Report on the Proposed
University of Hawai‘i at Mānoa Applied Research Laboratory,
a Naval Sea Systems Command (NAVSEA)
University Affiliated Research Center (UARC)

Final Report of the Faculty
Senate Executive Committee
Ad Hoc Committee on the UARC
University of Hawai‘i at Mānoa
Report on the Proposed University of Hawai‘i at Mānoa Applied Research Laboratory, a Naval Sea Systems Command (NAVSEA) University Affiliated Research Center (UARC)

Ad Hoc Committee on the UARC
Appointed by the University of Hawai‘i at Mānoa Senate Executive Committee

Committee members:

Danielle Conway-Jones (Law)
Jon Osorio (Center for Hawaiian Studies)
Calvin Pang (Law)
Tom Ramsey (Mathematics, SEC Liaison)
David Ross (Mathematics)
Sara Rutter (Library Services, Chair)
Jim Tiles (Philosophy, SEC Liaison)
Roy Wilkins (SOEST)

Outside counsel
Funded through the Hawai‘i Procurement Institute of the University of Hawai‘i by the Vice Chancellor for Research and Graduate Education Research and Training Revolving Fund account.

Attorneys at Law:

Terry Thomason and Jessica Horiuchi of Alston, Hunt, Floyd & Ing Attorneys at Law
Danielle Conway-Jones, ad hoc committee liaison to outside counsel
**Introduction**

**Ad hoc committee charge**

In June 2005, the Senate Executive Committee of the University of Hawai‘i at Mānoa Faculty Senate convened an *ad hoc* committee of UH Mānoa faculty to gather information about a proposed Naval Sea Systems Command (NAVSEA) University Affiliated Research Center (UARC). If approved by the UH Board of Regents, the newest NAVSEA UARC will be established as the University of Hawai‘i at Mānoa Applied Research Laboratory (ARL), and be integrated into the research infrastructure at UH Mānoa. The charge to the committee was to produce a report that would facilitate an informed discussion in the Mānoa Faculty Senate about the UARC and enable the Senate to make a recommendation to the Board of Regents.

Members of the committee included Danielle Conway-Jones (Law), Jon Osorio (Hawaiian Studies), Calvin Pang (Law), Tom Ramsey (Mathematics, SEC Liaison), David Ross (Mathematics), Sara Rutter (Library, Chair), Roy Wilkens (SOEST), and Jim Tiles (Philosophy, SEC Liaison).

The committee focused on the current UARC plans rather than on plans proposed more than two years ago, as many of the key people now leading the development of the UARC came to the project only earlier this year, and the UARC currently proposed differs substantially from that originally proposed.

**Ad hoc committee consultation**

The committee solicited comments from UH Mānoa faculty through the uhm-faculty listserv asking faculty to share their opinions about the establishment of a UARC on the UH Mānoa campus. Guests invited to meet with the committee, listed at the end of this report, included faculty opposed to the UARC, faculty who viewed the UARC as beneficial to the research environment of UH Mānoa, the Vice Chancellor of Research and Graduate Education (VCRGE) Gary Ostrander, and the Acting Vice Chancellor for Finance, Administration and Operations Kathy Cutshaw.

The committee established a series of web pages to archive the opinions, questions, answers, and background materials related to the proposed UARC, on the UH Mānoa Faculty Senate website at www.hawaii.edu/uhmfs/uarc.

**Outside counsel**

Legal analysis of the UARC draft contract was provided by two attorneys, Terry Thomason and Jessica Horiuchi of Alston, Hunt, Floyd, and Ing Attorneys at Law, who were engaged through the Hawai‘i Procurement Institute for the benefit of the SEC and the *ad hoc* committee. Mr. Thomason has long experience as an attorney in the Army Judge Advocate General’s Corp, working on Army laboratory command contracts, with corporate accounts in educational institutions, and on workplace issues. The legal
services were paid for by the office of the VCRGE out of Research and Training Revolving Funds (RTRF).

Philosophy and Mission

This committee finds that the university's mission and values impact the decision as to whether to have a UARC on campus, and if a UARC is approved, the mission and values should shape its form and function. The "mission and philosophy" debate has several dimensions.

University of Hawaiʻi at Mānoa Vision Statement

Mānoa is a premier research institution whose scholars are leaders in their disciplines and whose students are prepared for leadership roles in society. Mānoa strives for excellence in teaching, research, and public service. Mānoa is an innovative institution, comfortable with change. Mānoa celebrates its diversity and uniqueness as a Hawaiian place of learning. We build on our strengths including our unparalleled natural environment and tradition of outstanding Asia-Pacific scholarship. (Strategic Plan 2002-2010)

Hawaiian Place of Learning

Many faculty and students have raised the question whether the commitment of the University of Hawaiʻi at Mānoa to be a Hawaiian Place of Learning can coexist with the establishment of a Department of Defense sponsored University Affiliated Research Center, given the U.S. military involvement in the overthrow of Hawaiʻi’s sovereign government and the establishment of the University on ceded lands of that government. Insufficient outreach has been done to listen to Native Hawaiian concerns about the establishment of a UARC at UH Mānoa.

Addressing the concerns of the Native Hawaiian community

UH Mānoa has pledged to “honor the indigenous people and promote social justice for Native Hawaiians” in its 2002-2010 Strategic Plan. Members of the Kualiʻi Council have stated their opposition to the establishment of a NAVSEA UARC at UH Mānoa.

The administration should consult with faculty and students of the Center for Hawaiian Studies, the Hawaiian language program, and the Kualiʻi Council for help in identifying issues that are of concern to Native Hawaiians and strategies to ensure that these opinions affect the development of a program such as the UARC, from the initial stages.

