

# PROCEEDINGS OF THE BOARD OF REGENTS

*June 18, 2007*

## ATTENDANCE

This special meeting of the Board of Regents was held in the Regents' Room of the Smithsonian Institution Building and was called to order by the Chancellor at 8:05 a.m. on Monday, June 18, 2007. Present were:

Robert P. Kogod  
Doris Matsui

Roger W. Sant  
Patricia Q. Stonesifer

Participating by teleconference were:

The Chief Justice  
Eli Broad  
Thad Cochran  
Anne d'Harnoncourt

Shirley Ann Jackson  
Sam Johnson  
Patrick J. Leahy  
Alan G. Spoon

Hacker Caldwell, Chair, Smithsonian National Board

Unable to participate were:

Richard B. Cheney  
Xavier Becerra  
Chris Dodd

Phillip Frost  
Walter E. Massey

Also present were:

Acting Secretary Cristián Samper  
General Counsel John E. Huerta  
Assistant General Counsel Elaine Johnston  
Inspector General A. Sprightley Ryan  
Special Advisor to the Regents John K. Lapiana  
Senior Writer-Editor for the Office of the Secretary Barbara Feininger  
Assistant to the Vice President Marie Fishpaw  
Assistant to Senator Leahy Kevin McDonald  
Assistant to Congresswoman Matsui Alexis Marks  
Governance Committee Counsel Celia Roady, Esq., Morgan, Lewis & Bockius

Also participating by teleconference were:

Assistant to the Chief Justice Jeffrey P. Minear  
Assistant to Congressman Johnson David Heil

## **DISCUSSION OF PREVIOUSLY CIRCULATED AGENDA**

The Chancellor directed the Regents' attention to the meeting agenda, which had been previously distributed for consideration on June 14, 2007. Additional materials were sent via e-mail on June 16, 2007. The Chancellor noted that this meeting was a follow-up to the meeting of June 11, 2007. He began the meeting by summarizing the meeting of June 11, 2007, including the Regents' discussion with the Independent Review Committee and the review of the Governance Committee's recommendations. He then turned the meeting over to the Chair of the Governance Committee.

## **CONSIDERATION OF THE GOVERNANCE COMMITTEE REPORT AND RECOMMENDATIONS**

Patricia Q. Stonesifer noted that the Governance Committee ("the Committee") last met on June 13, 2007, during which time additional refinements were made to the proposed recommendations of the Governance Committee. Recommendation number 24 was strengthened to ensure unified standards and structures in the Institution's compensation policies; modifications to recommendation number 19 would standardize Smithsonian leave policies to follow federal employee policies. Recommendation number 12 was strengthened to facilitate the Inspector General's access to senior management. Number 15 was modified to enhance the transparency of the Regents' actions and communications; recommendation number 6 also was strengthened to create a web-based scorecard by which key stakeholders will be able to follow and assess the Regents' actions. Changes to recommendation number 18 clarify that senior management may no longer serve on the boards of for-profit companies.

Some of the recommendations in the Governance Committee report refer to the Smithsonian Secretary, whereas others note the Acting Secretary. It was clarified that proposed actions that require immediate response are directed towards Acting Secretary Samper, whereas descriptions of long-term proposed actions are directed toward the new Secretary. Recognition of the enhanced role of the Inspector General also was emphasized; this action is considered especially critical to the Board of Regents' aggressive efforts to develop and implement effective, transparent governance policies for the Institution. As was approved during the September 18,

2006, meeting of the Board of Regents, the Inspector General will continue to report directly to the Regents.

The Regents then unanimously approved the following motion:

*VOTED that the Board of Regents adopts the recommendations set forth in the Report of the Governance Committee and approves the specific actions described therein. The Executive Committee shall propose such Bylaw amendments as may be necessary to carry out these recommendations. The Board of Regents requests all Board Committees to undertake the actions set forth in the recommendations. The Board of Regents further directs the Acting Secretary to take such actions as are necessary to implement the policy guidance set forth in the recommendations.*

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## **REPORT OF THE GOVERNANCE COMMITTEE TO THE BOARD OF REGENTS (JUNE 14, 2007)**

### **Introduction**

The Governance Committee presents the following report and recommendations to the Board of Regents for consideration. The Committee believes that the recommendations, based on its review of the best practices of the nonprofit sector, as well as the insights of the Independent Review Committee, will strengthen the Regents' oversight of the Smithsonian and ensure that the Board will be a strong partner in setting the Institution's strategic direction.

In conducting its work, the Committee was especially sensitive to the critical concern that prompted its creation: the public's trust in the governance and management of the Smithsonian was shaken. Questions had been raised regarding the Smithsonian's executive compensation practices, abuses of travel and expense policies, participation by senior executives on for-profit corporate boards, and the lack of transparency on some business transactions and major decisions of consequence to the Institution.

The Committee's mandate is based on a simple premise — the Board is ultimately responsible for the Smithsonian. Where, as here, legitimate questions about the Board's governance of the Institution are raised, the Regents must accept that responsibility and act accordingly.

### **Context and Committee Process**

Over the past year and a half, a series of initiatives based on confidential business contracts (Smithsonian On Demand, a book publishing deal, and an image licensing agreement) between Smithsonian Business Ventures and outside companies generated particularly harsh criticism from the Congress and the public, as well as Smithsonian staff, that the Smithsonian lacked the transparency expected from a public institution. Meanwhile, members of the House Appropriations Committee and the media began to question the compensation of senior executives.

In January 2007, the Smithsonian's Acting Inspector General reported to the Regents on executive compensation and a confidential outside audit of then-Secretary Lawrence M. Small's expenses that identified a number of unauthorized or unsupported transactions. Some expenses, the report noted, "could be considered lavish or extravagant," but concluded that there was "no evidence that the expenses were solely for personal benefit." After a review of the expense report, the Regents, on the recommendation of the Audit and Review Committee, determined that the expenses were incurred for legitimate business purposes and retroactively authorized their expenditure. Changes to the existing policies were not considered.

That action prompted a substantial amount of criticism, culminating in a letter of inquiry and investigation from Senator Charles E. Grassley to the Chancellor, alleging that the Board's "response and action to [an] 'anything goes culture' seems to be rubber stamping the actions of Secretary Small and turning a blind eye to very serious issues raised by the Inspector General." Others also questioned the propriety of senior executives serving on for-profit corporate boards and contended that some Smithsonian operations, as well as those of the Regents, were not conducted in an appropriately transparent manner.

In response to these criticisms and in their own determination to advance the best interests of the Smithsonian, the Regents formed the Governance Committee with a mandate to comprehensively review the policies and practices of the Smithsonian and how the Board conducts its oversight of the Institution. At the same time, the Board established the Independent Review Committee (IRC), chaired by the Honorable Charles A. Bowsher, former Comptroller General of the United States, to review the issues arising from the Inspector General's reports, the Regents' response, and related Smithsonian practices identified in Senator Grassley's letter.<sup>1</sup>

The work of the two committees has run on parallel tracks. Each had a separate mandate focused on the same goal — improving Smithsonian governance. The IRC conducted an extensive factual investigation of Smithsonian practices questioned by the Inspector General and Senator Grassley, including conducting dozens of interviews and reviewing thousands of records. In contrast, the Governance Committee undertook a "clean slate analysis," researching and identifying the best practices in 21st century nonprofit governance and then applying them to the Smithsonian. The Regents' discussions with the IRC indicate that the recommendations from both the IRC and the Governance Committee share many similarities. Reaching similar results from such dissimilar approaches gives the Governance Committee added confidence that the critical weaknesses and failures prompting these reviews have been identified and addressed.

The Governance Committee has met weekly since March 21, 2007, and moved swiftly on a number of critical fronts. First, the Committee addressed issues raised by the Inspector General and congressional inquires. The initial result was the development of 12 interim policies and procedures, approved by the Executive Committee on April 9, 2007, that provided immediate corrections to monitoring and compliance problems initially identified.<sup>2</sup>

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1 The Honorable Stephen D. Potts and A.W. "Pete" Smith also served on the Independent Review Committee.

2 See Appendix D.

From its inaugural meeting, the Committee's work was informed by the best governance practices in the nonprofit and federal sectors. Among its initial tasks was to conduct a landscape analysis, comparing current Smithsonian practices to the Panel on the Nonprofit Sector's draft *Principles for Effective Governance*, as well as the best practices of similar organizations.

On May 6, 2007, the Committee hosted a robust discussion with four well-regarded experts on nonprofit governance on the applicability of 21st century governance practices to the Smithsonian. Two of the experts spoke to the full Board of Regents the next day, with non-Regent Committee member Diana Aviv facilitating. The Committee also received in-depth presentations from key Smithsonian staff to help it understand the unique legal nature of the Institution and the interaction between the Smithsonian's federal and trust budget processes.

In the final week before this Report was completed, the members of the IRC met with the Regents and discussed their preliminary findings and recommendations. The Regents welcomed the opportunity to engage the IRC directly in a frank review and discussion of their work, and were sobered by the number of management and governance weaknesses identified by the IRC. Both the IRC and the Regents were encouraged by the congruence between the recommendations reached by both bodies, despite their different charges and approaches. The IRC presentation and ensuing discussion informed the Governance Committee's final recommendations and we look forward to using the IRC's final report as guidance in our ongoing work.

This report, the result of the Committee's work since March 21, 2007, provides an initial blueprint for action over the next seven months. The purpose of these recommendations is not just to address weaknesses in existing policies and practices, but to position the Smithsonian among the leaders in nonprofit governance.

### **Scope of Recommendations**

The Regents' primary responsibility is to govern the Smithsonian on behalf of the United States. The original Smithsonian bequest was accepted by the Congress in trust for the American people. The Congress, in turn, delegated to the Regents the management and governance authority for the Smithsonian. This unique relationship is different from other nonprofit boards; it both constrains and provides opportunities for the Regents in exploring methods of better governance.

The Committee acknowledges that the Smithsonian's Charter — the basic framework establishing the Board — is statutory. Making changes requires more than passing a Board resolution or a Bylaw amendment. Only the Congress, with the concurrence of the President, can amend the Charter. Indeed, the last change to the Board's structure occurred over 30 years ago when the number of Citizen Regents was raised from six to nine. The Committee recognizes that considerable analysis and further deliberations are necessary before any decision can be made as to whether changes might improve the framework for governance. This task requires the Committee to go beyond current best practices to also study the historical and legal, including constitutional, issues that prompted the current structure. With that in mind, and as underscored by the recommendations below, the Committee is pursuing a full and complete review and consideration of all aspects of governance. In the meantime, many recommendations have been made that address significant areas of concern and can be implemented immediately.

