19 testing strategies to meet the needs of at-risk populations on O'ahu including those served by Community Health Care Centers on O'ahu, essential county employee groups, and homeless patients.
- Evaluating the efficacy and feasibility of saliva collection to replace nasopharyngeal swabs for COVID-19 diagnostic testing.

- Developing broad population antibody testing to identify patterns and levels of COVID-19 exposure locally.

B. The Contract and the Indemnity Provision

The City desires to fund the "Laboratory for COVID-19 Testing Innovation in Hawai'i" Project using a portion of the funds the City received from the federal CARES Act. The City will release up to approximately \$3,998,204 to the University to use over the next six (6) months. Funds not expended by December 2020 will lapse.

The bulk of the funds will be used to purchase diagnostic equipment, the test kits and the consumable testing supplies, and the ancillary protective equipment for the laboratory personnel. The tests are real time Reverse Transcriptase–Polymerase Chain Reaction ("RT-PCR") tests and Serology antibody tests. Up to four (4) laboratory technicians and a portion of the Laboratory administrative staff will be hired for this Project, via the University Health Partners, a separate organization comprised of practicing JABSOM faculty. The University Health Partners will also supply a HIPAA-compliant data storage and reporting system.

The test kits will be delivered to and administered by four (4) community health centers located in the County of Honolulu, under separate agreements between the City and the community health centers. The TMC will periodically collect the test specimens from the community health centers and transport the materials to the TMC laboratory for test processing. Test result will be reported to the health centers, or ordering physician, or the State Department of Health as appropriate.

The proposed Contract for this project includes, among other things, the following indemnification provision:

2.10 Indemnity. The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the contractor or the contractor's subcontractors, agents and employees and this requirement shall survive the termination of contract.

2.11 Infringement Indemnification. If the Contractor uses or licenses any design, device, material, process, technology or any other intellectual property ("Intellectual Property") covered by patent, copyright, trademark or other intellectual property protection, the right for such use shall be procured by the Contractor from the appropriate owner. The Contractor shall indemnify and hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any claims for infringement by reason of the use of any such Intellectual Property in connection with providing services under this Contract.

RISK ANALYSIS:

The initial drafts of the Contract did not contain indemnity obligations for the University. In later drafts, however, the City added a comparatively narrow indemnification obligation, but subsequently revised its request to broaden the scope of the indemnification. The current request was made on June 10, 2020. The University's attempts to negotiate the deletion or modification of the indemnification obligation were not successful.

A potential exposure for the University under the indemnification obligation would be HIPAA compliance. "HIPAA" is the acronym for the Health Insurance Portability and Accountability Act enacted by Congress in 1996. For purposes of this City COVID-19 testing contract, the pertinent portions of HIPAA require that health care providers and their business associates maintain the privacy and security of an individual's "protected health information" (or "PHI") when that information is received, transferred handled, or shared, in accordance with national standards of privacy and security. A covered entity must implement policies, procedures, and technologies to protect the PHI, especially when the information is in electronic format.

The University will be contracting with the University Health Partners of Hawai'i ("UHP") to supply a HIPAA-compliant data storage and reporting system, hire the personnel who will have clinical responsibilities related to the lab, and secure malpractice insurance for the entire operation. Included with these services are the HIPAA-compliant environment and infrastructure needed to ensure compliance with all applicable laws (i.e., security rule, privacy rule, etc.) and risk management services to mitigate risks and provide for the safest outcomes. UHP achieves these outcomes with policies, procedures, training/education, maintenance of cybersecurity, privacy, and network insurance (among others), and onsite assessment and monitoring of the physical environs.

The University will seek an indemnification clause from UHP, who has indicated that it would be able to agree to such a clause. The University will also request to be added as an

additional insured on the UHP insurance policies. Since UHP will be managing the data, systems, personnel with clinical responsibilities, and is willing to protect the University from risks related to HIPAA, risks to the University for HIPAA violations are mitigated to the extent practical.

Similarly, the courts have uniformly agreed that HIPAA does not allow an individual private right of action under HIPAA. It is possible; however, that an individual might pursue alleged breaches of privacy and confidentiality of health information under state negligence laws, or the individual might submit the allegations to the federal HIPAA oversight agency. These exposure risks are deemed slight.

The indemnity exposure for claims relating to copyright infringement or other violations of third party intellectual property rights are considered remote or manageable. The University shall take adequate measures to ensure that it has obtained the right to use third party intellectual property, if any such property is needed to provide the services contemplated by this Agreement.

With respect to indemnifying the City for claims, including reasonable attorney fees and cost of defense, caused by actions of the University or the University's employee, agents, or subcontractors, the University will carefully manage its use of subcontractors for this project, and in so doing, limit its exposure to the University and the City. Because the City is supplying the funds for this project, and the City is not directly involved with operations, or test administration, or testing analysis, we do not believe the City ultimately faces significant exposure to claims for death, injury, losses and damages to persons or property that can be legally attributed to the University or its employees or subcontractors. While the University may incur initial costs of defenses if claims against the City are tendered to the University pursuant to this indemnification provision in the Agreement, the University deems these defense costs acceptable, when considering the likely magnitude and expected frequency of such claims.

For the foregoing reasons, the risks of indemnifying the City are acceptable. The benefits to the community and the University outweigh the indemnification risks which are being evaluated, mitigated and managed.

ACTION RECOMMENDED:

It is recommended that the Board approve and authorize the University to accept an indemnification provision in a contract to provide COVID-19 testing services to the City.

Chairperson Benjamin Kudo
June 12, 2020
Page 6

Attachment (HRS § 304A-110)

c: Executive Administrator and Secretary to the Board of Regents

[§304A-110] Indemnification.