Classified Research

The VCRGE estimates that 15% of the research performed as a result of Task Orders sent through the UARC will be classified, which will increase the amount of classified research done, given a $300 million research budget (2004-2005), to 1.25% (meeting with VCR Ostrander and VCFAO Cutshaw, July 7, 2005).
The Mānoa Faculty Senate has passed resolutions regarding classified research in 1986, 2002, and 2005 (Appendix A, text of these resolutions). In the September 15, 2004 Manoa Faculty Senate Minutes, Jim Gaines, Vice President for Research, noted that “while there is no specific BoR policy about classified research [on campus], the UHM Faculty Senate has twice in the past issued statements opposing classified research being done on the UHM campus. He said he expected the agreement between the DoD and UHM to state that no classified research could be done on the UHM campus.” The proposed revision to the Board of Regents policy on research would not prohibit classified research on UH campuses (BoR Policy on Classified Research and proposed revision, see Appendix A). The Mānoa Faculty Senate in March 2005, voted to support only that research for which “there is a reasonable expectation that timely publication of the results of the research will not be restricted by its sponsor.”

The UARC is expected to facilitate the execution of classified research by UH researchers by offering rent free government owned secured research space and access to the Navy’s security infrastructure (sections H.4, H.8, H.11 Draft Contract).

Publication/dissemination of unclassified information

The draft contract in section H.5 Disclosure of Information describes the process through which unclassified information may be published. The UARC will request the approval of the NAVSEA Systems Command Office of Public Affairs, at least 60 days before publication is planned. If the UARC does not hear from the NAVSEA office by the 45th day of their (NAVSEA) receipt of the request, the UARC will send another request, which NAVSEA will have 15 days, after receipt, in which to respond. Unless the UARC is told within that time to withhold publication, the research may be published.

NAVSEA may tag unclassified information as unsuitable for publication because they determine that the information is “sensitive and inappropriate for disclosure.” The draft contract does not describe the criteria that NAVSEA would use to make this judgment. Nor does the contract describe the process under which information could be released at a later time.

The outside counsels’ report highlights concerns about publication rights on the part of UARC researchers of unclassified material determined to be sensitive by the Navy. The report points out that under this draft contract, the researcher will be placed at risk because of a mandatory “follow-on disclosure request” that must be submitted 15 days after the initial request, after which, if the researcher does not hear from the Navy, they assume that their publication request has been granted. In addition, UARC faculty will have to request permission to publish any information, even information that is not classified and not declared sensitive. Because of the restrictive language of the draft contract, the Federal Freedom of Information Act (FOIA) would give those outside of the UARC greater publication rights of data generated by UARC research than those working inside the UARC. FOIA requires a decision to release information within 20 days, rather than the 45 day plus 15 day requirement of the UARC. The outside counsels’ report points out an inconsistency in the Navy’s ability to prevent the publication of information
and UH’s “function of publicizing the results of its research” (Thomason and Horiuchi, p. 7).

The outside counsels’ report recommends that section H.5 of the draft contract, Disclosure of Information, be rewritten to include the implementation of five ideas ranging from narrowing the Navy’s authority to prevent publication of UARC research, shortening the time the Navy has to restrict publication, rights of appeal and the removal of a conflicting clause (Thomason and Horiuchi, p. 7).

Publication restricted research
Currently the UH Office of Research Services, Form ORS 5, Proposal and Contract Coordination Record, provides a check box for grant applicants to waive their rights to publication. The Mānoa Faculty Senate has voted to discourage the University from accepting research grants that restrict publication rights, passing resolutions to this effect in 1986, 2002, and 2005. When a task order that involves classified research is accepted and completed by the researchers working within the UARC, the UARC administration will notify the NAVSEA Security Office and request “classified material disposition in accordance with the Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22M).”

This committee met with researchers who wished to access classified data to pursue their research and believed that the UARC administrative structure would facilitate that work. Accessing this data would require a level of security clearance, and secure work areas, which the UARC could provide off-campus. The research results, once cleared by NAVSEA, would be disseminated in the normal communication streams.

There is concern among those faculty arguing against the UARC that facilitating research that will not be subject to peer review because results are classified may undermine the tenure and promotion system that can only credit work that can undergo peer review and is publicly accessible. However, this issue was not raised as a concern by UH Mānoa faculty who would most likely be involved in UARC supported research programs.

Increasing the amount of research performed by UH Mānoa faculty that requires security clearances or minimally, U.S. citizenship, is viewed by some faculty as divisive, causing some faculty and students to be cut off from those who work on projects that require citizenship or clearance. As with tenure and promotion concerns, this subject does not seem to be seen as a problem by potential UARC PIs. Faculty who spoke to the ad hoc committee, familiar with working within the constraints of outside funding sources, e.g. collecting data from a nuclear submarine and publishing research results based on desensitized data, indicated that they did not view the need for security clearances as an insurmountable barrier for their research colleagues.

The SEC ad hoc committee on classified research, which reported to the Senate in Spring 2005, identified seven problem areas related to classified research and concluded, "In the end, we were broadly dubious about the administration's ability to implement protections that could reliably manage each of these seven problem areas."
Greater Military Involvement

Increase of Department of Defense Research Funding
The University of Hawai‘i at Mānoa over the nine months between July 1, 2004 and April 13, 2005 brought in $23.64 million in grant funding from the Department of Defense, $4.1 million of these funds were from the Department of the Navy and $734,359 were from the Office of Naval Research. For 2004-2005, 19.64% of the extramural research awards, $41.09 million were sponsored by the Department of Defense. The areas of core competency identified for the UARC require staffs with technical expertise that need to be supported between grants if they are going to be retained by the University. These areas are also relying increasingly on funding from the Department of Defense for projects that are inherently beneficial, e.g. environmental clean up, tsunami research, etc. Researchers affiliated with the areas of core competency tend to believe that the UARC will not only add a funding source for their research but will add to the prestige of the research programs at UH Mānoa so that more funding will be made available.

Enhanced support for research and graduate students
A fixed fee, that is an added funding source, estimated to amount to $629,904 a year to the UARC will be available to carry researchers and research technicians “through funding delays,” and provide support for graduate student researchers (draft contract, section H.15).

Institutional agreement versus individual grants
The UARC is based on an institutional contract with the Department of Defense rather than grant funding to individual faculty. Some faculty have voiced concern that a formal and possibly permanent partnering with the Department of Defense will color decision making on campus and affect how we implement our academic mission by moving our processes to be more in line with the goals of the Department of Defense.