As it conducted its review, the Committee identified a number of weaknesses in Smithsonian governance practices:

- First, the Regents did not routinely receive, nor did they demand, the information necessary to support vigorous deliberation and well-reasoned decision-making. (Many Regents were unaware of critical details of Secretary Small’s employment contract, the non-uniform application of policies and procedures, objections to certain practices of Smithsonian Business Ventures, morale issues identified through employee surveys, and increasing tensions between the units and the central administration or “Castle”.)
- Second, critical relationships necessary to allow key staff to bring forward or highlight important issues and concerns to the Board were lacking. (The General Counsel, the Chief Financial Officer, and the Inspector General were without the necessary direct access to the Board to be able to raise concerns or serve as effective resources.)
- Third, with monitoring systems failing to raise the necessary “red flags,” the Regents’ ability to provide critical oversight and require compliance with policies and internal controls was crippled. (The Regents did not question enough the representations of management and misplaced their reliance on other advisors who failed to identify relevant issues and report them to the Board.)

Despite regular attendance by most Regents and active participation in meetings, in the end the Regents did not provide the level of leadership and oversight that they had intended.

Contributing to the situation was an agenda and information flow tightly controlled by the Office of the Secretary. Information leading to difficult and critical decisions was at times prepared and presented in a summary fashion that did not encourage full and complete discussion. As a result, the Regents were at times unable to thoroughly consider the major and strategic issues facing the Institution.

The recommendations contained in this report address these weaknesses and the well-founded criticisms of stakeholders, as well as other policies and practices identified for strengthening during the Committee’s review. Together, these recommendations make important immediate changes and provide an initial blueprint for action over the next seven months.

The Committee also acknowledges that the role of the Regents should not be confused with that of management: the Board sets the major policies and, while retaining the ability to engage in effective oversight, delegates to management the responsibility for implementation. In achieving this balance, the Committee recognizes the deep commitment and professionalism of Smithsonian employees and is confident in their abilities to implement these recommendations.

While moving swiftly since late March, the Committee remains mindful that many of the Smithsonian’s current processes, structures, policies, and practices have served the Institution well. The Committee distinguished between practices that needed to be changed, practices that needed improvement, and practices that were appropriate. The Smithsonian has flourished for 160 years; it has clearly been doing many things right. Its successes and accomplishments reflect the dedicated and loyal employees who continue to support the Smithsonian’s mission, despite

the controversies and criticisms caused by recent events.

The Committee's work is a significant step toward strengthening the Institution, but we recognize that serious threats continue to exist — the \$2.3 billion facilities backlog and the squeeze on funding for critical programs and activities. The Regents will need to work with Smithsonian management and the Congress to resolve these issues. A strong governance structure, coupled with the creativity, skills, and dedication of the members of the Board, its committees, and Smithsonian staff, will provide a framework to address these and other challenges facing the Smithsonian.

Finally, the Committee welcomes the rigorous search process now under way that will result in the selection of the 12th Secretary of the Institution.

With these recommendations the Board will put in place mechanisms to foster the constructive partnership with the Acting Secretary and his successor that is necessary to address the Smithsonian's enormous challenges. The Governance Committee acknowledges that many of the recommendations will require considerable and continuing efforts over the next year to implement. As part of that effort, the Committee will track progress on all of the recommendations and publish a "scorecard" that will be available on the Regents website.

### **The Blueprint for Better Governance: Recommendations**

The Committee's recommendations are organized into three areas of focus:

(1) Recommendations to Reinforce the Foundation of Integrity and Responsibility; (2) Recommendations to Promote a Constructive Partnership; and (3) Recommendations to Strengthen the Culture of Accountability. The capsule recommendations below are presented in further detail, with supporting reasoning, in Appendix A.

#### **I. Reinforcing the Foundation of Integrity and Responsibility**

Stakeholders properly look to the Regents to provide stewardship of the public trust, maintain the ethical compass for the Institution, and govern the Smithsonian in a fair and equitable manner. Recent controversies present opportunities for the Regents not only to renew and improve governance practices, but also to assume a leadership role in fostering a culture of strong ethical conduct, mutual respect, openness, and increased fidelity to the Smithsonian's core as a public trust.

The work of the Committee has been informed and guided by several overarching principles. The Committee believes that adoption of these guiding principles by the Regents will reinforce the foundation of integrity and responsibility that is essential for the Smithsonian to continue to achieve success and retain its status as a world-class educational institution.

These guiding principles support the specific recommendations of the Governance Committee and will also provide direction to the Regents and Smithsonian staff as they move forward in their work to carry out the Smithsonian's mission.

**A. Our Operations and Activities Will Reflect Our Status as a Public Trust Administered on Behalf of the American People:**

*The Board of Regents was established by Congress to carry out the responsibilities of the United States as trustee of the Smithsonian trust. Given this unique and special status, the Smithsonian must be mindful that it is a public trust operating on behalf of the American public and the United States government to carry out its mission to increase and diffuse knowledge. As such, the Smithsonian will be guided by the principles of the federal sector in the conduct of its activities whenever appropriate and consistent with its mission and trust responsibilities. In all other cases, the Institution will follow the principles and best practices for fiduciary stewardship in the nonprofit sector.*

**B. We Remain Committed to Following The Highest Standards of Ethical Conduct:**

*The Smithsonian Institution remains committed to following the highest standards of ethical conduct in pursuit of its mission to increase and diffuse knowledge. All individuals who have been entrusted to act on behalf of the Smithsonian — Regents, staff, researchers, fellows, interns, and volunteers — are expected to conduct their activities according to the highest professional standards, with honesty and accountability, and in the best interest of the Smithsonian. They must take care that their actions will not adversely impact the integrity of, or the public's confidence in, the Institution, its work, or its mission.*

**C. We Will Conduct Our Business Within an Ethos of Transparency:**

*The Smithsonian Institution is committed to operating in a culture marked by openness, accessibility, and robust communication. All Smithsonian stakeholders should have access to appropriate and accurate information regarding the finances, operations, and activities of the Smithsonian Institution. Effective transparency also requires open and reliable communication between the Board, management, and other stakeholders to support informed decision-making. The Smithsonian is dedicated to using every reasonable method to foster the effective transparency that will support its mission to increase and diffuse knowledge.*

**II. Promoting a Constructive Partnership**

Recent events have underscored the Board's need to govern proactively and to provide strategic leadership to the Smithsonian. These recommendations are designed to promote a constructive partnership between the Board and the Secretary. That partnership requires the Secretary to provide the Board the information it needs to engage in vigorous and productive deliberations. In turn, the Board must clearly convey to the Secretary its reasonable expectations and requirements. Moreover, certain staff, such as the Chief Financial Officer, the General Counsel,



and the Inspector General, whose contact with the Board in the past has been limited, must have free access to the Board to bring forward matters deserving of the Regents' attention, as well as to serve as resources for informed deliberations. And in some instances, such as setting executive compensation, the Regents must operate independently of Smithsonian management.

These recommendations to strengthen governance structures will transform the Board into a more dynamic body. By making these recommendations, the Committee recognizes that the Institution is best served by an engaged board comprised of members who understand their roles, are knowledgeable about the Smithsonian, and creatively address both challenges and opportunities.

### **Recommendations to Promote a Constructive Partnership**

- 1. To ensure that the Board is positioned to provide effective leadership, the Governance Committee will examine the appropriate structure and composition of the Board, the Executive Committee, and Board committees and report to the Board in January 2008 on its findings and recommendations.**
- 2. To establish clear governance expectations, the Regents adopt the description of the Regents' duties and responsibilities contained in Appendix A.**
- 3. To enhance Board leadership, the Regents adopt the specific duties and responsibilities for the positions of Chancellor and Chair of the Board contained in Appendix A and will initiate a change to the Bylaws to separate these positions.**
- 4. To provide sufficient time for deliberations and action, the Board of Regents will hold no fewer than four regular business meetings, with additional meetings as necessary. Each Board meeting will include an executive session without the presence of staff, as well as executive sessions with the Secretary and other key staff individually, as appropriate. To enhance the transparency of Board operations and deliberations, the Board and Board committees will keep minutes for all meetings, including executive sessions, and the Special Advisor to the Regents will develop a new format to document minutes of Board and Board committee meetings. The Secretary will delegate to the General Counsel the responsibility for preparing and keeping Board and committee minutes.**
- 5. To provide Regents with the necessary foundation to be effective, the Governance Committee will develop an orientation program for new Regents. To promote accountability, the Governance Committee also will develop and regularly administer a process to assess the effectiveness of the Board, Board committees, and individual Regents.**
- 6. To enhance effectiveness, each Board committee will review its role, function, and charter. The committees will revise and update their charters as necessary. Committee charters will be subject to approval by the full Board. To provide momentum as the Board initiates its strengthened governance practices, new leadership will be appointed for each of the Board-established committees.**

- 7. To ensure a rigorous, independent, and transparent system for evaluating executive compensation and performance, the Compensation and Human Resources Committee will implement a refined process that follows best practices in executive evaluation and compensation in the nonprofit sector. The Committee will follow this new process to recommend to the Board, at its September meeting, an appropriate compensation package to guide the search for the next Secretary, balancing the need to attract the best leader for the Institution with our public trust status.**
- 8. To provide a mechanism for immediate and continuing Board attention to the Smithsonian's facilities needs and to underscore the Regents' commitment to resolving the facilities backlog, the *ad hoc* Committee on Facilities Revitalization will become a standing committee of the Board.**
- 9. To strengthen board development and integrate the nominating and governance process, the Governance Committee will assume the responsibilities of the Nominating Committee and be renamed the Governance and Nominating Committee. The Committee will develop criteria for the nomination of new Citizen Regents to ensure that the skill sets and diversity necessary for a dynamic Board are identified. It also will review existing processes for appointing Board committee members and chairs and will recommend improvements.**
- 10. To provide the Board with necessary and timely legal advice, the General Counsel will have direct access to the Board, attend Board and Board committee meetings (either in person or by delegate), and regularly report to the Board and relevant Board committees in executive session. The General Counsel will have the right and obligation to bring directly to the Board and/or relevant Board committee any information on legal or compliance matters that he or she reasonably determines should be brought to their attention. The Governance Committee will review and report to the Board on whether sufficient resources are available for the Office of General Counsel to effectively perform its functions.**
- 11. To enhance the accessibility of financial information, the Chief Financial Officer will have direct access to the Board, attend Board and relevant Board committee meetings, and regularly report to the Board of Regents, the Audit and Review Committee, and/or other relevant Board committees in executive session. The Chief Financial Officer will have the right and obligation to bring directly to the Board and/or relevant Board committee any information on financial or compliance matters that he or she reasonably determines should be brought to their attention. The Audit and Review Committee will review and report to the Board on whether sufficient resources are available for the Office of Chief Financial Officer to effectively perform its functions.**
- 12. To strengthen the role of the Inspector General, the Audit and Review Committee will document the expectations for, and reporting relationship of, the Inspector General to the Board of Regents. The Inspector General is expected to bring**

