



**UNIVERSITY OF GUAM
UNIBETSEDÁT GUÅHAN**

Board of Regents

UOG Station, Mangilao, Guam 96923
Telephone: (671) 735-2995 Fax: (671) 734-2296

**Regular Meeting Minutes
December 6, 2023**

1.0 CALL TO ORDER

The Regular Meeting of the Board of Regents (BOR) was called to order by BOR Chairperson Sandra H. McKeever on December 6, 2023 at 5:30 p.m., RFK Library, Silent Room, and via Zoom. Notice of such meeting have been duly and regularly provided by the BOR.

QUORUM:

**Sandra McKeever
Lesley-Anne Leon Guerrero
Mike W. Naholowaa
Liza J. Provideo
Agapito "Pete" Diaz
Janice Malilay
Roland Certeza
Joanna Chun
Julie Laxamana**

**Chairperson
Vice Chairperson
Treasurer
Member
Member
Member
Member
Member
Member**

ALSO PRESENT:

**Anita Borja Enriquez
Anthony Camacho
Christine Mabayag
Kalyne Roberto
Bertha Fejeran**

**President/Executive Secretary
General Counsel
Recording Secretary
Support Staff
Support Staff**

2.0 MEETING MINUTES

2.1 Regular Meeting Minutes of September 28, 2023

Chairperson McKeever asked if there were any corrections or discussion regarding the regular meeting minutes as presented. Regent Malilay moved to approve subject to corrections, which was duly seconded by Regent Leon Guerrero. Chairperson McKeever stated there were some minor grammatical errors on items 5.2.6 and 7.0. She then called for the vote with the changes noted and if no other discussion. All voted in favor. The motion carried.

2.2 Special Meeting Minutes of October 31, 2023

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Chairperson McKeever asked if there were any corrections or discussion regarding the special meeting minutes as presented. Regent Diaz moved to approve subject to corrections, which was duly seconded by Regent Naholowaa. The motion carried.

3.0 CHAIRPERSON'S REMARKS

Chairperson McKeever welcomed everyone to the December regular meeting and hopes everyone is doing well. She stated that they appreciate the community support for the university, and the staff and faculty's dedicated work on working together to keep the mission of the university moving forward.

She also appreciated the efforts leading to the investiture ceremony for President Enriquez, stating that it was very special for those who attended. She commended the committees and all the staff and faculty that were involved in putting the ceremony together. She added that there were a couple of events leading up to the investiture, which was the Triton Fest which was led by the 62nd Student Government Association, and the graduate program Recruitment Fair that was held on October 29th.

She reported that they are looking forward to the commencement ceremony scheduled for December 17th, noting that there will be approximately 210 graduates.

She acknowledged all who contributed to the hard work leading up to the groundbreaking ceremony of the WERI and the Margaret Perez Hattori Uchima School of Health Nursing Annex. and that was held on November 20th. She added that they are also looking forward to the groundbreaking for the School of Engineering scheduled for December 15th.

She then gave special thanks to Regent Provideo for all her hard work, dedication, talent, and skills that she contributed to the university. She stated that this would be Regent Provideo's last Board meeting. She then asked for a round of applause and invited Regent Provideo to say a few words.

Regent Provideo stated that she is grateful for having served with the University for 6 years and that every day counted. She added that she feels like she is leaving the university in a better place, especially knowing of all the initiatives that needed to be done. She stated that she served on the Physical Facilities Committee, and saw projects come to reality, which she added was a great achievement for the Board.

Chairperson McKeever then introduced Regent Joanna Chun, as the newest member of the Board of Regents. She stated that Regent Chun's appointment filled the seat of Regent Bernie Valencia, whose term ends in February 2028. She then welcomed Regent Chun and invited her to say a few words.

Regent Chun stated that she has been looking forward to today and that she is honored and proud to be working with the Board and advancing our community. She added that she is excited to work with all, learn from all, and to share her expertise and experience in healthcare, operational excellence, and systems design.

