

**UNIVERSITY OF HAWAII CENTER: WEST HAWAII
AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING**

April 16, 2004

Preamble

The University of Hawai'i West Hawai'i Center was among the centers established by the Board of Regents action in June 1996. The West Hawai'i Center is a vehicle for delivering programs and services from all parts of the University of Hawai'i system to West Hawai'i. Goal E of the University of Hawai'i Center: West Hawai'i Development Plan 1998-2007 provides that the goal was to:

"Develop the infrastructure of the Center, including provision of basic facilities, equipment and support personnel to facilitate the delivery of quality programs and services."

One of the factors limiting the West Hawai'i program was the location of the Center in Kealahou, and the lack of adequate facilities and infrastructure.

The University of Hawai'i identified a 500 acre parcel of vacant land east of the Keahole Airport (within Tax Map Key parcel [3] 7-3-10-42) as a suitable site for a permanent campus for the West Hawai'i Center. The development of this site has been hampered by a lack of capital improvement funds to provide adequate potable water, roadway and other basic supporting infrastructure and to allow construction of classroom and office buildings.

Hiluhilu Development, LLC ("Hiluhilu") owns the parcel of land (TMK [3] 7-2-5-1) adjacent to the north boundary of the University of Hawai'i's 500 acre site. Hiluhilu expressed its willingness to coordinate its development with that of the West Hawai'i campus and to cooperate by providing supporting infrastructure for the West Hawai'i Center.

On November 21, 2002, the University of Hawai'i and Hiluhilu entered into a Memorandum of Understanding to begin discussions on the development of a University Village and providing critical infrastructure for the University's initial relocation of the West Hawai'i Center. Since that time, representatives of the University of Hawai'i and Hiluhilu have continued discussions on these subjects and Hiluhilu has been in discussion

with its consultants, the County Department of Water Supply, the State Department of Land and Natural Resources, the Department of Hawaiian Home Lands, and the Department of Transportation. The parties to this Memorandum wish to incorporate certain understandings that have been reached as a result of those discussions into an updated memorandum which will provide the key principles which will be used to guide the parties in future discussions directed toward producing formal legally binding commitments.

The University of Hawai'i wishes to explore further the specifics of its ability to relocate from its present leased facilities at Kealahakua, Hawai'i to the University Village using its existing budget to cover the cost of using the new facilities on a midterm basis of 5 to 10 years until the University's facilities can be built on its own land adjacent to the Hiluhilu land.

For the convenience of the parties, this document contains all of the terms that the parties have agreed upon. This Amended and Restated Memorandum of Understanding restates the provisions relating to the substantive courses of action in the November 2002 Memorandum of Understanding and, in light of these courses of action, outlines the key principles that will guide future discussions directed toward producing formal legally binding commitments between the parties.

Statement of Understanding

I. Initial Courses of Action.

The substantive courses of action as identified in the November 2002 Memorandum of Understanding were:

1. The parties to this Memorandum shall consult on the location and general site plan for the initial phase of an area to be developed for a University Village for the West Hawai'i Center. The University Village area will extend across the University land and across the Hihuhilu land and will be master planned to provide classrooms, office, living accommodations, food service and supporting commercial facilities for the West Hawai'i Center.
2. The parties to this Memorandum shall consult and cooperate in identifying critical infrastructure required for the initial relocation of the University's operations to the University Village. The infrastructure will include providing potable water, wastewater treatment and internal roadway access.
3. Hihuhilu will include in its development planning provisions to allow the West Hawai'i Center to share roadway access from the Queen Kaahumanu Highway to the site of the University Village. The parties will discuss the routing of such access, including the possibility that a portion of said roadway system may be located within the State land.
4. Hihuhilu, in planning for potable water units for its development, shall use its best efforts to obtain potable water for the first phase of University Village and will coordinate its efforts with the University to obtain additional potable water for later phases of the West Hawai'i Center.
5. Hihuhilu will include in its development plans provisions to allow the University Village to connect to the private wastewater treatment system which Hihuhilu will build. The plans will include provisions to allow expansion of the facilities as additional capacity is needed.
6. The parties to this Memorandum will discuss the feasibility of relocating to the University Village site with Hihuhilu having buildings constructed for lease by the University for the initial phase of the West Hawai'i Center.