**directly to the Board and/or relevant Board committee information on all matters that he or she determines should be brought to their attention. The Audit and Review Committee will review and report to the Board on whether sufficient resources are available for the Office of Inspector General to effectively perform its functions. The Office of Inspector General will be relocated to downtown Washington, in close proximity to the Secretary and senior management.**

- 13. To recognize the assistance and support that the Smithsonian National Board and other Advisory Boards provide to the Smithsonian and to establish a stronger link between the Regents and the Advisory Boards, the Governance Committee will oversee an examination of options to more effectively engage these Advisory Boards and will report to the Board with its recommendations in 2008.**

### **III. Strengthening the Culture of Accountability**

While recent criticisms of the Regents' oversight span a variety of areas, they provide an important lesson: the Regents must ask the necessary questions, and demand the necessary information, to engage in effective oversight. The Regents should have been made aware of all of the provisions of the Secretary's contract, outside activities of senior executives, any significant problems in Smithsonian Business Ventures, and deviations from normal travel and expense policies. Policies could have been strengthened or clarified and problems resolved when they first arose. Moreover, events have amply demonstrated that the Regents must dictate the flow of information to them, control their agenda, and frame the issues for discussion. Options must be presented and vigorous debate encouraged.

The Smithsonian's mission is to increase and diffuse knowledge, and congressional and public critics rightly point out that the Smithsonian also must apply this mission to knowledge about the Institution's operations, finances, and decision-making processes. Members of Congress have expressed concern about the Smithsonian's failure to provide controversial contracts to them and to operate its business ventures in a more open way. Inside the Smithsonian, many staff members have been disturbed by a perceived lack of transparency in the governance of the Institution, highlighted by controversial business deals and the acceptance of a number of large donations and corporate sponsorships.

The following recommendations are designed to increase the ability of the Regents, and in many instances senior management, to monitor critical operations of the Smithsonian and to hold staff, as well as themselves, more accountable. These recommendations also aim to increase transparency throughout the Smithsonian, ensuring that all stakeholders have access to clear, accurate, and timely information about the Institution and the Regents.

#### **Recommendations to Strengthen the Culture of Accountability**

- 14. To foster a culture of ethical conduct, the Secretary will develop an overarching Smithsonian Code of Ethics that promotes best practices and the highest professional standards and is based on the guiding principles for ethical conduct**

adopted by the Regents. The Code will be presented to the Board for review and approval as soon as possible and in any event no later than the end of 2007.

15. To embrace a spirit of increased openness, the Regents will provide an opportunity for input through an annual public forum and other appropriate mechanisms beginning in 2008. The Regents also will engage regularly in direct communication with interested members of Congress to promote a constructive dialogue with these key stakeholders. In addition, the Regents will immediately launch a public webpage that will include information about the structure, membership, and functions of the Board, as well as meeting agendas and summaries of meeting minutes.
16. To foster an ethos of transparency, the Secretary will develop a strategy to increase available information about the Board and Smithsonian activities and operations and to enhance communications with the Board. The strategy will be based on the best practices of nonprofit organizations, universities, and federal agencies. The Secretary will begin immediately implementing elements of this recommendation as they are developed and will present the full strategy to the Board for review and approval by the end of 2007. The strategy should include the following components:
  - Enhanced use of the internet to make information about Smithsonian policies, governance, finances, operations, programs, activities, and decision-making processes widely available.
  - Mechanisms to foster communication between and among senior management and the Board of Regents, staff, and other stakeholders.
  - A framework to ensure effective congressional outreach and information.
  - A communications plan to ensure that all constituencies are routinely informed of important decisions and current issues and have opportunities to provide comments or information to the Board and management. The plan should consider the establishment of a public ombudsman.
  - An effective process, including telephonic and electronic “hot lines,” for the staff or public to bring ethics and compliance issues to the attention of management and the Board.
  - Plans for monitoring and measuring these efforts, including routinely benchmarking Smithsonian efforts against evolving best practices.
17. To increase accessibility to information about Smithsonian activities, the Regents affirm that the Smithsonian embraces the principles of disclosure reflected in the Freedom of Information Act (“FOIA”) and follows its spirit in considering public requests for information. The Secretary will develop and issue by the end of 2007 a policy on disclosure of Smithsonian records to implement this guidance.

18. **To avoid even an appearance of conflict of interest or divided loyalty, the Regents adopt the policy that, beginning October 1, 2007, Smithsonian senior executives shall not be permitted to serve on the board of a for-profit company.**
19. **To maintain public confidence in the integrity of the Board and staff, the Regents adopt the following policies and guidance on outside activities and conflicts of interest:**
  - **The Secretary will transition all Smithsonian staff to a leave accrual system as soon as possible, and in any event no later than October 1, 2007. The leave policy for all Smithsonian employees will follow federal employee policies.**
  - **The rules on approval of outside activities engaged in by senior executives established in the Interim Policies and Procedures are adopted as standing policies and expanded to include all unit heads and above.**
  - **As the Smithsonian's Chief Ethics Officer, the General Counsel is primarily responsible for the identification and management of potential conflicts of interest of senior executives. The General Counsel will personally review the annual financial disclosure statements and outside activity requests of all senior executives and unit heads under the Standards of Conduct. The General Counsel will provide a written report to the Audit and Review Committee on the conclusion of the annual financial disclosure process and will also provide a written annual report to the Committee on the reported outside activities of senior executives, including dispositions of requests for clearance to participate in outside activities. The Audit and Review Committee, in turn, will report the General Counsel's conclusions and recommendations, if any, to the Board.**
  - **The Secretary will develop an accessible database for staff to alert appropriate officials when potential conflicts of interests may exist.**
20. **To promote accountability and ensure the public trust, Smithsonian Business Ventures ("SBV") operations will follow established Smithsonian policies, except in specific pre-approved circumstances when an exception is necessary to accomplish SBV mission requirements. All current deviations from general Smithsonian policies must be eliminated or individually re-approved by the Secretary and reported to the Chair of the Audit and Review by the end of 2007. The Regents endorse the Acting Secretary's plan to review the status, mission, and operations of SBV and to make recommendations to the Board concerning these issues.**
21. **To strengthen stewardship of Smithsonian resources, the rules on expenses for travel, representational activities, and special events established in the Interim Policies and Practices are established as standing policies and the Regents adopt the following additional policies:**

- **Expenses for travel, representational activities, and special events incurred by or on behalf of the Office of the Secretary will be subject to review by the Audit and Review Committee for reasonableness and compliance with standard Smithsonian policy. The Audit and Review Committee will report to the Board at least annually on the results of this review, including any deviations from Smithsonian policy. The Chief Financial Officer will conduct periodic audits of travel and entertainment expenses incurred by the Secretary and senior executives and report the results of such audits to the Audit and Review Committee.**
  - **Expenses for Regents' activities, as well as other Smithsonian special events, shall be reasonable and in accordance with spending guidelines to be developed by the Secretary and submitted to the Executive Committee for review and approval no later than September 2007.**
  - **The Audit and Review Committee will review internal controls and monitoring processes for all travel and expense reimbursements to determine whether they are consistent with best practices and will report to the Board on its findings and recommendations in 2008.**
- 22. The Finance and Investment Committee, working with the Secretary and Chief Financial Officer, will review the Smithsonian federal and trust budget formulation and monitoring process to ensure that the Committee and the Board have adequate opportunities to provide strategic direction in the development of budget priorities and meaningful oversight of the Smithsonian's budget and financial resources. The Committee will report to the Board on its findings and recommendations in 2008.**
- 23. The Audit and Review Committee, working with the Secretary and Chief Financial Officer, will review the Smithsonian's financial reporting systems and internal controls to ensure that appropriate systems and controls are in place to enable the Committee and the Board to provide meaningful oversight of the accuracy and integrity of Smithsonian financial statements and reports. The Committee will report to the Board on its findings and recommendations in 2008.**
- 24. To ensure that Smithsonian compensation practices are fair and equitable to employees and provide appropriate stewardship of Smithsonian human and financial resources, the Compensation and Human Resources Committee, working with the Secretary, will review the Smithsonian philosophy and rationale for senior trust employee compensation in order to present a unified compensation philosophy and structure to the Board by the end of 2007.**
- 25. To promote confidence in the integrity of Smithsonian business activities, the Secretary will develop a policy on Smithsonian contracting that will include principles and practices to ensure that all Smithsonian contracting activities are conducted with integrity, fairness, and openness and in a manner that will best**

achieve Smithsonian mission requirements. The Secretary will develop and issue by the end of 2007 a policy on contracting to implement this guidance.

## Conclusion

This report provides a key opportunity to advance good governance at the Smithsonian; however, the report and these recommendations represent only an initial milestone in the Committee's work. During the next seven months (and beyond), the Governance Committee will continue to explore, discuss, and identify areas in need of improvement or further thought and request that other committees do the same and present their findings and recommendations to the Board.

Good governance is a continuing process of rigorous re-examination and renewal. The Governance Committee looks forward to this challenge.