4.0 PRESIDENT'S REPORT

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President Enriquez expressed her gratitude to former chair and Regent Liza Provido, noting that she was always present at the convocations and spring assemblies and that her messages have always been very thoughtful and inspiring, coupled with all her work on the BOR committees are greatly appreciated.

She also expressed her gratitude to the Board members for their continuing support on what is being done at the institution and for their countless hours.

She then acknowledged and thanked members and leaders within the University shared governance groups and all the administrators for all their work, and the great partners like the University of Guam Endowment Foundation who have been instrumental in helping to provide funding or gap funding for the new facilities.

She added that she wanted to take the opportunity to recognize and honor those who have passed away and to express condolences to family members of their loved ones. She read the names of those in an In Memoriam slides and then asked for a moment of silence.

She also recognized faculty members who recently received Tenure at the previous BOR meeting. She introduced Dr. Hyunju Oh and Dr. Raymond Paulino.

President Enriquez then proceeded with her report, a copy of which is attached.

5.0 REPORTS FROM STANDING COMMITTEES

UOG General Counsel Camacho announced that the designated representatives from the Attorney General's Office are present, Chief Deputy Attorney General Joseph Guthrie and Deputy Attorney General Graham Botha.

Chairperson McKeever requested to take an agenda item out of order and move 5.6 to 5.0 before the first committee meeting report. Regent Naholowaa made a motion to move the agenda items as requested, which was duly seconded by Regent Leon Guerrero. Chairperson McKeever called for the vote, all voted in favor. The motion carried.

Chairperson McKeever then called Mr. Guthrie and Mr. Botha to address the Board.

Mr. Guthrie stated that he was asked to provide information about the proposed bylaw that would indemnify Regents and officers of the University of Guam for costs of legal representation that they might incur as a result of being charged with criminal acts.

Chairperson McKeever asked if the AG's office could briefly explain the objections.

Mr. Guthrie stated that there are several objections, one of which is that the statutes of the government of Guam and the Guam Supreme Court have expressed a policy against indemnification for criminal acts.

Guthrie cited the case of *Consy Caesar v. QBE Insurance*, which stated that the willful acts of the insured and the attorney's fees incurred in representing the insured for those willful acts, should not be indemnified by the plaintiff in the case. He added that another reason to object to indemnification for illegal acts is that the bylaw that is proposed has no consideration, that consideration in contract law requires a promise that to get a promise. He added that if you

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have a contract with someone, and then you amend it in only one party's favor, that is what you call a lack of consideration and that the contract should be voided.

General Counsel Camacho stated that the AG's arguments have no merit because UOG, as a public corporation, has specific statutory authority that authorizes it indemnify its regents for certain criminal acts.

He stated that, pursuant to 18 G.C.A. §28822(a), a corporation shall have the power to indemnify any person who was, or who is a party or is threatened to be made a party to any threatened pending or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation because the person was a director, officer, employee, or agent of the corporation against expenses to include attorneys, fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding and if the person acted in good faith and a manner the person reasonably believed to be in and not oppose to the best interest of the corporation, and with respect to any criminal action or proceeding had no reasonable cause to believe the person's conduct was unlawful.

He further stated the definitive case is not *Consy*, cited by the Attorney General's Office, but *In Re Camacho*, 2006 Guam 5, which clearly states that in the exercise of its business powers, a public corporation, such as UOG, may lawfully exercise these powers in the same way and will be governed by the same rules that control private individuals or a business corporation under like circumstances.