- (a) Notwithstanding any other law to the contrary, the board of regents may agree in writing to an indemnity provision by which the university agrees to indemnify, defend, and hold harmless any person, corporation, or entity that sponsors research at the university when all of the following conditions are satisfied:
 - (1) The person, corporation, or entity requires an indemnity in writing as a condition for providing a grant, benefit, service, or interest in or right to use property;
 - (2) The president, or the president's designee, following a favorable review by the university general counsel or the counsel's designee, approves the proposed indemnification; and
 - (3) The chief financial officer, pursuant to section 304A-108, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the university that may be reasonably anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the university to obtain insurance.
- (b) Nothing in this section shall be construed to expand the scope of liability of the university beyond that set forth in chapters 661 and 662.
- (c) Nothing in this section shall be construed to waive the immunity of the university from suit in federal courts guaranteed by the Eleventh Amendment to the United States Constitution. An indemnity provision not in strict compliance with this section shall not give rise to a claim against the university under this chapter or chapter 661 or otherwise waive the university's sovereign immunity.



UNIVERSITY
of HAWAII
HILO

UNIVERSITY OF HAWAII
BOARD OF REGENTS

University of Hawai'i at Hilo Administration
Office of the Chancellor

DTS 20687

20 JUN 10 10:19
June 2, 2020

RECEIVED

MEMORANDUM

*20 JUN 10 10:21

TO: Benjamin Asa Kudo
Chairperson, Board of Regents

UNIVERSITY OF HAWAII
PRESIDENT'S OFFICE

VIA: David Lassner
President, University of Hawai'i

FROM: Bonnie D. Irwin
Chancellor, University of Hawai'i at Hilo

SUBJECT: Appointment of William Carthage Bergin to the Mauna Kea Management Board

SPECIFIC ACTION REQUESTED:

It is requested that the Board of Regents approve the appointment of William Carthage "Billy" Bergin to a four-year term on the Mauna Kea Management Board. The term of Dr. Bergin would expire on June 30, 2024.

RECOMMENDED EFFECTIVE DATE:

Upon Board approval.

ADDITIONAL COST:

No additional costs.

PURPOSE:

To fulfill the mandate of the 2000 Mauna Kea Science Reserve Master Plan.

BACKGROUND INFORMATION:

The Mauna Kea Science Reserve Master Plan, approved by the BOR in June 2000, called for the establishment of the community-based Mauna Kea Management Board (MKMB). The Master Plan states:

200 W. Kāwili St.
Hilo, Hawai'i 96720-4091
Telephone: (808) 932-7348
Fax: (808) 932-7338
hilo.hawaii.edu

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Benjamin Asa Kudo, Chair

June 2, 2020

Page 2

“Community involvement in the management of the mountain begins with the membership of the Mauna Kea Management Board...The Board’s primary role is to advise the Office of the Chancellor at the University of Hawai’i at Hilo (UH Hilo) on management of the Mauna Kea Science Reserve...and shall be the main community voice for activities and development planned for the Science Reserve.”

The MKMB is comprised of seven members representing various constituencies with a stake in Maunakea: Native Hawaiians, environment, education, commercial activities, astronomy, land management, and general community. Pursuant to the Master Plan, the chancellor of UH Hilo submits her recommendations to the BOR for its consideration and approval.

Nominee

Dr. William Carthage “Billy” Bergin

Billy Bergin, a native of the Big Island and former regent of the University of Hawai’I, was born and raised in Laupahoehoe. While a regent, Dr. Bergin collaborated with island stakeholders to bring the voice of Native Hawaiians to the conversations about Mauna Kea. This work resulted in the creation of the Kahu Kumauna advisory group. Bergin earned two bachelor’s degrees, a master’s degree and a doctorate of Veterinary medicine from Kansas State University. He has been a practicing veterinarian for over 50 years, and has served in leadership roles in many community organizations. In addition to his service on the Board of Regents, Dr. Bergin has also served on the boards of the Hawaii Veterinary Medical Association, the National High School Rodeo Association, and the National Cowboy and Western Heritage Museum. He founded the Paniolo Preservation Society and is currently serving on the County of Hawaii Charter Review Commission. He currently resides in Kamuela.

ACTION RECOMMENDED:

It is recommended that the Board of Regents approve the appointment of William Carthage Bergin to a four-year term on the Mauna Kea Management Board. The term of Dr. Bergin would expire on June 30, 2024.

Attachment

Resume for William Carthage “Billy” Bergin

c: Executive Administrator and Secretary to the Board of Regents, Oishi

William Carthage Bergin, DVM

It is an honor to be considered for a position on the Mauna Kea Management Board. In addition to having a keen interest in the balanced management of Mauna Kea, I have a personal interest based on my involvement during my term as a University of Hawaii Regent when I was fortunate to collaborate with various stakeholder groups to bring a Hawaiian voice to the table that later became Kahu Kumauna. I bring multiple experiences, strengths, and leadership and problem solving skills spanning more than 50 years of professional and public service that will allow me to be an active contributor to the role.

Professional Experience

- 2007-present - Founding partner Aina Hou Animal Hospital, LLC with Dr. Brady Bergin, Kamuela, Hawaii
- 1978-1995 - Established Veterinary Associates, Inc. practicing on the Big Island, Maui, and Kauai
- 1971-2012 – Veterinary Medical Officer with the Livestock and Disease Control Division, State of Hawaii Department of Agriculture. Retired from the position
- 1970-1995 - Chief veterinarian responsible for Parker Ranch Animal Health program
- 1968-present - Licensed practitioner State of Hawaii; mentor for new veterinarians

Board Affiliations

- 2019-present – Board of Directors, National Cowboy and Western Heritage Museum, Oklahoma City, Oklahoma
- 2009-2019 – Associate Board of Directors, National Cowboy and Western Heritage Museum, Oklahoma City, Oklahoma
- 2003-2009 – Board of Directors, Rodeo Historical Society, National Cowboy and Western Heritage Museum, Oklahoma City, Oklahoma
- 1998-2002 – Regent, University of Hawaii
- 1998-present – Founding Director and Past President, Paniolo Preservation Society
- 1990-2000 – National High School Rodeo Association, President
- 1988-2003 – National Director/Executive Committee, National High School Rodeo Association
- 1974-1978 – Director, Board of Hawaii Veterinary Medical Association