Appendices:

- Appendix A: Detailed Recommendations and Rationales
- Appendix B: Methodology
- Appendix C: Committee Members and Acknowledgements
- Appendix D: Interim Policies and Practices, approved April 9, 2007

## APPENDIX A: DETAILED RECOMMENDATIONS AND RATIONALES

### RECOMMENDATIONS TO REINFORCE THE FOUNDATION OF INTEGRITY AND RESPONSIBILITY

To reinforce the existing foundation of integrity and responsibility, the Regents adopt the following Guiding Principles for conduct by the Smithsonian:

- A. Our Operations and Activities Will Reflect Our Status as a Public Trust Administered on Behalf of the American People:

*The Board of Regents was established by Congress to carry out the responsibilities of the United States as trustee of the Smithsonian trust. Given this unique and special status, the Smithsonian must be mindful that it is a public trust operating on behalf of the American public and the United States government to carry out its mission to increase and diffuse knowledge. As such, the Smithsonian will be guided by the principles of the federal sector in the conduct of its activities whenever appropriate and consistent with its mission and trust responsibilities. In all other cases, the Institution will follow the principles and best practices for fiduciary stewardship in the nonprofit sector.*

- B. We Remain Committed to Following The Highest Standards of Ethical Conduct:

*The Smithsonian Institution remains committed to following the highest standards of ethical conduct in pursuit of its mission to increase and diffuse knowledge. All individuals who have been*

***entrusted to act on behalf of the Smithsonian — Regents, staff, researchers, fellows, interns, and volunteers — are expected to conduct their activities according to the highest professional standards, with honesty and accountability, and in the best interest of the Smithsonian. They must take care that their actions will not adversely impact the integrity of, or the public's confidence in, the Institution, its work, or its mission.***

C. We Will Conduct Our Business Within an Ethos of Transparency:

***The Smithsonian Institution is committed to operating in a culture marked by openness, accessibility, and robust communication. All Smithsonian stakeholders should have access to appropriate and accurate information regarding the finances, operations, and activities of the Smithsonian Institution. Effective transparency also requires open and reliable communication between the Board, management, and other stakeholders to support informed decision-making. The Smithsonian is dedicated to using every reasonable method to foster the effective transparency that will support its mission to increase and diffuse knowledge.***

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

1. To ensure that the Board is positioned to provide effective leadership, the Governance Committee will examine the appropriate structure and composition of the Board, the Executive Committee, and Board committees and report to the Board in January 2008 on its findings and recommendations.

**Rationale:** The Board of Regents includes not only nine “Citizen Regents” but also representatives of each branch of the federal government: the Chief Justice of the United States, the Vice President, three members of the Senate and three members of the House of Representatives. Two Regents — the Vice President and the Chief Justice — serve in an *ex officio* rather than an individual capacity, and by tradition the Chief Justice serves as the Chancellor of the Institution.

The Smithsonian Charter — the basic framework establishing the Board — is statutory. Any changes would require legislative action by the Congress, with the concurrence of the President. The last change to the Board’s structure occurred over 30 years ago when the number of Citizen Regents was increased from six to nine. The Committee found that best practices for good governance include a periodic review of board size and structure to ensure it continues to meet the organization’s need for effective governance. The Committee determined that considerable analysis, including input from stakeholders, and further deliberations are necessary before making any suggestions with regard to whether changing the Charter would improve governance.

The Governance Committee has identified some fundamental questions about the structure and composition of the Board and its committees, including: (1) what is the appropriate size of the Board; (2) what is the appropriate size and function of the Executive Committee; (3) what is the appropriate representation of the Legislative, Executive, and Judicial Branches on the Board; (4) what is the appropriate Board committee structure; (5) what is the appropriate number of Citizen Regents on the Board; (6) what is the appropriate process for selection and appointment of Regents; and (7) what are the appropriate roles of the Chancellor and the Board Chair?



With respect to committee structure, the Governance Committee notes that significant areas of Smithsonian activity are not currently within the oversight of any committee, including fundraising and development, Smithsonian Business Ventures, and most programmatic activities. The Governance Committee will consider whether the Board's ability to provide strategic direction and oversight would be enhanced by the creation of additional committees to oversee these or other areas.

To address these questions, the Governance Committee will review the rationale for the existing structure, consider best practices of similar organizations, and consult with a wide range of stakeholders. The Committee may engage a consultant to assist in conducting this review. This review will include consideration of Board structure and function issues raised in the report of the IRC. The Committee's report will be presented to the Board of Regents at its January 2008 meeting.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

2. To establish clear governance expectations, the Regents adopt the following description of duties and responsibilities of all Regents:

### Duties and Responsibilities of Regents

The Board of Regents is entrusted with the governance of the Smithsonian Institution and overseeing its mission to increase and diffuse knowledge. Regents are responsible for carrying out their duties in a manner that encourages prudent and independent decision-making, places the Smithsonian's interests above personal interests and ensures that decisions are in keeping with the Smithsonian mission. The expectations of Regents in carrying out their duties and responsibilities are as follows:

- Regents operate in a culture of inquiry, regularly attending Board and committee meetings and engaging in meaningful and forthright discussion about issues that shape the Smithsonian's strategic plans and operations. The Board values independent thinking and encourages Regents to raise questions, challenge conclusions and advocate for solutions that affirm the primacy of the Smithsonian mission.
- Regents review and approve the Smithsonian's ongoing and future strategic plans and articulate Smithsonian priorities in a manner that continually reinforces and affirms the Smithsonian mission and culture. Regents establish major policies for the Institution and oversee implementation by the Secretary.
- Regents elect the Secretary, set the Secretary's compensation and annually evaluate the Secretary's performance. With input from the Secretary, Regents evaluate and establish compensation for the senior leadership team and plan for management development and succession. Regents hold management accountable for performance and regularly assess their own individual, Board and committee effectiveness.
- Regents work in partnership with the Secretary, who is responsible for implementing the policies and priorities articulated by the Board. They maintain open communication with the Secretary regarding information – both positive and negative – that impacts the Smithsonian's mission and operations. Regents request information from the Secretary and staff as necessary in order to oversee management in its operation of the Smithsonian and its programs.
- Regents are transparent in their dealings with one another and in their relationships with the Secretary, staff, Smithsonian National Board and Advisory Board Members, donors, the Congress and other stakeholders, and act as ambassadors for the Institution. Regents are accessible to the Secretary and senior staff and encourage them to bring important issues to the attention of the Regents. Regents establish and oversee processes to engage Smithsonian National Board and other Advisory Board members in promoting the Institution's mission and activities.

- Regents review and approve Smithsonian budgets and work in collaboration with the Secretary and the Congress to address the Institution's financial and human resource needs for the accomplishment of its mission and strategic priorities. Regents oversee and assist the Smithsonian's efforts to generate resources through private fundraising and revenue-generating activities.
- Regents oversee the Smithsonian's legal and ethical compliance obligations, the integrity and reliability of financial reporting and audit processes, and management's procedures for identifying and managing risks. Regents are mindful of their own ethical obligations to the Institution and follow the Regents Ethics Guidelines.
- Regents demonstrate their commitment to ongoing Board development by identifying potential candidates for Citizen Regents for consideration by the Congress. All new Regents participate in Board orientations.

**Rationale:** The Charter and Bylaws establish the Board as the Smithsonian's governing authority, but the specific duties and responsibilities of individual Regents are not explicitly stated. Without a formal job description, the role of a Regent was subject to individual interpretation. The best practices of nonprofit boards strongly encourage members to have a basic shared understanding of their roles and expectations. The Governance Committee believes that adopting a clear statement of Regent duties and responsibilities will reaffirm that the Board is the Smithsonian's ultimate governing authority and that the Regents will act accordingly.

This job description establishes expectations for all Regents, including *ex officio* and Congressional members, who act collectively as a governing body. The Governance Committee notes that the review of Board structure and functions described in Recommendation 1 will address the appropriate role and obligations of *ex officio*, Congressional, and Citizen Regents. Following that review, the Committee may suggest revisions to this job description.

Each current and prospective Regent should take into consideration whether he or she has sufficient time and ability to fulfill the requirements of the position as defined.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

3. To enhance Board leadership, the Regents adopt the following specific duties and responsibilities for the positions of Chancellor and Chair of the Board and will initiate a change to the Bylaws to separate these positions:

### Duties of the Chancellor

- The Chancellor presides over Board of Regents meetings. The Chancellor leads and furthers the Board's deliberations by providing an opportunity for all Regents to participate and sees that the Board follows proper decision-making procedures.
- The Chancellor serves as a member of the Executive Committee and in that capacity participates in developing the agenda for Board meetings.
- With approval of the Board, the Chancellor appoints members and chairs of Board committees, other than the Executive Committee.
- The Chancellor presides over official ceremonies of the Institution.

- The Chancellor may, by instrument in writing filed with the office of the Secretary, appoint an Acting Secretary when there is a vacancy in the office or whenever the Secretary is unable to perform the duties of the office.

#### Duties of the Chair of the Board

- The Chair plays a leadership role in guiding the Board of Regents in its deliberations and the exercise of its oversight function. The Chair directs the Board's attention to the immediate and long-term strategic planning needs of the Smithsonian and oversees the Board's, Board committees', and individual Regents' evaluation of their effectiveness. The Chair also works closely with the Chancellor in developing the agenda for Board meetings.
- The Chair represents the Board in dealing with the Secretary and senior management on matters that arise between Board meetings. The Chair works in partnership with the Secretary and senior management to communicate and oversee the carrying out of the policies adopted or approved by the Board and reports to the Board on the conduct and management of the affairs of the Smithsonian.
- The Chair establishes the process for selecting a new Secretary. Together with the Chair of the Compensation and Human Resources Committee, the Chair leads the Board in its annual evaluation of the Secretary's performance and compensation.
- The Chair is the chief spokesperson and advocate for the Board of Regents. The Chair communicates with the Congress, other Smithsonian stakeholders and the media on behalf of the Board. The Chair serves as the primary liaison between the Board and the Smithsonian National Board and other Advisory Boards.
- The Chair presides over Board of Regents meetings in the event the Chancellor is absent.
- The Chair serves as Chair of the Executive Committee.

**Rationale:** The Smithsonian Charter provides for a "Presiding Officer," called the "Chancellor," who is elected by the Regents and possesses certain statutory responsibilities. By tradition, the Regents have selected the Chief Justice of the United States — who by statute is an *ex officio* member of the Board — as Chancellor. The Bylaws provide that the Chancellor is also the Chair of the Board and that he may call on the Executive Committee for assistance. In practice, the Chair of the Executive Committee has performed many of the duties and responsibilities of the Chair of the Board.

The Smithsonian has greatly benefited from each Chief Justice's willingness to continue this tradition. By virtue of a Chief Justice's life-tenure judicial office, he brings to the role of Chancellor practical experience in presiding over deliberative proceedings and a long-range perspective of the Smithsonian's institutional interests. His presence as Chancellor reinforces the distinctive nature of the Smithsonian as a public trust of the United States. But by virtue of his judicial office, the Chief Justice, as Chancellor, also faces constraints in exercising the full range of responsibilities of the Chair of the Board. Accordingly, the current Chief Justice, like his predecessors, has limited his role as Chair of the Board in important respects and delegated a broad range of duties to the Chair of the Executive Committee.