Land grant university and military obligation
Because of the inclusion of military tactics in the Morrill Act, military training, now part of the Reserve Officers' Training Corp (ROTC), is performed at all land-grant universities. The Morrill Act of 1862, which established the Land-grant system states that each state benefiting from the act will appropriate money "to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." Thus, the presence of ROTC at UH Mānoa does comply with the land-grant mission of UHM. It can be argued from both pro and con points of view, whether the presence of a Department of Defense research facility, or UARC, at UH Mānoa is included in the function of teaching military tactics. There has been some debate on the Mānoa campus about the restrictive policies of the armed forces regarding
sexual preferences and whether those policies would affect how the UARC functions on the Mānoa campus.

**Growth of local businesses though UARC Subcontracts**

There is a potential for the UARC to stimulate the growth of local small businesses that currently receive DoD contracts. The draft contract describes procedures to engage expertise through subcontracting. There is a great need felt by high technology businesses in Hawai‘i to fight the brain drain in engineering by creating good jobs for talented engineers (state legislative informational hearings February 2003). The UARC is seen as a stimulus to grow the areas of expertise by attracting faculty and technicians, thus creating a research capability that UH has not had. The structure of the UARC is intended to allow local businesses to develop applications based on research performed in the UARC. The outside counsels’ analysis of the draft contract highlights a concern about the lack of specific language protecting licensing rights of UH Mānoa faculty for intellectual property developed under the UARC contract. The technology transfer capabilities of the UARC should be explicitly stated in the contract.

**Academic Freedom**

The UARC will operate under the Board of Regents policies. These policies state that “the University recognizes the right of the scholar to inquire and disseminate the results of inquiry according the established forms of academic freedom,” and “all research is undertaken voluntarily by individuals or groups of investigators. The ‘University’ as such is not engaged in research.” The establishment of a UARC at UH Mānoa will not increase the amount of academic freedom guaranteed already to UH Mānoa scholars. If the UARC is not established, researchers at the University will still have the rights described in the Board of Regents policies (Board of Regents Policies, section 5-15). The Board of Regents policies ensure that researchers cannot be forced to engage in research under the UARC contract.

The outside counsel report indicates that the draft contract does not ensure that UH Mānoa or UH Mānoa researchers can reject objectionable task orders. The contract states that the Navy issues the task order, however the task order preparation form indicates that the task order is approved by the UARC. Under the contract the UARC can dispute the task order but must continue to work on the task order until the dispute is resolved. The report offers several recommendations to clarify the rights of the UARC and its researchers to reject a task order (Thomason and Horiuchi, p. 9).

**Anti-military rhetoric**

Some faculty have expressed the concern that the anti-UARC rhetoric is a condemnation of and an attempt to control individual faculty research programs. The ad hoc committee believes that this is a side issue and not relevant to the discussion about the UARC. Statements made about the research that might be supported by the UARC has revealed a widening gulf between faculty in different disciplines whose research programs require different kinds of financing and institutional support--particularly between science and
engineering and the disciplines in the humanities and social sciences. This division can and should be addressed in other venues.

*Increasing Applied Research under Task Orders*

Many faculty regard the research mission of a university such as UH Mānoa to be to engage primarily in basic research, rather than in research that has a military application. The research that will be performed at the UH Applied Research Laboratory will be 6.1 (basic) and 6.2 (applied research). The type of research will not be “applied” in the military sense, and will most likely resemble the kind of research currently performed at UH Mānoa. The task order approach to research is somewhat different from research performed under a grant that requires only “best effort,” and encourages exploration, but many faculty currently perform research that ends in a product for a funding source (personal communication, meeting of *ad hoc* committee on the UARC). Some faculty are concerned that in making the task order approach to research an institutional norm through the UARC, the research university mission is diluted or endangered.

**Process: Development of the UHM ARL**

In February 2003, Chancellor Englert and Vassilis Syrmos, Interim director of Science and Technology of the Research Corporation of the University of Hawai‘i (RCUH) presented a public informational briefing to the Hawai‘i State Senate Committees on Science, Art and Technology, and on Economic Development, about the UARC and a proposed Engineering and Design Center that was to complement the UARC. This briefing was recorded for viewing on the legislature’s public access channel. The UARC proposal was presented as one piece of a large package of initiatives designed to leverage the university’s research capability and other resources to increase research opportunities and funding. The groundwork was laid by a few in the administration and the RCUH, and it appeared that little thought was given to an inclusive process. Although this may have been done in good faith to allow the UARC proposal to proceed more efficiently, it also engendered, perhaps unwittingly, suspicions of stealth when it was finally brought before the Mānoa campus and community.

On April 16, 2003, Chancellor Englert submitted a UARC management plan to the Chief of Naval Research, Admiral Jay Cohen and on July 8, 2004 the Department of the Navy designated the University of Hawai‘i as a UARC (Minutes of the November 18, 2004 Board of Regents meeting). It was not until September 1, 2004 that the UH Mānoa Faculty Senate Committee on Research (CoR) received a memorandum from Chancellor Englert with an attached proposal for the UARC. That committee made the following resolution,

> In order to make a recommendation to the Board of Regents on this proposal, we need to hear the presentation about the proposal planned by Peter Englert for the Mānoa Faculty Senate meeting scheduled for September 15, 2004.

> We are requesting that the proposal be scheduled for presenting at the November meeting of the Board of Regents to allow time for review by the Mānoa Faculty Senate and the CoR. (Minutes of the Committee on Research, September 1, 2004)
A presentation was subsequently made by Dr. Syrmos, then the Senior Advisor to the Vice Chancellor on Research and Graduate Education, to the September 15, 2004 Mānoa Faculty Senate meeting (minutes of the September 15, 2004 Mānoa Faculty Senate meeting). Dr. Syrmos was accompanied by Jim Gaines, UH Vice-President for Research.