II. Key Principles to Use for Legally Binding Obligations.

1. The parties now wish to identify the key principles which Hiluhilu will use to present specific improvements of benefit to the University. Future discussions between the parties and formal legally binding commitments will be made in context of these principles. All obligations of the University stated in this document are aspirations, and are not legally binding or enforceable. To become legally enforceable and binding, the Regents of the University of Hawai'i must approve those obligations, and sufficient funds must be available to the University to allow it to perform any such obligations.

2. **Potable water.** Hiluhilu and the University will both participate in the County Department of Water Supply planning for this area so that the lands of both Hiluhilu and the University can obtain adequate potable water for development. The University shall decide whether its participation will be done in conjunction with the Department of Land and Natural Resources or otherwise. In this regard, it is understood that Hiluhilu is responsible for obtaining water commitments for any buildings constructed on its land, including any buildings thereon leased to the University.

3. **Roadway.** Hiluhilu will develop any roadway that it builds to connect to the Queen Kaahumanu Highway so that the University will be able to use it for access to its land. Hiluhilu and the University will coordinate efforts to develop a mutually acceptable roadway to Queen Kaahumanu Highway, including consultation with the Department of Land and Natural Resources, the Department of Transportation and the Department of Hawaiian Home Lands. Except for that portion of the roadway that extends into the University land, the University will not participate in the cost of such roadway.

4. **Wastewater Treatment Plant and Related Improvements.** The private wastewater treatment plant and related improvements that Hiluhilu will build for its land will be designed to handle all of the wastewater being generated in conjunction with the Hiluhilu land. This capacity will include wastewater from buildings on the Hiluhilu land that will be leased to the University. The obligations of the University with respect to the cost of wastewater disposal from those leased facilities will be as a tenant to pay for a share of those costs as part of common area expenses.

Hiluhilu expects that the wastewater treatment plant and related improvements will be operated by a separate legal entity which will process wastewater from the buildings on the Hiluhilu land. It is expected that the entity will be subject to State PUC regulation on various phases of its business, including rates to be charged to customers and future plant expansion. Hiluhilu will consult with the University on the location and design of the wastewater treatment facilities. If the University is interested in having the wastewater from improvements on its own land processed by this entity, Hiluhilu will have its initial wastewater treatment system designed to allow it to be expanded as needed to handle the wastewater from the University land and will provide the means by which the separate entity will enter into discussion for expansion of the wastewater treatment system to handle the wastewater from University land. As a part of this process, the University may be asked to provide land area for the entity suitable for

wastewater treatment improvements. Any actual agreement regarding such expansion would require the agreement of the entity operating the wastewater treatment system as well as that of the University and Hihuhilu.

5. Architectural and Use Controls. Hihuhilu and the University will jointly develop a set of design standards and use controls covering a University Village area that will partly be located on Hihuhilu land and partly on University land. The precise extent of the University Village will be defined in the future. The concept of the University Village is to create a pedestrian oriented corridor approximately _____ feet in length. For the Hihuhilu land, these standards and controls shall be incorporated into the appropriate restrictive covenants that will run with the land. For the University land, the University shall establish such policies and controls that will allow it to undertake future construction in conformance with the standards and controls. The architectural standards will focus upon creating improvements whose exterior appearance will be compatible with a traditional rural Hawai'i community. Structures will be designed to preserve existing views, especially those for pedestrians. The designs used will emphasize natural ventilation, building insulation and landscaping to create energy efficient structures.

Use controls will focus on allowing mixes of compatible educational and commercial uses within the University village. Uses that could conflict with the educational uses would be conditioned and restricted to minimize such conflicts.