Professional and Community Organizations and Activities

- 2018-present – County of Hawaii Charter Review Commission
- 2011-present – Waimea Design and Plan Review Committee, Waimea Community Association

- 2010 -present – South Kohala Traffic Safety Committee
- 2006-2008 – Great Waiomina Celebration, Honorary Chairman
- 1996-present – Charter Member, National Cattlemen’s and Beef Association
- 1987 – Founder, Hawaii High School Association
- 1986-1987 – Hawaii County Board of Ethics, Member/Vice Chairman
- 1982-1986 – Hawaii County Police Commission, Member/Vice Chairman/2 term President
- 1980-1988 – Keiki Hawaii Rodeo Association, Founder and Chairman
- 1974-1983 – Hawaii State Board of Veterinary Examiners, Member, Secretary and Chairman
- 1967-present – American Veterinary Medical Association; 2010 Honorary Member
- 1967-present – American Association of Equine Practitioners; 2010 Honorary Member
- 1967-present – Hawaii Veterinary Medical Association; 2010 Honorary Member

Publications

Author of numerous articles on veterinary medicine that have appeared in professional publications of the American Association of Equine Practitioners, Veterinary Medicine/Small Animal Clinician, Journal of the Hawaii Medical Association, Cornell Veterinarian, and the Journal of the American Veterinary Medical Association.

Books

- 2021 Projected release. Loyal to the Land: The Legendary Parker Ranch, 1992-Present Day, Final Volume, Lasting Legacy, University of Hawaii Press
- 2017 The Hawaiian Horse, Senior Author, University of Hawaii Press
- 2010 Richard Smart of the Legendary Parker Ranch, Senior Author, Island Heritage Publications
- 2009 Loyal to the Land, The Legendary Parker Ranch, 1970-1992, Volume 3, Agents of Change, Island Heritage Publication
- 2008 Hawaiian Cowboys, McClure, M. and Bergin, Dr. Billy, Island Heritage Publications
- 2006 Loyal to the Land: The Legendary Parker Ranch, Volume 2, The Senior Stewards, University of Hawaii Press
- 2004 Loyal to the Land, The Legendary Parker Ranch, 750-1950, Aloha Aina Paka, University of Hawaii Press

Education and Training

- 1968 Kansas State University, College of Graduate Studies
Manhattan, KS M.S. Physiology
- 1967 University of Kentucky
Lexington, KY. Research Assistant , Master’s Thesis
- 1967 Kansas State University, College of Veterinary Medicine
Manhattan, KS Doctor of Veterinary Medicine

Item VII.

Executive Session

**ITEM TO BE
DISCUSSED IN
EXECUTIVE
SESSION**

20082-A



UNIVERSITY of HAWAII SYSTEM

UNIVERSITY OF HAWAII BOARD OF REGENTS

Erika Lacro Vice President for Community Colleges

20 MAY 29 A9:08

May 27, 2020

RECEIVED

'20 MAY 28 P7:08

MEMORANDUM

TO: Benjamin A. Kudo Chairperson University of Hawaii Board of Regents

UNIVERSITY OF HAWAII PRESIDENT'S OFFICE

VIA: David Lassner (signature) President University of Hawaii

VIA: Kalbert K. Young (signature) Vice President for Budget and Finance/Chief Financial Officer University of Hawaii

FROM: Erika Lacro Vice President for Community Colleges University of Hawaii (signature)

SUBJECT: HANGAR 111 ABROGATION AND RELEASE OF RESTRICTIONS KALAELOA AIRPORT, BARBERS POINT, EWA, O'AHU

SPECIFIC ACTION REQUESTED:

In accordance with Board of Regents Policy RP 10.201, it is requested that the Board of Regents:

- (1) Approve Abrogation and Release of Restrictions. Approve the Abrogation and Release of Restrictions ("Abrogation") between the United States Department of Education ("USDOE"), as grantor, and the University of Hawaii ("University"), as grantee, under which the USDOE, upon receiving the required payment from the University, will release certain restrictive covenants encumbering the premises comprising Hangar 111, located at Kalaeloa Airport, Barbers Point, Ewa, O'ahu ("Property"), in accordance with the terms described in the attached major term sheet;

2444 Dole Street, Bachman 207 Honolulu, Hawaii 96822 Telephone: (808) 956-7038 Fax: (808) 956-5286

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- (2) Authorize the President or VPBF to finalize and execute. Authorize the University President and/or the University Vice President for Budget and Finance/Chief Financial Officer ("**VPBF**"), in accordance with Board of Regents Policy RP 10.201, to negotiate, finalize, and execute the Abrogation (consistent with the attached major term sheet), take other action, and execute such other documents as may be necessary or appropriate to implement the Abrogation, which will enable the University to allow other entities to use the Property for non-educational purposes and permit the University to lease the Property to third parties for commercial purposes; and
- (3) Authorize the Issuance of a Board of Regents Resolution. Authorize the issuance of a Board of Regents resolution confirming that the Board of Regents has authorized the President and/or the VPBF to: (a) execute the Abrogation consistent with the terms described in the major term sheet; (b) take such other action and execute such other documents as may be necessary to implement the Abrogation; and (c) proceed with the finalizing and closing the transaction to effect the Abrogation.

RECOMMENDED EFFECTIVE DATE:

It is requested that any authority granted to the University by the Board of Regents to enter into the Abrogation be effective upon approval. Under the Abrogation, upon the University's payment of the amounts required under the Abrogation ("**Abrogation Payment**"), the USDOE will release certain restrictive conditions that were imposed by USDOE in the Quitclaim Deed dated July 20, 2000, and recorded on December 13, 2000, by which USDOE conveyed title to the Property to the University ("**Deed**") and which duration had been extended three (3) years by that certain Amendment to Deed ("**1st Amendment**") previously approved by the Board of Regents. At the time that the Property was obtained from USDOE, Honolulu Community College ("**HonCC**") used it for its Commercial Aviation program.