The Senate Executive Committee presented the following resolution regarding the UARC, which was passed at the November 17, 2004 meeting:

Whereas the University of Hawai‘i has initiated consultations with affected parties including the Mānoa Faculty Senate about establishing an Applied Research Laboratory at UHM (ARL-UHM),

And whereas these consultations are ongoing,

And whereas there are significant issues of institutional structure and research integrity still outstanding,

Therefore, be it resolved, the Mānoa Faculty Senate requests that the Board of Regents make permanent status for any ARL-UHM contingent upon acceptance by the Mānoa Faculty Senate.

At the November 18, 2004 Board of Regents meeting Dr. Gaines presented the ARL to the Board members. William Bakamis, Associate Director for Business and Finance of the University of Washington’s Applied Physics Laboratory (a NAVSEA UARC established in 1943) who was engaged by UH as a consultant in the UARC negotiations, provided further information about NAVSEA UARCs. Chancellor Englert requested that the Board of Regents approve the establishment of the Applied Research Laboratory at Mānoa.

Testimony to the Board included that of Manu Ka‘iana of the Kuali‘i Council, Tom Schroeder, Chair of the Mānoa Faculty Senate, J.N. Musto representing UHPA, Interim President McClain, Ruth Hsu and Roger Lukas, UH Mānoa faculty. The Board voted to provisionally approve the establishment of the Applied Research Laboratory with the proviso that consultation with stakeholders, e.g. the Mānoa Faculty Senate, Native Hawaiian groups, occur before the administration brought the proposal to the Board for final approval.

Vocal opposition to the establishment of a UARC at UH Mānoa from community and campus groups was evident at two seminars held in February 2005 coordinated by the UH Mānoa Public Policy Center, at the March 16, 2005 Mānoa Faculty Congress, and at a series of informational meetings held by Chancellor Englert in April 2005. (Minutes of the March 16, 2005 Congress; transcripts of the April sessions available on the Chancellor’s UARC website). A well-publicized occupation of Interim UH President David McClain’s office from April 28 to May 4, 2005 brought further attention to a coalition of groups led by students, united to stop the establishment of the UH Mānoa UARC.
In discussions with faculty members who tended to favor the presence of a UARC on campus, this committee learned that little consultation had occurred with the researchers who would most likely be staffing the UH Mānoa UARC. Three such colleagues appeared before this committee and testified that they lacked the information to effectively weigh and address the arguments raised by those opposed to the UARC. They were thus reluctant to speak publicly in support of the proposed UARC. Additionally, in interviews with a dean and two faculty who lead units that will provide expertise and personnel to UARC supported research activities, it was evident that they had never been consulted or apprised of how personnel and space issues are going to be addressed under the UARC. This despite the fact that the success of the UARC will necessarily depend on the working relationship between its administration and the units that will be performing the task order work. Early presentations of the UARC included research areas of faculty who were not consulted about the inclusion, who believed their research programs to be threatened by the inclusion, and who ultimately went to great effort to untangle their research programs from the UARC plans.

Vice Chancellor for Research and Graduate Education (VCRGE) Gary Ostrander, acting Vice Chancellor for Facilities, Administration and Operations (VCFAO) Kathy Cutshaw and Associate Vice Chancellor for Research Vassilis Syrmos have all either appeared before this committee, provided materials, or answered written questions for posting on this committee’s website. In addition, Vice Chancellor Ostrander agreed to fund the hiring of independent legal and business experts with military contract and procurement experience to advise this committee, through the University of Hawai‘i Procurement Institute, which is led by Danielle Conway-Jones, a member of this committee. The development of the UARC has been an iterative process, therefore statements made earlier in its initial stages may not be relevant to the current plans. In the September 2004 Faculty Senate meeting, Vice President Jim Gaines stated that the UARC would not be established on campus. However, the current UARC proposal describes a UARC integrated into existing research facilities on campus with administrative offices off-campus at the Mānoa Innovation Center on Woodlawn.

In the State Legislature informational briefing in February 2003, Dr. Syrmos presented a coherent plan of three initiatives, the Hawai‘i Engineering Design Center (HEDC), the High Technology Development Venture (HTDV) and the UH Applied Research Laboratory, which together would serve different, but integrated functions for research and development on the part of the University of Hawai‘i and Hawai‘i businesses. When asked what the connections were between the UARC, HTDV and HEDC in July 2005, Dr. Syrmos stated, “There is no relationship between HTDV and the UARC,” and, that the Hawai‘i Engineering Design Center is an Office of Naval Research grant/cooperative agreement with the College of Engineering at UH Mānoa The award amount is $452K and the period of performance is 03/05-02/06.” Vice Chancellor Ostrander said that commitments made in establishing the HEDC had no bearing on the UARC (http://www.hawaii.edu/uhmfs/uarc/questions.html).
The changing vision of the UARC has made it difficult for the campus community to develop a clear understanding of how this UARC, with its unprecedented integration into existing university facilities, will affect the campus.

The outside counsels’ report describes the statutory authority under which the UARC has been awarded to UH. The ad hoc committee believes that this explanation resolves the concerns expressed by many members of the UH Mānoa community that the non-competitively awarded agreement was illegal (Report and Analysis, Thomason and Horiuchi, p. 1).

Contract review
In light of the report of the outside counsel regarding the contract, noting several areas of concern, we recommend that a full analysis be performed of the contract by an outside counsel before it is sent to the Board of Regents for approval. The seven issues identified by the outside counsel advising the SEC that should be investigated include: 1) Limitations on disclosure of research information, 2) Authority to reject task orders found objectionable, 3) Virtual offices and use of property on non-UARC research, 4) Intellectual property rights, 5) Drug free work force and other personnel issues, 6) Impact of security classification procedures on research staff, and 7) Conflicts of interest and restrictions on faculty conduct of non-UARC research. The first two issues have been addressed by the outside counsel and a number of recommendations are included in their report (Thomason and Horiuchi).

Survey of faculty opinion
Because of the absence of sufficient factual information regarding the UARC, the faculty have not had the opportunity for needed deliberative and informed debate. The importance and controversial nature of this issue warrants full faculty participation in deciding whether to support this initiative. In 1985, a vote of the Faculty Congress was taken regarding classified research at UH Mānoa—this is perhaps an appropriate precedent for the UARC issue after all relevant information about the UARC has been made available for critical review and proponents and opponents of the UARC have had an opportunity to make their arguments clear and known.