To formalize the division of the past and augment the central role of the Chair of the Board, the Governance Committee recommends that the Regents amend the Bylaws to separate the positions of Chancellor and Chair of the Board. This division of responsibilities is consistent with the concerns expressed by the IRC that the Board should structure its organization to bring more resources to bear on day-to-day leadership and oversight. The Committee recommends that, prior to approval and implementation of a Bylaw change, the Regents recognize this division of responsibilities through appropriate means. The roles of the Chancellor and Chair may be further refined as a result of the Governance Committee review of Board structure and functions.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

4. To provide sufficient time for deliberations and action, the Board of Regents will hold no fewer than four regular business meetings, with additional meetings as necessary. Each Board meeting will include an executive session without the presence of staff, as well as executive sessions with the Secretary and other key staff individually, as appropriate. To enhance the transparency of Board operations and deliberations, the Board and Board committees will keep minutes for all meetings, including executive sessions, and the Special Advisor to the Regents will develop a new format to document minutes of Board and Board committee meetings. The Secretary will delegate to the General Counsel the responsibility for preparing and keeping Board and committee minutes.

**Rationale:** The Board's current schedule includes three business meetings and one strategic planning meeting each year (this does not include committee meetings). Current practice allows for an extended period as a "Committee of the Whole" before the business meetings. In doing so, substantive discussions are separated from decision-making in a way that detracts from good governance. Moreover, because the Committee session is not considered part of the business meeting, the amount of time Regents deliberate has been underestimated by observers.

The flow of Board meetings and decision-making will improve by conducting no fewer than four business meetings each year, with additional Board meetings to be scheduled as necessary. The meeting schedule may include an opportunity for additional work sessions and/or Board committee meetings the preceding day, as appropriate. The Committee notes that because of the extraordinary governance issues that have arisen this year six Board meetings are likely. The Committee believes that all Regents must be aware of, and accept, the fact that governing an Institution as large and complex as the Smithsonian requires a significant time commitment, both in attending Board and committee meetings as well as necessary engagement and action between meetings.

The Committee notes the importance of executive sessions as a mechanism to provide the Board with unfiltered information and enhance its ability to engage in frank and open discussions. The Board should have regular executive sessions with no staff present, as well as sessions with the Secretary and key "gatekeepers" individually. As discussed in Recommendations 10-12, regular executive sessions will be held with the General Counsel, Chief Financial Officer, and Inspector General.

Nonprofit organizations customarily prepare succinct minutes for each board or board committee meeting. These minutes include discussions of agenda items, decisions made and relevant

deliberations informing those decisions. Under current practice no minutes are prepared for meetings of the Committee of the Whole and certain Executive Committee meetings. Consequently, gaps exist in the records of Regent deliberations. The Regents rely on Board and Board committee minutes to make informed decisions; other stakeholders, including Congressional committees and the Office of Management and Budget, also rely on minutes for information on Smithsonian governance. As a result, the Board should require minutes for all Board and Board committee meetings to provide the necessary record of the Regents' official deliberations and decisions. Minutes of committee meetings should be regularly provided to the Board for information. The Secretary should delegate to the General Counsel his corporate secretarial responsibilities for the preparation and maintenance of the minutes for Board and committee meetings, including executive sessions.

The current format for the formal Board of Regents minutes (called "Proceedings") is difficult to follow. There is little discussion of Board deliberations aside from the language of the actual resolutions adopted, and the Proceedings incorporate reports of committee meetings and other reports delivered to the Regents, such as Advisory Board communications. The Regents should maintain a record of Board and Board committee meetings that better serves their needs and promotes effective transparency. The Committee has instructed the Special Advisor to the Regents to develop a new, more accessible format for minutes for presentation to the Executive Committee for review and approval prior to the Board's September 2007 meeting.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

5. **To provide Regents with the necessary foundation to be effective, the Governance Committee will develop an orientation program for new Regents. To promote accountability, the Governance Committee also will develop and regularly administer a process to assess the effectiveness of the Board, Board committees, and individual Regents.**

**Rationale:** A robust orientation for new board members is widely considered a best practice. No formal orientation program for new Regents has been conducted since at least 2000. Given the breadth and complexity of the Smithsonian's operations, Regents must have a thorough orientation about the Institution's legal status, organization and funding structure as well as the responsibilities of Board members. The Governance Committee will work with management to develop an orientation for new Regents, to begin in January 2008. All Regents will be strongly encouraged to participate. The Governance Committee will provide guidance to Smithsonian management to ensure that orientation programs for the Smithsonian National Board and other Advisory Boards include appropriate elements of the Regents' orientation.

Best practices call for boards, board committees and individual board members to evaluate their effectiveness and contribution to the organization's mission and strategies. The Governance Committee will develop a process to do that for the Board of Regents, Board Committees and individual Regents. One area identified for measurement is the success of the Board, Board committees and individual Regents in maintaining a culture of inquiry and independent-mindedness, as well as working in constructive partnership with management. The assessment

process will be implemented in January 2008.

The Governance Committee will also consider the value and propriety of maintaining an independent and dedicated staff within the Institution to support the Board of Regents. Having staff reporting directly to the Regents may assist in the flow of critical information to the Regents and provide for independent analysis. At the same time, the Committee is aware that an independent staffing capacity may cause confusion regarding reporting and support responsibilities within the Institution. The Committee will explore the advisability of establishing such a function and present a recommendation to the Board at its January 2008 meeting.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

- 6. To enhance effectiveness, each Board committee will review its role, function, and charter. The committees will revise and update their charters as necessary. Committee charters will be subject to approval by the full Board. To provide momentum as the Board initiates its strengthened governance practices, new leadership will be appointed for each of the Board-established committees.**

**Rationale:** Over the past several years, it has become a best practice for board committees to have formal written charters that clarify purposes and responsibilities, establish operating procedures and require assessments of effectiveness. This reflects, among other things, the growing influence of the Sarbanes-Oxley Act on the nonprofit sector. By identifying a committee's purposes and functions and backing them with performance assessments, charters allow a committee to better carry out its strategic role in supporting the organization's mission.

Some of the Board committee charters lack the necessary detail to guide operations. For example, the Executive Committee charter does not require the Committee to audit the Regents' travel expenses as required by the Smithsonian Charter. Others do not reflect state-of-the-art governance practices. For example, the Compensation and Human Resources Committee charter does not incorporate the procedures set forth in the regulations under Section 4958 of the Internal Revenue Code (the so-called "intermediate sanctions" provisions) for establishing a "rebuttable presumption of reasonableness" in the compensation-setting process.

As Board committees review their role, function, and charters, they should also consider their operating procedures and specify or clarify their information needs and expectations of management. The committees should complete their review by end of 2007.

The Governance Committee recognizes that the strengthened governance practices recommended in this Report will require a high level of engagement by all Regents, and each committee is being charged with specific actions to be initiated immediately. To provide momentum during this critical period, new leadership will be appointed to chair the Audit and Review, Compensation and Human Resources, Facilities Revitalization, and Finance and Investment, and Governance Committees.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

7. **To ensure a rigorous, independent, and transparent system for evaluating executive compensation and performance, the Compensation and Human Resources Committee will implement a refined process that follows best practices in executive evaluation and compensation in the nonprofit sector. The Committee will follow this new process to recommend to the Board, at its September meeting, an appropriate compensation package to guide the search for the next Secretary, balancing the need to attract the best leader for the Institution with our public trust status.**

**Rationale:** Much recent scrutiny of the Smithsonian involved the level of compensation and spending practices of the former Secretary, including a housing allowance, first class travel accommodations and spousal travel. Other executive compensation policies have since been questioned by the Regents. Members of the Board and the Compensation and Human Resources Committee were unaware of some of these practices, such as exempting certain senior executives from the generally-applicable leave accrual system.

The Compensation and Human Resources Committee is responsible for ensuring that the Smithsonian executive compensation and benefits are reasonable and appropriate. The Committee should implement a refined compensation process that follows best practices in the nonprofit sector, including the IRS requirements under the intermediate sanctions regulations for obtaining the “rebuttable presumption of reasonableness.” These refinements will enhance the independence and reliability of information available to the Committee and will thereby better support the validity and propriety of the Committee’s and the Board’s compensation decisions. In addition to the specific process recommendations described here, the Governance Committee recommends that the Compensation Committee review the overall philosophy and rationale for Smithsonian employee compensation (see Recommendation 24).

This refined process will include the following elements (some of which are already in place): (1) Committee members will be independent of the Secretary in fact and in perception; (2) the executive compensation process will be administered under the control and direction of the Committee; (3) outside compensation consultants will be selected, engaged by and report solely to the Committee; (4) the Committee’s review will take into account all elements of compensation, including appropriate benchmarks; (5) current executive benefits will be examined for reasonableness in light of comparable market data and revised as appropriate; (6) decisions regarding executive compensation made in executive session will be documented in minutes kept in accordance with applicable IRS requirements; (7) when acting on recommendations of the Committee, the Board will have access to all necessary information, including comparable market data, to meet the applicable IRS requirements; (8) executive compensation and benefits will be accurately and fully reported on Form 990; and (9) the Committee and Board will follow best practices in the nonprofit sector for transparency and disclosure of compensation decisions and practices.

The Committee should implement these practices immediately to recommend to the Board at its September meeting an appropriate compensation package to guide the search for the next Secretary, balancing the need to attract the best leader for the Institution with our public trust status.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

8. To provide a mechanism for immediate and continuing Board attention to the Smithsonian's facilities needs and to underscore the Regents' commitment to resolving the facilities backlog, the *ad hoc* Committee on Facilities Revitalization will become a standing committee of the Board.

**Rationale:** The Smithsonian's most pressing issue is the \$2.3 billion facilities revitalization and maintenance backlog. Significant public attention has been focused on facilities revitalization, including planned hearings by both the House and the Senate on the issue over the summer. The Regents must leave no doubt that this is also their paramount concern. The *ad hoc* Committee on Facilities Revitalization was established in June 2005 and has met once since that time. Given the particularly complex and pressing nature of these issues, the Governance Committee recommends that the *ad hoc* Committee become a standing Board committee. The Committee on Facilities Revitalization should be made responsible for working with Congress and other stakeholders to explore all the options available for revitalizing aging Smithsonian facilities.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

9. To strengthen board development and integrate the nominating and governance process, the Governance Committee will assume the responsibilities of the Nominating Committee and be renamed the Governance and Nominating Committee. The Committee will develop criteria for the nomination of new Citizen Regents to ensure that the skill sets and diversity necessary for a dynamic Board are identified. It also will review existing processes for appointing Board committee members and chairs and will recommend improvements.