6. Initial Building Improvements for University. The University shall provide Hihuhilu with its initial estimate for the classrooms, office space and related improvements it needs to allow it to relocate its present West Hawai'i operations to the University Village area. Hihuhilu shall prepare a proposal under which it would construct the improvements on its land and lease the same to the University. The design of the structures and the related improvements would allow Hihuhilu to convert them to a non-University use after the expiration of the lease to the University.

The term of the leases will be by mutual agreement. While this memorandum does not limit either party from proposing any term, the general range being contemplated would be an initial term of 5 to 10 years with one comparable option period. The lease form will be a standard real estate lease form. Depending on the specific needs of the University, the leased areas may be space within a building or may be the entire buildings (with appropriate rights to common areas such as parking lots, pedestrian walkways, service and maintenance areas). The lease form would not involve conveying any equity interest in the underlying land, nor would the terms include a financing lease under which a portion of the lease payments would be applicable to purchase of the leased property.

Hihuhilu would design spaces for use by the University which would be suitable for general office or classroom purposes. As a guiding principle, the design of such spaces should be such as to allow Hihuhilu to convert those spaces on termination of the lease with the University into space for commercial tenants without extraordinary renovations to the buildings such as having to remove load bearing walls.

The rent shall be in an amount as agreed by the University and Hiluhilu. The rent being contemplated would be within the range that the University would pay for comparable facilities elsewhere in the Kona area. As a guiding principle, the objective of the parties is to create classroom and office space that is functionally equal or better to that currently in use by the University in Kona within the University's budget for space in Kona over the period that the lease with Hiluhilu would cover. In this context, the parties expect that the leased areas would allow the University to at least have the classroom capacities that it now has. To the extent possible, the parties will work towards the objective of providing additional capacity to allow for expansion of University programs. The parties will review various alternatives, including providing more floor area for larger classrooms, providing more classrooms and designing classroom space so it can be easily divided or combined to suit enrollment and program needs.

The University would cover the cost of improvements that would have specific uses for educational programs and would not be usable by a commercial tenant.

For improvements constructed on Hiluhilu land and leased to the University, the University is not expected to contribute to the associated capital costs.

Hiluhilu will cooperate with the University in reviewing any proposal to construct improvements on the University land. In such case, however, one element in such construction would be the responsibility for the cost of related capital improvements on the State land required to support such improvements.

III. Conditions, Duration of Memorandum

1. Although the parties to this Memorandum hope to implement the results of the development planning to be undertaken under this Memorandum, such implementation is conditioned upon the parties being able to obtain funding, water units, permits and other governmental authorizations. In the case of Hiluhilu, implementation will also depend on the financial feasibility of various parts of its development.

2.. With respect to the efforts of the parties to obtain funding, water units, permits and other governmental authorizations, the parties to this Memorandum will cooperate with each other in providing information and reasonable support for the furtherance of the University Village pursuant to mutually acceptable development plans.

3. If the parties to this memorandum are able to agree upon the development plans for the University Village, they will enter into negotiations to establish mutually acceptable terms for such items as operating costs of common infrastructure and lease terms. Hiluhilu expects that it can solely bear the cost of certain capital infrastructure such as shared roadways and infrastructure required for the initial phase of the University Village as part of its contribution to the community for development impacts. It is expected that other capital infrastructure costs which are solely of benefit to the University would be the responsibility of the University. The parties will discuss the terms for other infrastructure costs which are of mutual benefit to both of them.

4. This agreement expires automatically twenty four (24) months after the date of this agreement unless extended by mutual written agreement. Either party may terminate this agreement at any time prior to the expiration date for any reason, upon thirty (30) days notice to the other party.

5. This agreement to consult with each other and discuss joint development opportunities for the adjoining parcels identified in the Preamble is not an exclusive agreement. Either party may explore other development options.

Signed on this day:

UNIVERSITY OF HAWAII

By

Evan S. Dobelle
Its President

HILUHILU DEVELOPMENT, LLC

By:

Its Manager