Financial Costs and Benefits

According to Vice Chancellor Ostrander, the UARC will bring up to $50 million into the University over a period of five years, $10 million a year. The $10 million a year figure is an upper limit, negotiated with the Navy to establish a cap, which is required of non-competitive contracts.

The Business/Management plan for the UH Mānoa ARL was released by the VCRGE’s office on September 12, 2005 providing more detail about the fund allocations that would support the administration of the UARC. A draft contract was released by the administration on October 7, 2005.

The $10 million income from the UARC takes the form of direct costs (such as PI
salaries), indirect costs (support staff and equipment for the project), and RTRF. In other funding vehicles the latter two are typically combined, and charged at a rate depending on the granting agency. The NSF and NIH indirect rates for UH are currently negotiated at 36.3% of the direct costs, or roughly 26% of the project total; grants outside the sciences often have much lower rates. One quarter of this 36.3% goes to the UH system RTRF fund, 25% goes to the Mānoa RTRF fund, and 50% to the investigator's home unit.

Under the UARC as currently proposed, the indirect costs appear to be closer to a very large 67% (equivalently, 40% of the project total), but only 9.06% (7.5% of the total) takes the form of RTRF that is shared as just described. In the Vice Chancellors’ Revised Business/Management plan, the University would be able to charge approximately 25% more for an equivalent amount of work proposed through an National Science Foundation (NSF) grant; the extra revenue would come from prorated direct costs, a fixed fee percentage, and a smaller indirect cost percentage rate. The Business/Management plan noted that if direct costs (also called “level of effort”) were held to be the same in comparing the income from an NSF grant and a UARC task order, the distribution of the revenue received is shown in Table 1.

**Table 1: Comparison of NSF grant allocation with UARC award Salaries constant**

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<thead>
<tr>
<th></th>
<th>NSF</th>
<th>UARC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research salaries, supplies, etc.</td>
<td>$60.00</td>
<td>$60.00</td>
</tr>
<tr>
<td>SOEST RTRF</td>
<td>$10.90</td>
<td>$3.90</td>
</tr>
<tr>
<td>Mānoa VCR RTRF</td>
<td>$5.40</td>
<td>$2.00</td>
</tr>
<tr>
<td>UH VPR RTRF</td>
<td>$5.40</td>
<td>$2.00</td>
</tr>
<tr>
<td>Prorated Direct Cost</td>
<td>$0.00</td>
<td>$33.90</td>
</tr>
<tr>
<td>Total</td>
<td>$81.80</td>
<td>$101.80</td>
</tr>
</tbody>
</table>

If the award is held constant, a $100 award would be distributed as in Table 2 (as presented in the Interim report of the ad hoc committee).

**Table 2: Comparison of NSF grant allocation with UARC award: Award constant**

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<thead>
<tr>
<th></th>
<th>NSF</th>
<th>UARC</th>
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<tbody>
<tr>
<td>Research salaries, supplies, etc.</td>
<td>$74.00</td>
<td>$60.00</td>
</tr>
<tr>
<td>SOEST RTRF</td>
<td>$13.00</td>
<td>$3.75</td>
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<tr>
<td>Mānoa VCR RTRF</td>
<td>$6.50</td>
<td>$1.88</td>
</tr>
<tr>
<td>UH VPR RTRF</td>
<td>$6.50</td>
<td>$1.87</td>
</tr>
<tr>
<td>Prorated Direct Cost</td>
<td>$0.00</td>
<td>$32.50</td>
</tr>
<tr>
<td>Total</td>
<td>$100.00</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

The Prorated Direct Cost (PDC) will pay for the UARC administrative costs, central support services, laboratory maintenance, etc. The Revised Business/Management Plan indicates that the majority of this line will go to the PI and the unit that contracted the work, but it is unclear how much of the Prorated Direct Cost will be directed to administrative costs and how much will be directed to the PI and home unit. The fixed fee or incentive fee paid to the UARC can be directed to support graduate student

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research, cover cost overruns, update research facilities, carry over through funding delays, etc (H.15 Draft Contract).

One question currently unresolved is how much of the UARC funding will be for projects currently fully funded at UH from other sources, and how much in the form of new projects or expansions of old projects. In any accounting, UARC dollars that replace dollars from other sources should not be counted as “new” income for the purposes of deciding benefits and costs. The administration maintains that the funding will indeed be for new projects, not as an alternate revenue stream for current ones. The administration has also indicated that the UARC will make it easier for other funding sources, such as NSF, to support research at UH Mānoa. If funding dollars go through the UARC contract vehicle, the RTRF eventually realized from this funding will be lower, because of the lower (9.06%) indirect cost rate, thus possibly reducing funds that currently help support initiatives and faculty in UH Mānoa’s well regarded, but under-funded programs in the social sciences, arts, and humanities.

If the UARC significantly increases the amount of research performed at UH Mānoa, the hiring of new faculty members, and general institutional expansion in subject areas represented by the UARC will be necessary. Because 100% of the UARC income will go to the UH research effort, increasing the research infrastructure, the base indirect cost rate negotiated for all grants, which affects the amount of RTRF realized, may rise. This would be a collateral benefit of the increased research conducted at UH Mānoa through the UARC.

**Financial Costs to Establish the UARC**

The office of the Vice President of Research has committed $500,000 and the Office of the Chancellor has authorized up to $1 million per year for three years toward the startup costs. The $1 million per year will come from the Mānoa RTRF account. The committee was told by the VCRGE and VCFAO that it is unlikely that the UARC will need that much as it is believed that the UARC will become self-supporting quite soon after the first year, once task orders begin to arrive.

Our calculations show that this startup money will be recouped by the Mānoa general RTRF fund only after many years, if at all. Even assuming the UARC is funded to the maximum $10 million a year, this will return only $187,000 per year to the Mānoa RTRF coffers. Ignoring considerations like time value of money, it will take eight years to recoup a $1.5 million startup investment, and 24 years if the UARC takes three years to become self-supporting. However, it is common for RTRF to be used for projects where the likelihood of recovery is small; the purpose of this money is to support and stimulate new projects.