**Rationale:** Board development is an essential function of the Governance Committee and will be a focus of its work as improved governance practices are adopted and implemented. Combining the functions of the Governance and Nominating Committees will ensure that new Regent and committee appointments will support and reflect the priorities and strategies for strengthening the Board identified by the Governance Committee.

Press reports and Congressional inquiries have questioned the relationship between the Regent nominations and the prior Secretary. In response to these questions and reflecting best practices, the new Governance and Nominating Committee will develop criteria for nomination of all new Citizen Regents that factor in, among other things, critical skills (e.g., experience in public service, academia, business or complex cultural and educational institutions; expertise in areas such as



financial accounting and audit, investment strategies, governance, compensation, or facilities management) and diversity. The criteria will also value a candidate's independence and commitment to the Smithsonian.

The Governance and Nominating Committee will also review the committee and chair appointment process. The Bylaws do not limit the number of committees that a Regent may chair, making it possible to concentrate significant governance responsibility in a small group of Regents. Providing that a Regent may not chair more than one committee would result in a more equitable distribution of responsibilities and allow a committee chair to better focus attention on a single committee. The Bylaws also do not address appointment of non-Regents to committees, even though this is permitted by committee charters and established practices. Non-Regents contribute significantly to the work of Board committees, and the Governance Committee will consider appropriate Bylaw amendments and/or suggested committee charter revisions that address and encourage such appointments.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

10. **To provide the Board with necessary and timely legal advice, the General Counsel will have direct access to the Board, attend Board and Board committee meetings (either in person or by delegate), and regularly report to the Board and relevant Board committees in executive session. The General Counsel will have the right and obligation to bring directly to the Board and/or relevant Board committee any information on legal or compliance matters that he or she reasonably determines should be brought to their attention. The Governance Committee will review and report to the Board on whether sufficient resources are available for the Office of General Counsel to effectively perform its functions.**

**Rationale:** The Committee recognizes that under the prior Secretary, the General Counsel's access to the Board was limited. The General Counsel is legal counsel to the Institution and must be available to provide legal advice directly to the Board and its committees. The General Counsel must also have the right and obligation to bring directly to the Board and/or relevant Board committee any information on legal or compliance matters that he or she reasonably determines should be brought to their attention.

The General Counsel's attendance at Board and Board committee meetings will ensure that Regents have immediate access to legal advice during their deliberations. Regular reporting by the General Counsel to the Board and relevant committees on pending litigation and other serious legal or compliance issues, including in executive session as appropriate, will keep Regents informed of potential risks to the Smithsonian. The Committee also recognizes that given the number of meetings that committees may conduct, the General Counsel may not always be available to attend. Accordingly, the Committee expects that the General Counsel may designate a staff member to attend in his or her stead as appropriate. The Secretary should consult with the General Counsel to determine whether a staff lawyer should be dedicated to handle ethics, conflicts

of interest, and governance issues. The Governance Committee will review and report to the Board on whether sufficient resources are available for the Office of General Counsel to effectively perform its functions.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

11. To enhance the accessibility of financial information, the Chief Financial Officer will have direct access to the Board, attend Board and relevant Board committee meetings, and regularly report to the Board of Regents, the Audit and Review Committee, and/or other relevant Board committees in executive session. The Chief Financial Officer will have the right and obligation to bring directly to the Board and/or relevant Board committee any information on financial or compliance matters that he or she reasonably determines should be brought to their attention. The Audit and Review Committee will review and report to the Board on whether sufficient resources are available for the Office of Chief Financial Officer to effectively perform its functions.

**Rationale:** The Bylaws establish the position of Chief Financial Officer, whose functions include assisting the Board in the exercise of its fiduciary duties. However, neither the Bylaws nor charters for the Audit and Review and Finance and Investment Committees address the Chief Financial Officer's relationship to the Board or its committees. The Chief Financial Officer must, however, have the right and obligation to bring directly to the Board and/or relevant Board committee any information on financial or compliance matters that he or she reasonably determines should be brought to their attention.

The Chief Financial Officer should have direct access to the Board and Board committees by attending Board meetings and relevant Board committee meetings and by regularly reporting to the Board, the Audit and Review Committee and/or other relevant Board committees in executive session. The Audit and Review Committee will also review and report to the Board on whether sufficient resources are available for the Chief Financial Officer to effectively perform her functions.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

12. To strengthen the role of the Inspector General, the Audit and Review Committee will document the expectations for, and reporting relationship of, the Inspector General to the Board of Regents. The Inspector General is expected to bring directly to the Board and/or relevant Board committee information on all matters that he or she determines should be brought to their attention. The Audit and Review Committee will review and report to the Board on whether sufficient resources are available for the Office of Inspector General to effectively perform its functions. The Office of Inspector General will be relocated to downtown Washington, in close proximity to the Secretary and senior management.

**Rationale:** The Office of the Inspector General is an independent office within the Smithsonian charged by statute to promote economy, efficiency, and effectiveness, and prevent and detect waste, fraud and abuse. Until last year, the Inspector General reported to the Secretary but now reports directly to the Board of Regents. The Committee supports the Acting Secretary's decision to relocate the Office of the Inspector General to downtown Washington in close proximity to the Secretary and senior management.

The Audit and Review Committee will work with the Inspector General to formalize her reporting relationship to the Board of Regents, consistent with applicable law. Developing formal terms of reference for this relationship will strengthen the Inspector General's contribution to good governance of the Smithsonian. The Inspector General will propose terms of reference to the Audit and Review Committee for review and presentation to the Board of Regents for approval in September 2007. The Audit and Review Committee will also review and report to the Board on whether sufficient resources are available for the Office of Inspector General to effectively perform its functions.

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

13. **To recognize the assistance and support that the Smithsonian National Board and other Advisory Boards provide to the Smithsonian and to establish a stronger link between the Regents and the Advisory Boards, the Governance Committee will oversee an examination of options to more effectively engage these Advisory Boards and will report to the Board with its recommendations in 2008.**

**Rationale:** The Regents recognize that Smithsonian Advisory Boards are an underutilized core asset that can, and should, become a strong partner with them in advancing the Institution's mission. The more than 600 Advisory Board members are effective advocates and fundraisers and possess a focused and intense passion for the museums or programs they support. Acknowledging the contributions Advisory Boards can make to general Smithsonian governance, the Regents have established a practice of inviting the Chair of the Smithsonian National Board to attend all of its meetings and to participate in other Regent activities, including executive search committees.

Advisory Boards provide a key link between the Regents and the public and a direct connection to Smithsonian units. Advisory Board members are a diverse group, coming from all walks of life and representing a wide variety of interests and constituencies. Many individual Advisory Board members have indicated that they are enthusiastic about engaging in new ways to assist the Regents in their oversight and support of the Institution.

The Governance Committee believes the Regents should seize this opportunity and will ask the Chair of the Smithsonian National Board and the Secretary to assist with a review of ways to use the Advisory Boards more effectively. The Committee will report to the Board of Regents with recommendations in 2008. The report should propose a new, strong partnership between the Regents and the Advisory Boards that will also:

- enhance the Regents' understanding of Smithsonian units and their strategic plans.

- inform the Regents' deliberations and oversight of issues relating to the individual units.
- increase the effectiveness of Institution-wide advancement and fundraising efforts.
- ensure a diversity of inputs to inform the Regents decision-making process.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

14. To foster a culture of ethical conduct, the Secretary will develop an overarching Smithsonian Code of Ethics that promotes best practices and the highest professional standards and is based on the guiding principles for ethical conduct adopted by the Regents. The Code will be presented to the Board for review and approval as soon as possible and in any event no later than the end of 2007.

**Rationale:** While the Regents Ethics Guidelines and the Smithsonian Standards of Conduct, which is modeled on the Ethics in Government Act and federal conflict of interest laws, provide guidance for individual conduct, and other policies address specific ethics issues, the Smithsonian does not have a single Board-approved statement of institutional ethics that reflects the Guiding Principles on Ethical Conduct set forth above. An institutional Code will reaffirm the Smithsonian's mission, purpose, and values; provide guidance to Regents, staff, and volunteers in the performance of their Smithsonian responsibilities; and support public confidence in the integrity of the Smithsonian.

The Institutional Code of Ethics should complement the existing Standards of Conduct and the Regents Ethics Guidelines and reflect the principles contained in the Code of Ethics for Museums of the American Association of Museums as well as relevant codes for federal employees. The new Code should require that all Smithsonian staff participate in an annual process to encourage a continuing commitment to the highest ethical conduct and best professional practices. The Smithsonian will also establish telephonic and electronic ethics "hot lines" for staff to report questionable activities or to proactively seek guidance.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

15. To embrace a spirit of increased openness, the Regents will provide an opportunity for input through an annual public forum and other appropriate mechanisms beginning in 2008. The Regents also will engage regularly in direct communication with interested members of Congress to promote a constructive dialogue with these key stakeholders. In

**addition, the Regents will immediately launch a public webpage that will include information about the structure, membership, and functions of the Board, as well as meeting agendas and summaries of meeting minutes.**

**Rationale:** The Committee recognizes that effective transparency requires not only that information about the Regents is made widely available, but also that the Regents receive information and input from stakeholders to inform their decision-making. The Committee recommends that the Board begin in 2008 a practice of hosting an annual public forum that will enable interested stakeholders to address information and inquiry directly to the Board. The Committee will continue to review best practices to consider other mechanisms that will provide appropriate opportunities for the Board to receive public input and to be more accessible to stakeholders.

Members of Congress have indicated that oversight of the Institution would benefit from increased and direct communication with the Board, while recognizing that the Secretary and other Smithsonian staff must remain the primary channel for information. The Regents agree that increased engagement with Congress will benefit the Institution and plan to engage regularly in direct communication with the Congress. The Board may also host an annual forum or event to facilitate interaction with Members of Congress and their staffs.

The Smithsonian's public website has included little information on Smithsonian governance generally and the Board of Regents in particular. As a trust instrumentality of the United States with a mission to increase and diffuse knowledge, the Smithsonian must be a leader in operating with effective transparency. Outside observers have noted the difficulty of monitoring Board activities and decisions. The Committee has worked with Smithsonian staff to develop a public webpage that includes information on Board and committee structure, membership, functions, meeting agendas and minutes, the Smithsonian's IRS Form 990, management reports to the Board, and significant policies and procedures. The Board will work with staff on an ongoing basis to ensure that the webpage remains current and an effective means of conveying information about the Board and its activities.