ADDITIONAL COST:

No costs other than the Abrogation Payment are expected to be incurred.

PURPOSE:

The University and the USDOE have negotiated and tentatively agreed on the terms of the Abrogation, the more significant terms of which are listed on the attached

major term sheet. The Abrogation will enable the University to allow others to use the Property for non-educational purposes and permit the University to lease the Property to third parties for commercial purposes.

BACKGROUND INFORMATION:

A. Quitclaim Deed.

The USDOE conveyed the Property by Deed to the University in July 2000. At the time, the Property was considered Federal surplus real property. The Property is approximately 4.520 acres with improvements that consist primarily of an aircraft hangar enclosing about 105,000 square feet of the Property.

The Property was conveyed to the University subject to certain restrictive covenants and conditions contained in the Quitclaim Deed (collectively the "**Restrictive Covenants**"), which were to remain in effect for thirty (30) years and included: (1) using the Property solely and continuously for educational purposes consistent with the program proposed by the University in its application; (2) refrain from selling, leasing, renting or otherwise transferring any interest in the Property (unless authorized by USDOE); (3) submit to USDOE an annual operating and maintenance report; and (4) remain a tax supported institution or a nonprofit institution exempt from taxation under section 501(c)(3) of the IRS Code.

From the time it acquired the Property from USDOE, the University, through HonCC, operated a flight training program that allowed students to earn an Associate of Science in Commercial Aviation. Upon completion, the students were eligible for direct transfer to a bachelor's degree program at a private institution such as Embry-Riddle which had a location in Honolulu. The flight training program was suspended in September 2016. The property and facility could be used for other programs and utility purposes of the University, but the current restrictions and covenants with USDOE limit potential options.

HonCC has also operated for years an aeronautics maintenance technology program at a hangar located at Daniel K. Inouye (Honolulu) International Airport ("**HIA**"). Having programs at both Kalaeloa Airport (flight training) and HIA (aeronautics maintenance technology) gave HonCC a presence at Oahu's two premier aviation/aeronautical sites.

B. 1st Amendment.

Under the 1st Amendment that the Board of Regents approved around September 2010, HonCC continued to operate its flight training program and allowed the University to construct and operate its Applied Research Laboratory ("**ARL**") in a portion of Hangar 111. The ARL is a U.S. Department of Defense University-Affiliated Research Center sponsored by the U.S. Navy that was approved by the Board of Regents in September 2007. As a condition of permitting the flight training program and the ARL, the USDOE asked for additional considerations on the property by extending the duration of already agreed upon covenants. Pursuant to conditions required by USDOE in the 1st Amendment, the duration of the Restrictive Covenants period was extended by three (3) years. The USDOE did approve the 1st Amendment pursuant to an amended application submitted by the University.

HonCC, however, discontinued the flight training program as of September 2016. The ARL relocated from Hangar 111 in 2018. With no educational or research programs currently identified to immediately utilize the Property, the University is seeking the flexibility to allow third parties to use Property for commercial purposes to benefit the University of Hawai'i.

C. Abrogation.

The Deed does provide for a process, called abrogation, by which the University could obtain relief from the Restrictive Covenants. It is described in paragraph 15 of the Deed.

1. Abrogation defined. At the time the Board of Regents approved the 1st Amendment, it was noted that unless the University decided to seek the early release and termination of USDOE's restrictive covenants contained in the Deed (defined as an "abrogation"), the University would not incur any additional costs due to the 1st Amendment.
2. Abrogation requires Abrogation Payment to USDOE. If the University decided to seek such an abrogation, the University will be obligated to make the Abrogation Payment to USDOE.
3. Abrogation Payment formula. The Abrogation Payment is to be equal to the fair market value of the Property as of the date of abrogation: (1) multiplied by the percentage public benefit allowance that was granted at the time the Property was conveyed to the University (which public benefit allowance was reduced by three (3) years by USDOE pursuant to the 1st Amendment);

(2) divided by 360; and (3) multiplied by the number of months, or any portion thereof, of the remaining period of restrictions to be abrogated. Based on the abrogation payment formula, the USDOE has determined that, and the University agrees, the Abrogation Payment amount is Eleven Million One Hundred Seventy-Three Thousand Five Hundred And No/100 Dollars (\$11,173,500).

Upon receiving the Abrogation Payment from the University, USDOE will release the Restrictive Covenants and allow the University to permit third parties to use the Property for non-educational purposes, including the University leasing the Property to such third parties.

Attached is a major term sheet summarizing the more significant terms of the Abrogation.

ACTION RECOMMENDED:

It is requested and recommended that the Board of Regents:

1. Approve the Abrogation. Approve the Abrogation between the USDOE, as grantor, and the University, as grantee, consistent with the terms described and contained in the attached major term sheet.
2. Authorize the President and/or VPBF to finalize/execute the Abrogation. Authorize the President and/or the VPBF, in accordance with Board of Regents Policy RP 10.201, to negotiate, finalize, and execute the Abrogation (consistent with the attached major term sheet) and take such other action and execute such other documents as may be necessary or appropriate to implement the Abrogation.
3. Authorize the Issuance of a Board of Regents Resolution. Authorize the issuance of a Board of Regents resolution confirming that the Board of Regents has authorized the President and/or the VPBF to: (a) execute the Abrogation consistent with the terms described in the major term sheet; (b) take such other action and execute such other documents as may be necessary to implement the Abrogation; and (c) proceed with finalizing and closing the transaction to effect the Abrogation.