**Fiscal Accountability**

The administration should develop an environment of transparency in the accounting of the UARC expenditures and the administration of the UARC and to this end, we recommend that the VCRGE reports annually to the Senate the UH/ARL administrative expenses and the financial status of the ARL, including a
comparison of actual performance to the performance projected in the management plan presented to the Faculty Senate on September 21, 2005.

Management and Governance

The proposed UARC will be blended into existing research infrastructure and, with the exception of the core administrative offices, not be housed or staffed separately as is done by the four existing NAVSEA UARCs at Johns Hopkins University, Pennsylvania State University, University of Washington, and the University of Texas-Austin. At these institutions, UARCs are discrete entities with separate administrative and personnel lines, separate buildings and facilities.

The draft contract describes the process in which equipment purchased for UARC research will be designated as UH Mānoa owned equipment. This equipment may then be deployed for other UH Mānoa research efforts in which the PI or contracting unit wishes to engage. The dual-use of equipment and staff between UARC research and other UH Mānoa research has raised the concern that the ad hoc committee has attempted to address. The disposition of equipment purchased for UARC research is described in section H.6 of the draft contract. The virtual UARC proposed for the UH Mānoa, if approved and viable, will allow a flexibility in personnel and equipment interchangeability between the UARC and UH Mānoa research programs that other UARCs do not have. At existing UARCs, when a major program loses funding support or is cancelled, UARC personnel may experience layoffs and technical support for sophisticated equipment may dwindle. The UH virtual UARC model could help to smooth these transition times because existing faculty will have other duties and equipment that may be supported by non-DoD research enterprises. The outside counsels’ report notes that this area of “‘Virtual Offices’” and use of property for non-UARC research,” is an area that needs more investigation and clarification (Thomason and Horiuchi, p. 9).

Consultation with stakeholders

The lack of open discussion during the development of the UARC plans has engendered distrust on the part of students, faculty and community towards the motives of the Mānoa and system administration. The lack of information sharing on the part of the administration in the planning of the UARC has made it difficult for those in favor of the establishment of a UARC to provide substantive arguments in favor of the program.

Decision-making Accountability

Because NAVSEA, a non-UH agent, has the potential to influence decision-making regarding research performed, publication, and perhaps employee human resource issues, full accountability of decisions made by the UARC administration is an imperative.

Review of the UARC

Consistent with the need for overall assessments of existing programs within the University, the administration and the Faculty Senate should agree on conditions under which the UARC would be deemed a failure and not continued. As with new academic
programs, this assessment should take place after the first or second year.

**Task order review board**

Acceptance of task orders through the UH/ARL must be contingent upon their review and approval by a faculty committee appointed by the Senate, that will ensure compliance with University policies and Faculty Senate approved resolutions. This committee should monitor the task orders throughout the lifetime of the UARC.

**Administrative structure**

While integrated into existing though possibly expanded infrastructure, the UARC will be an independent unit that will report to the Vice Chancellor for Research and Graduate Education. It will be managed by an Executive Director who will consult with an Advisory Board on “long-range planning and vision.” The members of the Advisory Board are yet to be determined but are described in the business plan as “deans and directors, faculty, community stakeholders, and students.” The Executive Director will have a major responsibility in soliciting new business from both military and non-military funding sources.

There will be four directors covering the four areas of identified expertise (1) Ocean Science and Technology, (2) Astronomy, (3) Electro-optics and Sensing, and Sensors, and (4) Communications and Information Technology. In addition a fifth person will be hired as Director of Business Administration. There will also be clerical and contract administration support staff. The main administrative office of the UARC will be located in the Mānoa Innovation Center on Woodlawn.

Members of the SaveUH/StopUARC Coalition distributed a document obtained through the Freedom of Information Act, dated February 2005, *Folder 1: University of Hawai‘i at Mānoa Applied Research Laboratory UARC Business and Management Plan*, which described the administrative office space and the security measures planned. Vice Chancellor Cutshaw told the ad hoc committee that these plans were developed for a NAVSEA site visit in March 2005 and were now out of date, as plans for the UARC had matured. An opinion piece published in the *Honolulu Star-Bulletin* of October 30, 2005 described these plans. Comparable documents reflecting the current UARC plans have not been released by the administration.

Investigators and technical staff working on UARC projects are proposed to come primarily from existing Mānoa personnel. These individuals will maintain their locus of promotion and, where appropriate, tenure within existing academic or organized research units. Contract administration will be through the UARC office and personnel matters will be handled through the home units. When UARC Task Orders require additional personnel they will be hired through the home units. This is similar to the current situation when a large grant is awarded through traditional funding channels.

Staffing by on-campus personnel is a major departure from the organization of the four existing Navy UARCs. The model proposed by UH will have UARC work done by
individuals who will move in and out of the UARC structure—sometimes working on UARC Task Orders and other times supported by traditional funding through their home unit. At existing UARCs, employees are often not technically faculty members and are more akin to RCUH hires. Whether bargaining unit 7 faculty members can be hired to only work within the UARC has been raised as a question by UHPA Executive Directory, J.N. Musto (e-mail communication with Jim Tiles) as it is unclear whether the UARC as contractor is a separate institution or a part of UH Mānoa.

A concern raised by the outside counsel is the possibility of drug testing for researchers dealing with materials or equipment determined to be sensitive by the Navy. According to Musto, drug testing occurs for UH nurses working in hospitals in which the overseeing agency requires them. Though their UH contract does not permit UH to perform mandatory drug testing, some UH nurses make the choice to voluntarily undergo the testing so that they can complete work they’ve chosen to pursue. UH faculty working in areas of research through the UARC that require drug testing may have to make a similar, individual choice. The outside counsel report listed this issue as one that needed further investigation and clarification (Thomason and Horiuchi, p. 10).