## **RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY**

**16. To foster an ethos of transparency, the Secretary will develop a strategy to increase available information about the Board and Smithsonian activities and operations and to enhance communications with the Board. The strategy will be based on the best practices of nonprofit organizations, universities, and federal agencies. The Secretary will begin immediately implementing elements of this recommendation as they are developed and will present the full strategy to the Board for review and approval by the end of 2007. The strategy should include the following components:**

- **Enhanced use of the internet to make information about Smithsonian policies, governance, finances, operations, programs, activities, and decision-making processes widely available.**

- Mechanisms to foster communication between and among senior management and the Board of Regents, staff, and other stakeholders.
- A framework to ensure effective congressional outreach and information.
- A communications plan to ensure that all constituencies are routinely informed of important decisions and current issues and have opportunities to provide comments or information to the Board and management. The plan should consider the establishment of a public ombudsman.
- An effective process, including telephonic and electronic “hot lines,” for the staff or public to bring ethics and compliance issues to the attention of management and the Board.
- Plans for monitoring and measuring these efforts, including routinely benchmarking Smithsonian efforts against evolving best practices.

**Rationale:** Although the mission of the Smithsonian Institution is to increase and diffuse knowledge, the Institution has been subject to criticism that it does not apply this mission to knowledge about the Institution’s policies, governance, finances, operations, or decision-making processes. The Smithsonian must operate in an ethos of transparency that is both informed by, and reflective of, its mission and status as a leading educational and research organization. To achieve this result, the Smithsonian must exploit all of its substantial and diverse communication resources.

In developing a strategy for increased transparency, the Smithsonian should identify and acknowledge its array of stakeholders and recognize their common interests as well as those particular to each, determine the scope of information that should reasonably be available to each stakeholder group, and establish mechanisms to make the information readily accessible. The Smithsonian should be prepared to identify and articulate a reasonable basis for its decisions on whether and how particular types of information are made available. In addition, the strategy should include establishing telephonic and electronic “hot lines” for staff and the public to report questionable activities or to proactively seek guidance on ethics and compliance matters.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

17. To increase accessibility to information about Smithsonian activities, the Regents affirm that the Smithsonian embraces the principles of disclosure reflected in the Freedom of Information Act (“FOIA”) and follows its spirit in considering public requests for information. The Secretary will develop and issue by the end of 2007 a policy on disclosure of Smithsonian records to implement this guidance.

**Rationale:** Although FOIA applies only to executive branch agencies, the Smithsonian has had a long practice of being guided by FOIA principles in responding to requests for information. Even so, there has been confusion, both within the Smithsonian and with the public, regarding the applicability of those principles. Recent requests for business contracts and personnel information exacerbated the uncertainty. With this endorsement by the Board, the underpinnings of Smithsonian policy and practice will be established and give authority to the Secretary to develop an appropriate policy on disclosure of information.

### RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

18. To avoid even an appearance of conflict of interest or divided loyalty, the Regents adopt the policy that, beginning October 1, 2007, Smithsonian senior executives shall not be permitted to serve on the board of a for-profit company.

**Rationale:** Serious concerns have been raised about the participation on corporate boards by senior Smithsonian executives. In particular, stakeholders and the IRC have asked whether senior executives devote too much time to such activities and whether potential conflicts of interest exist. The obligations of, and compensation received for, corporate board service also give rise to questions regarding an executive's loyalty and professional commitment to the Smithsonian. To avoid even an appearance of impropriety, the Governance Committee recommends that senior executives be prohibited from serving on boards of for-profit companies.

### RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

19. To maintain public confidence in the integrity of the Board and staff, the Regents adopt the following policies and guidance on outside activities and conflicts of interest:
- The Secretary will transition all Smithsonian staff to a leave accrual system as soon as possible, and in any event no later than October 1, 2007. The leave policy for all Smithsonian employees will follow federal employee policies.
  - The rules on approval of outside activities engaged in by senior executives established in the Interim Policies and Procedures are adopted as standing policies and expanded to include all unit heads and above.

- As the Smithsonian's Chief Ethics Officer, the General Counsel is primarily responsible for the identification and management of potential conflicts of interest of senior executives. The General Counsel will personally review the annual financial disclosure statements and outside activity requests of all senior executives and unit heads under the Standards of Conduct. The General Counsel will provide a written report to the Audit and Review Committee on the conclusion of the annual financial disclosure process and will also provide a written annual report to the Committee on the reported outside activities of senior executives, including dispositions of requests for clearance to participate in outside activities. The Audit and Review Committee, in turn, will report the General Counsel's conclusions and recommendations, if any, to the Board.
- The Secretary will develop an accessible database for staff to alert appropriate officials when potential conflicts of interests may exist.

**Rationale:** The Committee notes that the Smithsonian Standards of Conduct provide a clear standard for staff engagement in outside activities and include an appropriate disclosure and recusal process for outside activities. Employees are not permitted to engage in outside activities for pay or any outside activities unrelated to their Smithsonian position during regular business hours. Some senior executives, however, do not accrue or record leave. For these employees, paid or unrelated outside activities taking place during regular business hours may appear to be occurring on Smithsonian, rather than on their own, personal time. Accordingly, the Committee recommends that all Smithsonian employees be subject to the existing system of leave accrual, which will provide 26 days of leave annually. This will enable senior executives to participate in permitted outside activities while on annual leave, subject to the requirements of the Standards of Conduct.

The Standards of Conduct and the Board of Regents Ethics Guidelines provide an appropriate process for staff and Regents to report any financial interests that may conflict or appear to conflict with Smithsonian interests. The Committee recommendation for additional reporting and review in the financial disclosure process will improve Board oversight of this process.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

20. To promote accountability and ensure the public trust, Smithsonian Business Ventures ("SBV") operations will follow established Smithsonian policies, except in specific pre-approved circumstances when an exception is necessary to accomplish SBV mission requirements. All current deviations from general Smithsonian policies must be eliminated or individually re-approved by the Secretary and reported to the Chair of the Audit and Review by the end of 2007. The Regents endorse the Acting Secretary's plan to review the status, mission, and operations of SBV and to make recommendations to the Board concerning these issues.



**Rationale:** Recent press reports, Congressional inquiries, and an Inspector General audit and continuing investigation have brought into question the propriety of SBV policies and activities, such as its compensation practices and travel and expense policies. SBV was created in 1999 to consolidate Smithsonian business activities with the expectation that an Institution-wide unit would be better able to expand existing businesses, initiate new businesses, and improve business management and operational efficiency. To achieve those goals, SBV was permitted to conduct its activities more like a commercial enterprise and was not subject to all Smithsonian policies. SBV adopted separate policies in numerous areas, such as travel, contracting, accounting, and human resources. In light of the criticism of SBV practices, the Committee recommends that SBV follow generally-applicable Smithsonian policies except where a clear need for deviation is established. The recommendation provides a process for review, approval, and reporting of SBV policy determinations that will improve accountability and oversight.

The Regents further endorse the Acting Secretary's plan to review the status, mission, and operations of SBV and to make recommendations to the Board concerning these issues. In undertaking this review, the Acting Secretary should remain mindful of and specifically underscore the Regents' ultimate responsibility for, and oversight of, SBV.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

21. To strengthen stewardship of Smithsonian resources, the rules on expenses for travel, representational activities, and special events established in the Interim Policies and Practices are established as standing policies and the Regents adopt the following additional policies:
- Expenses for travel, representational activities, and special events incurred by or on behalf of the Office of the Secretary will be subject to review by the Audit and Review Committee for reasonableness and compliance with standard Smithsonian policy. The Audit and Review Committee will report to the Board at least annually on the results of this review, including any deviations from Smithsonian policy. The Chief Financial Officer will conduct periodic audits of travel and entertainment expenses incurred by the Secretary and senior executives and report the results of such audits to the Audit and Review Committee.
  - Expenses for Regents' activities, as well as other Smithsonian special events, shall be reasonable and in accordance with spending guidelines to be developed by the Secretary and submitted to the Executive Committee for review and approval no later than September 2007.
  - The Audit and Review Committee will review internal controls and monitoring processes for all travel and expense reimbursements to determine whether they are consistent with best practices and will report to the Board on its findings and recommendations in 2008.

**Rationale:** The Inspector General's report on the former Secretary's travel and entertainment expenses demonstrated that Smithsonian policies and practices in this area needed improvement. The Governance Committee took swift action (with Executive Committee approval) in April 2007 by proposing Interim Policies and Practices to ensure that expenditures for travel, representational activities, and special events must be reasonable, demonstrably support the Smithsonian's mission, and not provide a personal benefit. The Committee concludes that making the Interim Policies and Practices permanent and adopting the additional guidelines and review processes in this recommendation will close the gaps reported by the Inspector General.

To make clear that expenses related to Regents' activities and other Smithsonian special events will also be subject to the requirement they are reasonable, in support of the Smithsonian mission, and not for personal benefit, the Committee recommends that the Secretary develop clear and appropriate guidelines to apply to the costs of such activities.

The Audit and Review Committee should annually review these expenses, report to the Board on any deviations from standard policy, and should adopt procedures, such as conducting random reviews of requests for reimbursement and their disposition during the year, to ensure continuing compliance.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

22. **The Finance and Investment Committee, working with the Secretary and Chief Financial Officer, will review the Smithsonian federal and trust budget formulation and monitoring process to ensure that the Committee and the Board have adequate opportunities to provide strategic direction in the development of budget priorities and meaningful oversight of the Smithsonian's budget and financial resources. The Committee will report to the Board on its findings and recommendations in 2008.**

**Rationale:** Among the most important responsibilities of the Board is ensuring that the Smithsonian manages its financial resources effectively to further its mission. The annual budget and the process for developing and monitoring the Smithsonian's budget should be used as key tools for the Board to establish Institutional priorities. The Governance Committee recommends this review to ensure that the Board has appropriate and effective input and oversight into the Smithsonian budget development and monitoring process.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

23. **The Audit and Review Committee, working with the Secretary and Chief Financial Officer, will review the Smithsonian's financial reporting systems and internal controls**

to ensure that appropriate systems and controls are in place to enable the Committee and the Board to provide meaningful oversight of the accuracy and integrity of Smithsonian financial statements and reports. The Committee will report to the Board on its findings and recommendations in 2008.