Attachments

1. Major Term Sheet – Abrogation
2. Draft Board of Regents Resolution

c: Executive Administrator and Secretary to the Board Kendra Oishi

MAJOR TERM SHEET

ABROGATION AND RELEASE OF RESTRICTIONS
BETWEEN

UNITED STATES OF AMERICA,
acting by and through its Secretary of Education

AND

UNIVERSITY OF HAWAI'I
(for the benefit of Honolulu Community College)

Hangar 111
Kalaeloa Airport, Barbers Point, Oahu, Hawai'i

1. Parties.

- a. Grantor: United States of America, acting by and through its Secretary of Education (“*USDOE*”).
- b. Grantee: University of Hawai'i (“*University*”) for the benefit of Honolulu Community College (“*HonCC*”).

2. Property. The property is located at the former Barbers Point Naval Air Station, Barbers Point, City and County of Honolulu, Oahu, Hawai'i, consisting of approximately 4.52 acres, designated as Tax Map Key No. (1) 9-1-013:025, and shown on the map attached hereto as Exhibit A and upon which Hangar 111 (approximately 105,000 square feet) is situated (collectively the “*Property*”).

3. Quitclaim Deed. Quitclaim Deed dated July 20, 2000, and recorded on December 13, 2000, by which USDOE conveyed title to the Property to the University (“*Deed*”).

4. Conditions Subsequent. The Deed contained several conditions subsequent (“*Conditions Subsequent*”) which were to remain in effect for thirty (30) years and included the University: (1) using the Property solely and continuously for educational purposes consistent with the program proposed by the University in its application; (2) refraining from selling, leasing, renting or otherwise transferring any interest in the Property (unless authorized by USDOE); (3) submitting to USDOE an annual operating and maintenance report; and (4) remaining a tax supported institution or a nonprofit institution exempt from taxation under section 501(c)(3) of the IRS Code.

5. Deed Amendment. Amendment to Deed dated May 26, 2011, recorded on July 11, 2011 (“*1st Amendment*”) which allowed the University to continue HonCC's flight training program and establish the Applied Research Laboratory (“*ARL*”) within Hangar 111. The 1st Amendment also extended the duration of the Restrictive Covenants by three (3) years to a total of thirty-three (33) years with a corresponding reduction in the University's public benefit allowance (which is a factor considered in calculating the appropriate Abrogation payment amount).

6. Restrictive Covenants. In addition to the Conditions Subsequent, the Deed contained a number of covenants that were intended to run in perpetuity or for a period longer than thirty-three (33) years (collectively the "*Restrictive Covenants*"), including the following:
 - a. Notice of Entry covenant. If the University was found to be in breach of any of the terms and conditions of the Deed, the USDOE could file a Notice of Entry to regain ownership of the Property ("*Notice of Entry covenant*").
 - b. Educational Use covenant. If title to the Property is reverted to the USA for noncompliance, the University, shall at USDOE's option, be responsible for reimbursing the USA for: (1) the decreased value thereof that is not the result of reasonable wear and tear, an act of God, or alterations and conversions made by the University and approved by USDOE; (2) the costs to adapt the Property to the educational use for which the Property had been transferred; and (3) damage USDOE may sustain as a result of such noncompliance, including, but not limited to, costs incurred to recover title to or possession of the Property ("*Educational Use Cost covenant*").
 - c. Restricted transfer covenant. The University may not sell, lease, mortgage, encumber or otherwise transfer ("*Transfer*") the Property or any interest therein without USDOE's prior written consent, and if the University does so, the University shall hold in trust for the USA, subject to USDOE's direction, all revenues and the reasonable value of any other benefits to the University, as determined by USDOE, deriving directly or indirectly from such Transfer ("*Restricted Transfer covenant*").
 - d. Restricted Extraction covenant. At all times during the period that the University holds title to the Property subject to the Conditions Subsequent: (a) the University shall not engage in or authorize the extraction or production of any minerals from the Property without USDOE's prior written consent; and (b) should such an extraction or production of minerals occur during such period, the University will hold all payments, rentals, royalties, net revenues and proceeds generated by such extraction or production in trust for and promptly pay the same to USDOE (collectively the "*Restricted Extraction covenant*").
 - e. Insurance covenant. The University is required to insure the Property against certain risks and losses (including flood damage if the Property is located within a floodplain) and if any loss, damage, or destruction to the Property shall occur during the period the University holds title, the University shall hold said insurance proceeds in trust and promptly use it to repair and restore the Property to its former condition (or replace it with at least equivalent facilities) or if not so used, shall pay it over to the USA in an amount equal to the unamortized public benefit allowance of the Property multiplied by the current fair market value of the improvements lost, damaged or destroyed (the "*Insurance covenant*").
 - f. Grantor Consent to SHPO Activity covenant. The University covenanted to consult with USDOE and obtain USDOE's concurrence that any activities approved by the State Historic Preservation Officer ("SHPO") are consistent with the terms and requirements of the Deed conveyance with respect to Federal public benefit allowance transfers ("*Grantor Consent for SHPO Activity covenant*").
7. Abrogation Payment. Based on the formula described in the Deed, as amended by the 1st Amendment, the total abrogation payment that the University is required to submit to USDOE is Eleven Million One Hundred Seventy-Three Thousand Five Hundred and No/100 Dollars (\$11,173,500.00), after applying the reduced public benefit allowance ("*Abrogation Payment*").