Task orders will be reviewed by a review committee, currently envisioned by the VCRGE as faculty appointed by the SEC to serve on this committee. This committee has been proposed by the SEC as a check on research task orders generated through the UARC. The VCRGE has indicated in the Revised Business/Management Plan that having a committee of seven faculty as part of the review process can be built into the task order preparation process (section A.6 Revised Business/Management Plan). Because of the outside counsels’ report noting the uncertainty in the draft contract as to whether the UARC can reject received task orders, the weight of this review committee’s opinion is also unclear.

**Complexity of Management**

The integrated, virtual structure of the UH UARC demands scrupulous management to ensure that University researchers and UARC researchers remain free from conflicts of interest. Dr. Syrmos in state legislative informational meetings in 2003 and in a presentation to the September 2004 Senate meeting described the UARC as a “trusted agent” of the government. According to VC Cutshaw, the trusted agent status applies only to entities that assess and advise the Navy on proposals of other contractors. To keep the review of proposals untainted by self-interest these trusted agents are not allowed to be contractors in any matter remotely connected to what they examine for the Navy. The UARC will be a trusted agent only in task orders that call for the execution of these kinds of assessment or advising tasks. The UARC will not be allowed to be involved in the contracts connected to the project being assessed and will not be allowed to contract with the companies that are bidding to perform the work. Because the contractor with NAVSEA is the UARC and not the University of Hawai‘i at Mānoa, the work of researchers who do not conduct research with UARC funds will not be affected by this trusted agent status that may be held by the UARC in particular task orders. The outside counsels’ report notes this area of concern as one needing further investigation.
(Thomason and Horiuchi, p. 9)

**Selected Sources of Information**


*Draft UARC contract.* Released October 7, 2005. Available online at
<http://www.hawaii.edu/uhmfs/uarc/background.html>

*Revised UARC Business/Management Plan.* Released October 3, 2005 (first draft released September 12, 2005). Available online at
<http://www.hawaii.edu/uhmfs/uarc/background.html>


**Ad hoc committee meetings**

Proposal to Naval Sea Systems Command in response to NAVSEA RFP N00024-05-R-6234(S) for Research, Development, and Engineering to be performed during the period 1 October 2005-30 September 2010. February 4, 2005. Vols I-III.

Meeting with Vice Chancellor for Administration, Finance, and Operations, Kathy Cutshaw. Committee learned that Cutshaw is the lead on the contract negotiations. June 23, 2005

Meeting with Kathy Cutshaw and Vice Chancellor for Research and Graduate Education, Gary Ostrander. July 7, 2005

Meeting with John Madey and Eric Szarmes (Physics). Faculty in area of UARC expertise who believe the UARC will negatively impact UH. July 14, 2005

Meeting with Terry Thomason and Jessica Horiuchi, contract attorneys enlisted as outside counsel to provide analysis and assistance in understanding UARC contracts. July 21, 2005.

Meeting with Kathy Ferguson (Women’s Studies) and Noel Kent (Ethnic Studies). Faculty who have spoken out against the establishment of a UARC. July 27, 2005.

Meeting with Gerard Fryer (HIGP), Magdy Iksanider (Engineering), and Rick Rocheleau (Director SOEST’s Hawai’i Energy Institute). Faculty whose areas of expertise were identified in the UARC proposal. August 4, 2005.
Meeting with Vaughn Vasconcellos, owner of Akimeka, a Native Hawaiian Company, that offers IT solutions under contracts with the Department of Defense. August 11, 2005.

Comments and documents gathered by committee


Questions sent to VCRGE Gary Ostrander, with answers <http://www.hawaii.edu/uhmfs/uarc/questions.html>

Documents gathered as background information <http://www.hawaii.edu/uhmfs/uarc/background.html>

Opinions gathered from other published sources <http://www.hawaii.edu/uhmfs/uarc/opinions.html>
Appendix A

Mānoa Faculty Senate Actions on Classified Research

Resolution of 1986 passed by 36 for, 1 opposed, 2 abstentions:

January 29, 1986
The Senate resolves that any research which does not permit open inquiry and unrestricted dissemination of knowledge sets a dangerous precedent and does subtle, yet irreparable harm both to this University and to the entire academic process. Therefore, the Senate recommends adoption of a policy prohibiting classified and/or proprietary research on this campus. In line with this recommendation, the following policy should be adopted:
A. The University will accept no contract or grant which requires classification or limitation in publication.
B. Faculty members may consult during a strictly limited fraction of their time with any external agency, or project of their choice.
C. No University facility may be utilized in such consultancy.

Resolution of November 20, 2002, passed December 11, 2003, 29 for, 5 opposed, 4 abstentions, regarding performing classified research on campus:

Classified, proprietary, and other publication-restricted research

In the following resolution, the term "classified research" means research requiring government security clearance, typically involving defense research; "proprietary research" means research conducted for a non-governmental sponsor, such as a private-sector business, with restrictions on the disclosure of the results; "publication-restricted research" is other research where the publication requires advance review by or permission of the funding agency.

Whereas, current BOR policy regarding classified, proprietary, and other publication-restricted research is in conflict with existing practice and internally inconsistent, and fails to provide adequate oversight measures; and

Whereas, the proposed BOR policy removes these inconsistencies, harmonizes policy and practice, and provides the required mechanisms for the oversight of classified research, in particular a satisfactory Management Oversight Group; and

Whereas, the proposed policy permits individual faculty members to accept classified, proprietary, or other publication-restricted research as a matter of individual choice; and

Whereas, the proposed policy permits classified research both on- and off-campus; and

Whereas, a 1986 resolution of the Mānoa Faculty Senate nevertheless prohibits such research on-campus,

Therefore be it resolved that:

The Senate approves the proposed policy on classified, proprietary, and other publication-restricted research with the proviso that classified research not be conducted on campus.
Resolution of March 16, 2005, passed 36 for, 7 opposed, 1 abstention regarding publication restricted research:

The Mānoa Faculty Senate Ad Hoc Committee on Classified and Proprietary Research, formed in accordance with a Senate resolution in December 2004, unanimously recommends that the Senate adopt the resolution set below:

BE IT RESOLVED that the Mānoa Faculty Senate affirms that the University of Hawai‘i at Mānoa support only research for which there is a reasonable expectation that timely publication of the results of the research will not be restricted by its sponsor.