He added that UOG is a public corporation and, like any other Guam corporation, UOG has the power to indemnify its regents and officers who face criminal charges arising out of their official duties if the person acted in good faith and in a manner the person reasonably believed to be in and not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding had no reasonable cause to believe the person's conduct was unlawful and that it's important to note that the language of the amendment that was made back in June closely mirrors the criminal indemnification language of 18 G.C.A. §28822(a), and the amendment is specifically authorized by that statute, and the language of the amendment mirrors the language of the statute and does not exceed or depart from that statutory authority. He stated that the Attorney General Office's reliance on *Consy Caesar v. QBE Insurance*, 2001 Guam 6 is misplaced because the case is not relevant to the issue of whether UOG had the authority to pass the amendment. In *Consy*, the administratrix of an estate brought legal action against an automobile insurer to recover liability and compensation for injuries suffered by the decedent when he was struck by an automobile, the lower court granted the insurer summary judgment finding that the injuries were caused by the intentional act of the driver, and that compensation was therefore barred by the exclusionary provisions in the insurance policy and by statute, and the Supreme Court affirmed the lower court's ruling, relying on, in part, 22 G.C.A. §18602, which states that an insurer is not liable for the loss caused by the willful act of the insurer. He added that 22 G.C.A. Chapter 18, which is a chapter in which that statute is found, is limited to insurers authorized to do business in Guam and is not applicable to the University of Guam or the Board of Regents.

He added that he would recommend in this case, that a compromise be reached in which we could draft an amendment removing the language about the criminal indemnification, and keep

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the remaining language, which does clarify to an extent when we will indemnify persons. He stated that we could also agree to send a draft to the Attorney General's office for their review and that we could consider the draft at the next meeting which is scheduled in February, if the Attorney General agrees to the amendment. He further stated that it is not because our actions were illegal, but that the Board has the discretion to cooperate, should they so choose.

Chairperson McKeever then thanked GC Camacho and the AG's office for speaking regarding this issue. She agrees that we want to work with the AG's office, noting that we are going to look at revising or amending the bylaws and come to an understanding.

Atty Botha stated that he thinks the compromise proposed by General Counsel Camacho would be a very reasonable one, and that the AG's concern about this was just that if it says any crime you would be entitled to indemnification, but he thinks a compromise would be in order, and that they would certainly like to look at the draft.

Regent Malilay stated that they have responsibilities to the community and the University of Guam is a promise on their part, so she doesn't quite understand how that would be a one-sided promise when they have promised something. Atty Guthrie responded by stating that that is what they call in the law a pre-existing duty which means that the Regents are already obligated to do what they do under the statutes, and so forth. He suggested maybe signing up for 5 years or something to that effect, but that it is just an example. He added that they are already under duties and when you amend the contract it must be by mutual consideration, and not just judgment on one side.

Regent Malilay then asked if they have to add to the draft that there is an exchange of promises. Atty Guthrie responded that the AG's office and GC Camacho will discuss the draft, but that he is concerned about it because you want to have provisions that are enforceable.

In closing, he stated that he believes it needs to be addressed and that it can be further discussed among themselves.

5.1 Student Affairs, Scholarship, Alumni Relations and Honorary Degree (SASARHD) Committee

5.1.1 Committee Update

Regent Malilay reported that the SASARHD Committee met on November 8th at 1:22 p.m. with a quorum present and presented and reviewed the proposed resolution for the Board's approval.

5.1.2 Resolution No. 23-36, Relative to Approving the Fanuchãnan Commencement Graduate Listing

Regent Malilay introduced Resolution No. 23-36 and moved to approve, which was duly seconded by Regent Diaz. She summarized the resolution explaining the purpose and provided a brief report on the graduation data which was included with the listing. The motion carried.

5.2 Academic, Personnel and Tenure Committee (AP&T) Committee

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5.2.1 Committee Update

Regent Malilay reported that the AP&T Committee met on November 8th at 2:35 p.m. with a quorum present and presented and reviewed the proposed resolution for the Board's approval.

5.2.2 Resolution No. 23-37, Relative to Authorizing Certain University of Guam Employees to sign, or to appoint persons authorized to sign, all documents submitted on the University of Guam's behalf to the Federal Alcohol and Tobacco Tax Trade Bureau

Regent Malilay introduced Resolution No. 23-37 and moved to approve, which was duly seconded by Regent Provido. She summarized the resolution explaining the purpose The motion carried.