8. USDOE's Excess Share. USDOE has based its calculation of the Abrogation Payment on a real estate appraisal completed for USDOE that estimated the Property's fair market value at \$19,500,000.00.
 - a. Grantor's Excess Share. As further confirmation as to the fair market value of the Property, USDOE is requiring that if the University, prior to late February 2023, sells, transfers, conveys, leases or otherwise disposes of the Property or any rights therein for a sum in excess of \$19,500,000.00, as determined by USDOE ("Excess Amount"), then the University shall remit to USDOE a portion of the Excess Amount equivalent to 57.3% of the Excess Amount ("*Grantor's Excess Share*").
 - b. University to remit Excess Amount and furnish agreements. The University shall remit to USDOE any such portions of the Excess Amount within ten (10) days of the University's receipt of such Excess Amount together with pertinent copies of the agreements that establish the amount of actual or promised consideration, the Excess Amount, and the Grantor's Excess Share.
 - c. University as trustee. The University agrees that all sums received in excess of \$19,500,000, including the Grantor's Excess Share, shall be held in trust by the University for the USA, subject to USDOE's direction and control.
9. USDOE Release. Under the Abrogation, USDOE is releasing the University from having to comply with all of the Conditions Subsequent and all of the Restrictive Covenants. USDOE is also releasing any interest in or rights to all benefits under the Deed except the Grantor's Excess Share.
10. Remainder of Deed Effective. Except as otherwise amended under this Abrogation, the remaining provisions in the Deed, including those relating to USDOE's conveyance of title to the Property to the University, remain valid and in full force and effect.

Authorizing Hangar 111 Abrogation Kalaeloa Airport, Barbers Point, Oahu, Hawai'i

WHEREAS, certain real property owned by the UNITED STATES OF AMERICA, located in the City and County of Honolulu, State of Hawai'i, had been declared surplus and was subject to assignment for disposal for educational purposes by the Secretary of the U.S. Department of Education, under provisions of section 203(k)(1) of the Federal Property and Administrative Services Act of 1949, as amended (Act), (63 Stat. 377), and the rules and regulations promulgated pursuant thereto, more particularly described as follows:

Hangar 111, consisting of approximately 105,000 square feet with second floor offices, a small ramp area and an adjacent parking lot with a total land area of about 4.5 acres at the former Barbers Point Naval Air Station, City and County of Honolulu, island of Oahu, State of Hawai'i, designated as Tax Map Key No. (1) 9-1-013:025 (collectively the "Property").

WHEREAS, the University of Hawai'i ("**University**") Board of Regents authorized the University to acquire ownership of the Property (see University of Hawai'i Board of Regents, Resolution dated October 9, 1998, signed by Board Chair Donald Kim and certified by Board Secretary David Iha), and the University completed acquiring the Property by Quitclaim Deed dated July 20, 2000, and recorded on December 13, 2000 ("**Deed**") from the United States of America, by its Secretary of Education ("**USDOE**"); and

WHEREAS, the Deed contains certain restrictive covenants and conditions that apply to the Property (collectively "**Restrictive Covenants**") in favor of USDOE, relating primarily to requiring the University to continue using the Property for the educational purposes as described in the University application submitted to USDOE, which University application has been amended over time; and

WHEREAS, some of the Restrictive Covenants are scheduled to be in effect for up to thirty-three (33) years or longer; and

WHEREAS the Deed contains a procedure by which the University may abrogate or terminate early the effectiveness of the Restrictive Covenants; and

WHEREAS, this abrogation or early termination procedure requires the University to submit a payment to USDOE that is determined in accordance with the abrogation payment formula described in the Deed and is based on a fair market value appraisal of the Property reduced by an offset for the applicable public benefit allowance; and

WHEREAS, the University desires to abrogate or terminate early the Restrictive Covenants; and

University of Hawai'i Board of Regents
RESOLUTION

20-01

WHEREAS, the University anticipates that with the abrogation or early termination of the Restrictive Covenants, the University will be able to allow third parties to use the Property for non-educational purposes and the University will be permitted to lease the Property to entities for commercial purposes; and

WHEREAS, USDOE has determined that the University should submit to USDOE an abrogation payment of Eleven Million One Hundred Seventy-Three Thousand Five Hundred and No/100 Dollars (\$11,173,500.00), which calculation is based on a fair market value appraisal of the Property reduced by an offset for the applicable public benefit allowance ("**Abrogation Payment**"); and

WHEREAS, the Hawai'i State Legislature has appropriated \$11,500,000 and the University has requested release of such funds in part to pay the Abrogation Payment to USDOE; and

WHEREAS, the University and USDOE have reached tentative agreement upon the terms of the Abrogation and Release of Restrictions ("**Abrogation**"), under which the University would pay the Abrogation Payment to USDOE and USDOE will release all of the Restrictive Covenants and enable the University to allow third parties to use the Property for non-educational purposes and permit entities to lease the Property for commercial purposes; and

WHEREAS, the University is seeking approval from the Board of Regents to finalize and execute the Abrogation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Regents of the University of Hawai'i hereby approves the Abrogation, authorizes the University of Hawai'i ("**University**"), through its President and/or Vice President for Budget and Finance/Chief Financial Officer ("**VPBF**"), to negotiate, finalize, and execute the Abrogation, submit the Abrogation Payment to USDOE, and take any action and execute such other documents as the President and/or the VPBF deem necessary to implement the Abrogation; and

BE IT FURTHER RESOLVED that the University has legal authority, is willing and is in a position financially and otherwise to implement the Abrogation and gain additional flexibility to allow third parties to use the Property for non-educational purposes and permit the University to lease the Property to entities for commercial purposes, and that President David Lassner and Vice President for Budget and Finance/Chief Financial Officer Kalbert Young are hereby authorized, for and on behalf of the University, to do and perform any and all acts and things which may be necessary to carry out this resolution, including the negotiation, finalization, and execution of the Abrogation, preparing and filing of plans, applications, reports and other documents, the execution, acceptance, delivery, and recordation of agreements, deeds and other instruments pertaining to the Abrogation and the implementation of the Abrogation, and the payment of any and all sums, fees, or costs incurred in connection with the Abrogation, including, the Abrogation Payment, the preparation of surveys, title searches, and appraisals, the establishment of an escrow, and the recordation of instruments.

University of Hawai'i Board of Regents
RESOLUTION

20-01

A copy of the Abrogation will be filed with the permanent minutes of the Board of Regents.