UH Office of Research Services Form ORS 5, Proposal and Contract Coordination Record
This form in Section F, items 8 and 9 allows an applicant for a grant to waive their intellectual property rights and publication rights:
In check box 8, the rights of the researcher to waive intellectual property rights are limited by UH’s claim that “UH holds the title to intellectual property developed at the University and will not relinquish its ownership except in exceptional circumstances.” By checking the “yes” box in item 9, publication rights can be waived by the grant seeker in accepting a “sponsor’s terms and conditions that restrict, limit, or prohibit publication.”

Current Board of Regents Policy on Classified Research (Section 5-15)

(1) The University recognizes the right of the scholar to inquire and disseminate the results of inquiry according to the established forms of academic freedom, recognizing that an individual's work may have profound effects on the academic community. (am: Nov. 17, 1995)

(2) At the University of Hawaii all research is undertaken voluntarily by individuals or groups of investigators. The "University" as such is not engaged in research. It may provide facilities, equipment and certain kinds of overhead administrative services to facilitate the research. Whenever a given research proposal, however, involves special financing, whether by agencies inside or outside the University, there is a joint decision to submit the proposal by the principal investigator and the various University reviewers. (March 25, 1970)

(3) The University guarantees the freedom to inquire of each member of the academic community and affirms the right to each member to gain access to all available relevant information. Each member also has the absolute right to choose whether, how, and where to publish scholarly conclusions and results of research. The University must insure however, that there are no restrictions in making available the scholarly results of inquiry included in any contract or grant to which the University is formally a party, except for matters normally held in confidence, such as those between doctor and patient. 5-18

(4) It is also the policy of the University to press for maximum openness among agencies--governmental or private--that place any kind of restriction upon access to information of a scholarly character.

(5) Whenever a given research proposal is accepted by the University of Hawaii, it means that the following conditions have been met: the proposal has scholarly merit; the investigator is deemed capable of undertaking it; those responsible for committing the use
of facilities and other resources of the University agree to accept the commitment involved; the investigator is free to publish the research results; and the investigator has disclosed all potential conflicts of interest. All cases of indecision, or unfavorable decisions to be reviewed by University authorities will be referred to the Academic Freedom Committee of the University Faculty Senate for hearing according to established due process procedures. (Mar. 25, 1970; am: Nov. 17, 1995)

d. Administrative Unit for Classified Contracts. A "Managerial Group" shall be responsible for the negotiation, execution administration, and institutional compliance of classified contracts that are subject to the Department of Defense National Industrial Security Program Operating Manual (NISPOM) requirements. Recognizing that research is a faculty enterprise, regardless of the University’s organizational structure and titles at any point in time, the "Managerial Group" should always include the senior academic administration responsible for University research. Occupants of the following University positions shall comprise the "Managerial Group" pursuant to the requirements of the NISPOM:

(1) Secretary of the Board of Regents,
(2) Vice President for Legal Affairs and University General Counsel,
(3) Vice President for Administration and Chief Financial Officer,
(4) Vice President for Research,
(5) Vice President for Academic Affairs, and
(6) Chief University Information Officer.


e. Security Clearance. The President and members of the Managerial Group shall possess or be processed for a personnel security clearance for access to classified information to the level of the facility security clearance granted this institution. Members of the Board of Regents and administration not named in this paragraph shall not require, nor shall have and can be effectively denied, access to classified information in possession of the University. They do not occupy position that would enable them to affect adversely the University's policies or practices in the performance of classified contracts from the Department of Defense. The University's duly appointed Facility Security Officer shall insure that the institution complies with all policies, regulations and contractual stipulations relative to safeguarding classified information accessed by this University. (Feb. 16, 1954; June 8, 1961; Sept. 22, 1966; Oct. 17, 1986; am: Nov. 17, 1995; am: Mar. 20, 1998; am: Oct. 18, 2002)

f. Outside Research Projects.

(1) The following rules apply to requests from individuals or organizations to utilize University facilities to conduct research which is not a part of the University's research program.

(a) Only requests coming from other universities or research institutions shall be considered.
(b) No requests shall be granted unless space and facilities are available, and then only for definitely limited periods.
(c) Researchers under such an arrangement must have a University appointment, for example as Research Associate or as Research Assistant.
(d) A specific list of facilities and equipment required shall be submitted an arrangements for payment must be made prior to permission being granted.

(2) It is understood that the limitations in (a) above do not apply to cooperative research projects where arrangements for the utilization of facilities by visiting scientists were made when the project was established. (June 15, 1954; am: Nov. 17, 1995)
Proposed changes to BOR policy on classified research (Section 5 Research) (www.hawaii.edu/uhmfs/sessions/2002_03/proposed_bor_policy_classified_research_021126.pdf)

(2) The University guarantees the freedom to inquire of each member of the academic community and affirms the right of each member to gain access to all available relevant information. Each member also has the absolute right to choose whether, how, and where to publish scholarly conclusions and results of research. The University must insure however, that there are no restrictions in making available the scholarly results of inquiry included in any contract or grant to which the University is formally a party, except for matters normally held in confidence, such as those between doctor and patient. [deleted in proposed revision]

Notwithstanding the absolute right of individual investigators to choose whether to publish, it is [added in proposed revision] It is also [deleted in proposed revision] the policy of the University to press for maximum openness among agencies--governmental or private--that place any kind of restriction upon access to information of a scholarly character.

(3) Whenever a given research proposal is accepted by the University of Hawai`i, it means that the following conditions have been met: the proposal has scholarly merit; the investigator is deemed capable of undertaking it; those responsible for committing the use of facilities and other resources of the University agree to accept the commitment involved; the investigator is free to publish the research results. [deleted in proposed revision] has freely accepted the terms and conditions of the contract or grant [added in proposed revision] and the investigator has disclosed all potential conflicts of interest.