5.3 Physical Facilities Committee

5.3.1 Committee Update

Regent Diaz reported that the Physical Facilities Committee met on November 8th at 4 p.m. at the President's Conference Room with a quorum present and presented and reviewed the proposed resolution for the Board's approval.

Regent Diaz reported on the School of Engineering (SENG) and Student Services Center noting that the USDA loan closing is complete. He stated that the Student Services Center preconstruction meeting was completed and that the building permit was issued and a Notice to Proceed (NTP) was executed, and that construction has begun. He added that the School of Engineering is 100% design and has been reviewed and that UOG has provided an additional pump to ensure proper water flow and pressure for fire protection which will be concurrent with the SENG construction. He stated that the groundbreaking for the SENG is scheduled for Friday, December 15, at 9am.

He reported on the USEDA project which includes the WERI and School of Health Annex. He stated that an NTP was issued, and that a pre-construction conference was held and that the building permit is in progress. He added that both buildings are to be constructed by one contractor. He stated that a groundbreaking ceremony was held on November 20th, noting that several board members and stakeholders attended, including the family members of the late Dr. Margaret Perez Hattori Uchima, and that the Acting Governor Josh Tenorio, Acting Lieutenant Governor Therese Terlaje, along with President Enriquez, UOG Endowment Foundation Board Chair, Jesse Leon Guerrero and RCUOG Director Cathleen Moore-Linn provided brief remarks.

He further reported on the Siemens project, the Typhoon Mawar repairs, safety and security updates, and other ongoing projects.

5.3.2 Resolution No. 23-38, Relative to Approving the Policy Governing Service, Assistance, Pet and Stray Animals

Regent Diaz introduced Resolution No. 23-38 and moved to approve, which was duly seconded by Regent Provido. He summarized the resolution explaining the purpose The motion carried.

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5.4 Investment Committee

5.4.1 Committee Update

Regent Leon Guerreo reported that the Investment Committee met on November 9th at 1:30 p.m. via zoom and in the President's Conference Room with a quorum present.

She reported that Daniel Ramos of the Triton Investment Club provided an update on the funds, stating that the fund balance has increased from about \$38K to \$42K in the last quarter and that Exxon Mobil is the only change that was made recently as it was the first step towards some rebalancing efforts that they're currently undertaking. The gain for the quarter was 2.12% as compared to 1.07% for the S&P.

She reported that Jason Miyashita of Raymond James and Associates gave an overall update on the markets and that it has been a whirlwind since July. The markets have reacted positively to the Federal Reserve's decision not to raise rates at the last meeting and that there will still be continued volatility for the next few months. They are targeting 4650 on the S&P by the end of the year. Household cash reserves have been depleted, which will serve as a drag on the economy. The price of oil has been dropping, which should help the economy, and they are watching what is going on in the Middle East. They are anticipating a mild recession in the first and second quarter of 2024 and expect the Federal Reserve to start reducing rates in the third and fourth quarters of 2024.

She also reported that Amanda Gima of Raymond James and Associates walked through the individual investments, stating that most of the investments operated in line with their benchmarks. The portfolio has grown from \$24.4M as of September 30, 2023, to nearly \$24.7M as of November 7, 2023. The private equity investment with Blackstone has done very well and that the return for FY23 is 12% and Blackstone has already started returning capital to the University as the relationship is now approaching five years.

The KKR private equity is just beginning to draw down funds and their performance has been flat so far. She added that VPAF Wiegand was tasked with scheduling a call with KKR to learn more about their plans and how to move forward.

In closing, she reported that Amanda Gima also covered the Conservatively Managed Portfolio stating that there is currently \$4.2M in the portfolio. The portfolio has gained \$40,000 in the most recent quarter but is still down about \$50,000 since inception due to market volatility. They feel the portfolio is well-positioned for the anticipated interest rate reductions that we foresee in 2024.