Benjamin A. Kudo
Chairperson, Board of Regents
University of Hawai'i

I, Kendra T. Oishi, hereby certify that I am the Executive Administrator and Secretary of the Board of Regents, University of Hawai'i, and that the foregoing resolution is a true and correct copy of the resolution adopted by a vote of a majority of the members of said University of Hawai'i Board of Regents present at a meeting of said Board on the _____ day of _____, _____, at which a quorum was present.

Kendra T. Oishi
Executive Administrator and Secretary of
the Board of Regents
University of Hawai'i
2444 Dole Street
Honolulu, Hawai'i 96822

Adopted by the Board of Regents
University of Hawai'i
_____, 2020



University of Hawai'i Community Colleges



Hangar 111

For Presentation to:
University of Hawai'i Board of Regents
June 18, 2020

Erika Lacro, Vice President for Community Colleges

Hangar 111

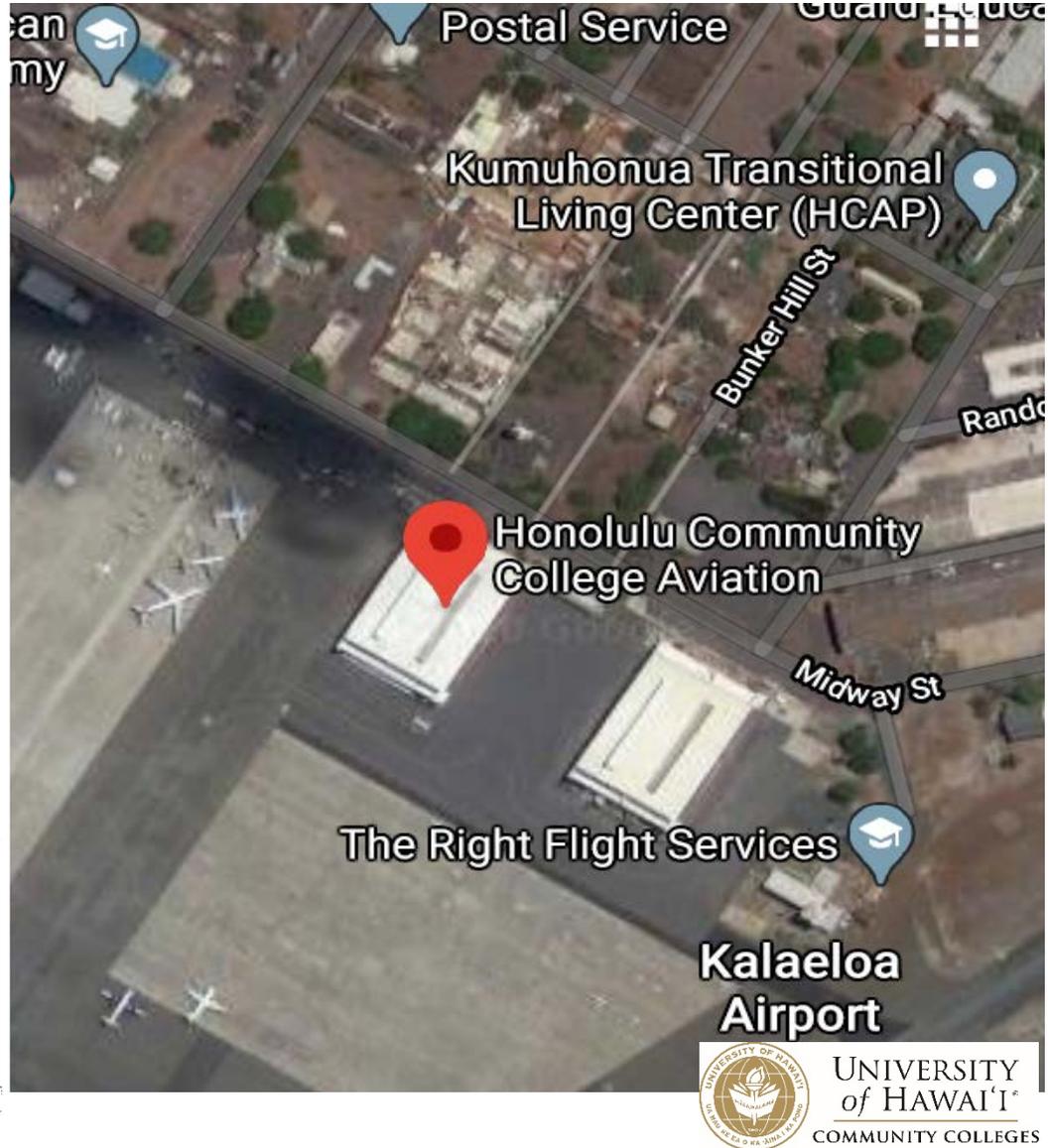
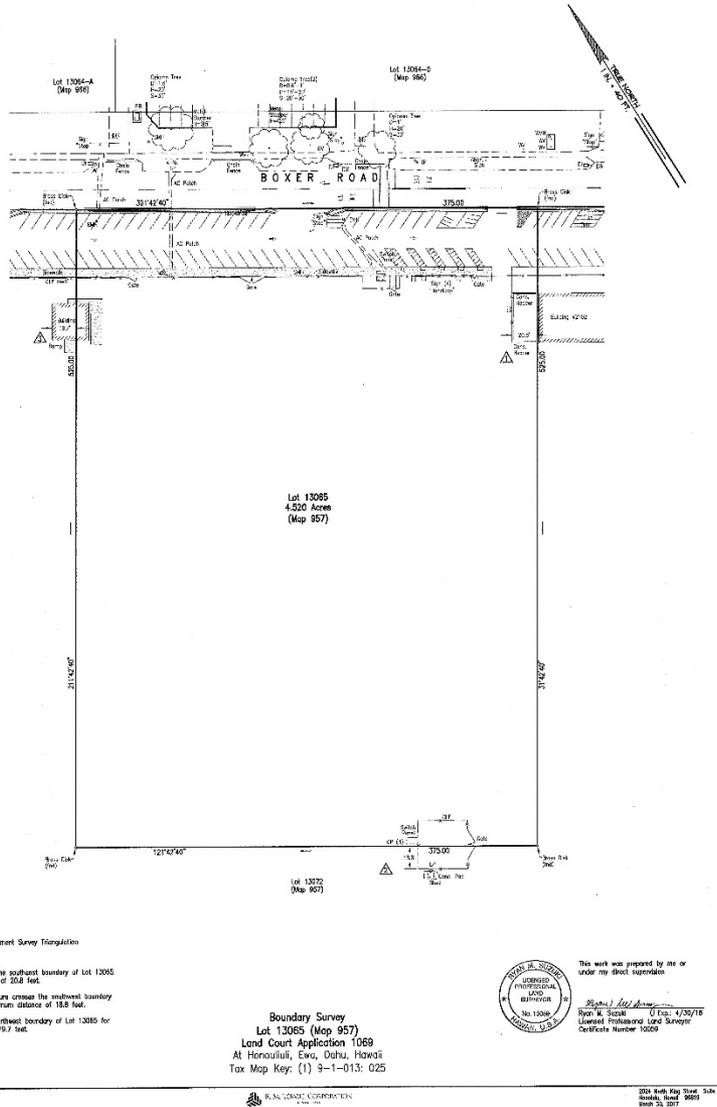
Property Description

- Located at Kalaeloa Airport, Barbers Point, Kapolei, O'ahu
 - 91-1259 Midway Road
 - Tax Map Key No. (1) 9-1-013:025
- Constructed in 1942
 - Approximately 105,000 square foot hangar
 - Office and class spaces on first and second floors
 - Ramp area and adjacent parking lot
- Approximately 4.5 acres total land area



Hangar 111

Site and Survey Map



- USDOE conveyed property to UH, July 2000
 - No cost conveyance
 - Quit claim deed to remain in effect for 30 years
 - Restriction for sole and continuous use for education and research only
- USDOE / UH BOR Amendment permits Applied Research Laboratory (ARL) at hangar, September 2010
 - Quit claim deed extended to 2033
- Honolulu CC operated AS in Commercial Aviation until September 2016
- ARL relocated from hangar in 2018



- **Release of USDOE Deed Restrictions**
 - Allows UH use of property for non-educational purposes
 - Permits UH to lease Property to third parties for commercial purposes
 - Deed provides a process called abrogation, to allow UH to seek early release and termination of USDOE's restrictive covenants
 - No cost other than abrogation payment is expected to be incurred
- **Permits termination of restrictions prior to 2033**
- **Requires Board of Regents approval and resolution**
- **Abrogation payment of \$11,173,500 to USDOE**
 - Based on USDOE real property appraisal of \$19.5 million as fair market value, discounted for public benefit allowance
 - Hawai'i State Legislature appropriated funds in 2019
 - UH has already requested release of funds



1. Approve the abrogation.
2. Authorize the UH President and/or the Vice President for Budget and Finance/Chief Financial Officer to finalize and execute the abrogation.
3. Authorize the issuance of a Board of Regents Resolution.



Mahalo



University of Hawai‘i Board of Regents
R E S O L U T I O N

Honoring University of Hawai‘i Regent
Michael T. McEnerney

WHEREAS, Michael T. McEnerney attended the University of Wisconsin, earning a bachelor of science degree, cum laude, as a double major in accounting and business administration, and later attended the University of Hawai‘i at Mānoa, where he earned a master of business administration; and

WHEREAS, Michael T. McEnerney received his draft notice the day following the award of his M.B.A. degree and honorably served on active duty with the United States Army in Berlin, West Germany, receiving, among other awards, an Army Commendation (ARCOM) award; and

WHEREAS, Michael T. McEnerney attended, as a full-time student, Northwestern University in Chicago, earning a juris doctorate degree cum laude in 1976 and passing the Illinois CPA exam in 1974, then began working in an international accounting firm; and

WHEREAS, returning to Hawai‘i in 1977, Michael T. McEnerney, began his career in Hawai‘i working at an international accounting firm and local accounting firms; shared his wealth of knowledge in business, accounting, tax, and legal matters, teaching undergraduate and graduate courses at the University of Hawai‘i at Mānoa and Chaminade University in Honolulu; instructed accountants and attorneys throughout Hawai‘i in a variety of tax and business valuation issues; and opened an accounting firm in Honolulu in the early 1980s which became McEnerney Shimabukuro Okazaki & Fujita CPAs, AAC; and

WHEREAS, Michael T. McEnerney has held key leadership positions in a variety of organizations; earned numerous professional certifications and designations, including as an Accredited Senior Appraiser and Certified Valuation Analyst; and was among the first in the country to earn the Accredited in Business Valuation designation and Certified in Financial Forensics designation; and

WHEREAS, in 2015, Governor David Ige appointed Michael T. McEnerney to the University of Hawai‘i Board of Regents, representing the island of O‘ahu; and

WHEREAS, during his tenure on the Board, Regent McEnerney served on many committees, including the committees on Academic and Student Affairs; Budget and Finance; Independent Audit, for which he served as Chair; Intercollegiate

Athletics, for which he served as Vice-Chair; and Personnel Affairs and Board Governance; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Regents of the University of Hawai‘i extends its heartfelt gratitude and appreciation to Regent Michael T. McEnerney for his dedicated service, guidance, and valuable contributions to the University of Hawai‘i and the State of Hawai‘i; and

BE IT FURTHER RESOLVED that the Board of Regents wishes Michael a warm mahalo, and extends to him its aloha and best wishes for continued success and happiness with his wife of 48 years, Irene (his “chief of staff”), and their four sons and eight grandchildren.

Adopted by the Board of Regents

University of Hawai‘i

June 18, 2020