5.5 Budget, Finance, and Audit (BFA) Committee

Regent Naholowaa reported that the BFA Committee met on November 9 at 3 p.m. and a quorum was present and presented and reviewed the proposed resolution for the Board's approval.

5.5.1 Financial Update

He reported that enrollment has been trending down for the last several years and the University had hoped that Fiscal Year 2023 would be a rebound year after prior years were impacted by the COVID-19 pandemic. He stated that the Committee questioned what the University is going

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to do about the decline and that VPAF Wiegand responded by stating that there are plans to reach out to the military and to pursue students who started with the University and then left their programs, and to work with high schools to bring students in through dual enrollment programs.

He reported that it dealt with the appropriation history of the University for the last 25 years and that the graph revealed that the appropriations have been flat over the years. The University's appropriation for Fiscal Year 2024 would be \$25.5M if the funds were removed for the recent salary increases for staff and faculty and that this would make it a little lower than the 1999 appropriation and lower than most years covered in the graph.

He reported that Comptroller Martin discussed the growth in federal grant revenue for the same period. He stated that although the graph includes funds received in 2009 related to the American Re-investment and Recovery Act and the Higher Education Emergency Relief funds which the University has had in the last few years, however, the growth in grant activity is unmistakable.

He reported that the Auxiliary activities brought in revenue of \$4.7M with expenses less than \$2.3M and that most of the funds were brought in by the Global Learning and Engagement team.

He reported that VPAF Wiegand discussed capital asset activity, noting that it is healthy for capital assets to grow as it shows funds are being reinvested into buildings faster than they are being depreciated. He added that the history of UOG is that capital assets have been declining and that the FY23 financials showed the impact of the Guam Cultural Repository on the books. He stated that over the next few years four additional buildings will be added to the capital assets.

He reported that Comptroller Martin also discussed the results of the recent insurance procurement, stating that the cost of UOG's insurance policies increased from \$749,000 in Policy Year 2022/23 to \$848,000 in Policy Year 2023/24. He stated that VPAF Wiegand said most of the increase is related to losses from Typhoon Mawar and that he expects it to trend downward in the coming years.

He further reported on insurance updates, the FEMA claims and reported on the progress of the Siemens project.

5.5.2 Collections Report

He reported that Associate Comptroller/Bursar Flores discussed the recapture of receivables from the various scholarship programs, noting that FY23 was the first year in which the target was not reached. The University collected about \$230,000 or about 92% of the target of \$250,000. He referred to the report as provided in the boardbook.

5.5.3 Procurement Transactions and Contracts Report

He reported that VPAF Wiegand stated that most of the contracts are normal – software license, insurance, etc., however, the large expense is a \$22M contract for the construction of the new WERI building and the new nursing annex.

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5.5.4 Resolution No. 23-39, Relative to Authorization to Write Off Certain Accounts that have been Determined to be Uncollectable

Regent Naholowaa introduced Resolution No. 23-39 and moved to approve, which was duly seconded by Regent Certeza. He summarized the resolution explaining the purpose. The motion carried.

5.6 Executive Committee

5.6.1 Discussion with the Attorney General of Guam Regarding BOR Resolution No, 23-20

Refer to item 5.0.

6.0 AD HOC REPORT: ENDOWMENT FOUNDATION UPDATE

Katrina Perez, Executive Director, provided the BOR with an update on the UOGEF projects and events. A copy of the update is attached.

7.0 OPEN PRESENTATION (3 Minute Limit per Person)

Chairperson McKeever opened the floor for open presentations. There were no presentations.

8.0 ADJOURNMENT

Regent Diaz moved that the meeting be adjourned, which was duly seconded by Regent Naholowaa. The motion carried. Chairperson McKeever adjourned the meeting at 6:43 p.m., CHamoru Standard Time.



Sandra H. McKeever, Chairperson

ATTESTED:



Anita Borja Enriquez, D.B.A., Executive Secretary