**Rationale:** To fulfill its responsibility to provide effective oversight and require accountability for the management of Smithsonian resources, the Board should ensure that appropriate policies are in place to guide all aspects of Smithsonian operations and that there is an effective process for enforcing and monitoring compliance. As part of the recommended review, the Audit and Review Committee should consider launching regular comprehensive risk assessments. The Governance Committee notes that a recent management letter from the Smithsonian's outside auditor cited inadequate accounting resources and staff as a "reportable condition" and suggests that the Audit and Review Committee determine whether the Smithsonian is taking appropriate steps to address this concern and other issues raised in that report.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

24. To ensure that Smithsonian compensation practices are fair and equitable to employees and provide appropriate stewardship of Smithsonian human and financial resources, the Compensation and Human Resources Committee, working with the Secretary, will review the Smithsonian philosophy and rationale for senior trust employee compensation in order to present a unified compensation philosophy and structure to the Board by the end of 2007.

**Rationale:** Serious questions have been raised as to whether compensation for Smithsonian senior executives should be brought into line with federal levels. The Smithsonian maintains separate employment systems governing its federal, trust, and SBV employees.

Smithsonian human resources policies for non-SBV trust employees track those for federal employees in many respects. Salaries are comparable for employees below the senior level (*i.e.*, the federal and trust pay schedules mirror one another). The Smithsonian may appoint federal employees to Senior Level ("SL") positions and pay above the GS scale to the applicable SL salary cap, although Smithsonian federal employees are not eligible for the Senior Executive Service ("SES") positions. Senior trust executives are not subject to a similar explicit salary cap.

The Governance Committee believes that the Board should review existing compensation policies and practices to ensure that they are appropriate, effective, and serve the public trust. Particular focus should be directed to aligning senior federal and trust employees under a unified compensation philosophy. In doing so, the Board's review should also provide for the flexibility identified by the IRC to allow limited deviations from any unified compensation structure to attract highly qualified individuals for key positions.

The Governance Committee believes that this recommendation reflects concerns expressed to the Regents by the IRC regarding the advisability of creating a unified compensation philosophy and structure for both federal and trust senior executives.

## RECOMMENDATIONS TO STRENGTHEN THE CULTURE OF ACCOUNTABILITY

25. To promote confidence in the integrity of Smithsonian business activities, the Secretary will develop a policy on Smithsonian contracting that will include principles and practices to ensure that all Smithsonian contracting activities are conducted with integrity, fairness, and openness and in a manner that will best achieve Smithsonian mission requirements. The Secretary will develop and issue by the end of 2007 a policy on contracting to implement this guidance.

**Rationale:** Members of Congress, the public, and the media have expressed concern about the Smithsonian entering into confidential business contracts that appeared to have been awarded in a manner not consistent with contracting standards generally applicable in the public sector. Existing Smithsonian contracting policies state that the Smithsonian is guided by federal rules and principles for contracting, but the policies do not clearly describe how or when exceptions to these principles and rules may be approved. The Committee recommends that the Secretary reaffirm the Smithsonian's commitment to the consistent application of best practices across all contracting activities and develop a policy ensuring adherence to those practices.

### APPENDIX B: METHODOLOGY

The Governance Committee met weekly from March 21, 2007, to June 4, 2007, including one-full day session. Most meetings lasted over two hours and were marked by active involvement by all members.

In making these recommendations, the Committee was informed by the best governance practices in the nonprofit and federal sectors. Among its initial tasks was conducting a landscape analysis, which compared current Smithsonian practices to the Panel on the Nonprofit Sector's draft Principles for Effective Governance, as well as the best practice of similar organizations.

As part of that effort, the Committee identified a number of organizations comparable to the Smithsonian in certain respects and, through information publicly available or through interviews, collected information about the governance practices of those organizations. After completing the analysis, the Committee met to identify strengths and weaknesses in the Smithsonian's current practices, as well as best practices of other organizations that the Institution should consider in developing practices to strengthen its governance.

On May 6, 2007, the Committee and other invited Regents engaged in a vigorous dialogue with four well-regarded experts on nonprofit governance:

Victoria Bjorklund, Partner, Simpson Thacher & Bartlett LLP  
 Scott Harshbarger, Senior Counsel, Proskauer Rose, LLP  
 William Josephson, Former Assistant Attorney General of New York, Charities  
 Division  
 William P. Ryan, Research Fellow, Hauser Center for Nonprofit Organizations,  
 Harvard University

The following day, Mr. Josephson and Mr. Ryan spoke to the full Board of Regents on 21st century governance practices and their applicability to the Smithsonian. In preparation for these discussions, the speakers were provided substantial information on Smithsonian governance issues as well as Institutional operations in general.

The Committee also had in-depth presentations from key Smithsonian staff to help it understand the unique legal nature of the Institution and the interaction between the Smithsonian's federal and trust budget processes.

This report was the result of an intensive drafting process. Over the last month, the Committee reviewed proposed recommendations against the landscape analysis, issues raised by stakeholders, and the relevant literature on nonprofit best practices, including BoardSource's "Twelve Principles of Governance That Empower Boards."

Members of the Committee met with interested members of Congress and their key staff in an effort to ensure that their concerns were heard and, to the extent practicable, addressed in this report. The Committee expects that these conversations, as well as outreach to other stakeholders, will continue in the coming months.

In the final week before this Report was completed, the members of the IRC met with the Regents and discussed their preliminary findings and recommendations. The Regents engaged the IRC directly in a frank review and discussion of their work. The IRC presentation and ensuing discussion informed the Governance Committee's final recommendations.

The Committee has also commissioned a survey of Regents, Regents' staff, senior Smithsonian staff and the chairs of Smithsonian Advisory Boards designed to solicit their input on the Board of Regents' governance practices. The results of the survey will be particularly useful as the Committee begins expanding upon and implementing its longer-term recommendations.

## **APPENDIX C: COMMITTEE MEMBERS AND ACKNOWLEDGEMENTS**

### **Regent Members:**

#### **Patty Stonesifer, Chair**

*Chief Executive Officer, Bill and Melinda Gates Foundation*

Patricia Q. (Patty) Stonesifer is the chief executive officer of the Bill and Melinda Gates Foundation and previously was senior vice president of Microsoft. Ms. Stonesifer has served as a member of the U.S. delegation to the United Nations General Assembly Special Session on HIV/AIDS and currently is on the boards of DATA (Debt, AIDS, Trade, Africa); Amazon.com; and The Seattle Foundation.

**Robert P. Kogod**

*President, CESM Inc.*

Robert P. Kogod is the former co-chairman and co-chief executive officer of the Charles E. Smith companies and currently a trustee with Vornado Realty Trust and Archstone-Smith Trust. He serves on the boards of numerous professional and civic organizations, including the Jewish Federation of Greater Washington; the District of Columbia College Access Program; the Island Foundation, Mount Desert Island, Maine; and Hillel International.

**Dr. Walter E. Massey (Regent 2001-2007, reappointment pending)**

*President, Morehouse College*

Walter E. Massey is the ninth president of Morehouse College in Atlanta. He previously served as provost and senior vice president of academic affairs at the University of California; director of the National Science Foundation; president and chairman of the American Association for the Advancement of Science; vice president of the American Physical Society; vice president for research at the University of Chicago; director of the Argonne National Laboratory; and dean of the college and professor of physics at Brown University.

**The Honorable Doris O. Matsui**

*Member of Congress, Fifth Congressional District of California*

Doris O. Matsui, a Democrat from California, has been a member of the House of Representatives since 2005. She is a member of the House Rules Committee and the House Transportation and Infrastructure Committee, and previously worked in the White House, serving as deputy assistant to President Bill Clinton. She has served on a number of nonprofit boards, including as president and board chair of KVIE, Sacramento's public television station, and on the board of trustees of the Woodrow Wilson International Center for Scholars.

**Outside Member:**

**Diana Aviv**

*President and CEO, Independent Sector*

Diana Aviv is the president and CEO of Independent Sector, a national leadership forum for America's nonprofit organizations, foundations, and corporations. She also serves as executive director of the Panel on the Nonprofit Sector, an independent panel of nonprofit and philanthropic leaders convened by Independent Sector in October 2004.

## **Acknowledgements**

The Committee first wishes to express its sincere gratitude to the Institution's more than 6100 staff whose dedication and commitment are critical to the Smithsonian's current and future success.

The members of the Governance Committee wish to express their appreciation to the following for their assistance in producing this report or providing guidance to the Committee during its deliberations:

### **Committee Staff:**

Alexis Marks, Legislative Assistant to The Honorable Doris O. Matsui

John E. Huerta, General Counsel, Smithsonian Institution

James M. Hobbins, Executive Assistant to the Secretary, Smithsonian Institution

Grace L. Jaeger, Administrative Officer, Smithsonian Institution

Elaine L. Johnston, Assistant General Counsel, Smithsonian Institution

John K. Lapiana, Special Advisor to the Regents, Smithsonian Institution

Celia Roady, Esq., Morgan, Lewis & Bockius, Washington, D.C.

Ann K. Battle, Esq., Morgan, Lewis & Bockius, Washington, D.C.

### **Outside Experts:**

Victoria Bjorklund, Partner, Simpson Thacher & Bartlett LLP

Scott Harshbarger, Senior Counsel, Proskauer Rose, LLP

William Josephson, Former Assistant Attorney General of New York, Charities Division

William P. Ryan, Research Fellow, Hauser Center for Nonprofit Organizations,  
Harvard University

## **APPENDIX D: INTERIM POLICIES AND PRACTICES, APPROVED APRIL 9, 2007**

Approved by the Regents' Executive Committee, April 9, 2007

Approved by the Regents' Governance Committee, April 6, 2007

### **Recommended Interim Policies and Practices**

The Governance Committee has commenced a review of Smithsonian governance policies and practices to provide recommendations to the Board of Regents on whether those policies and practices might be strengthened to improve Smithsonian operations in support of its mission. In order to address areas of concern that have been raised in recent Inspector General reports and Congressional inquiries, the Governance Committee has made the following recommendations for interim policies and practices to be put into place immediately, subject to further review following receipt and consideration by the Board of Regents of the report of the Independent Review Committee and the further deliberations of the Governance Committee.

#### A. Reimbursement of Travel Expenses for Smithsonian Employees

**Background:** The Smithsonian travel policy applies to all Smithsonian-supported travel paid by federal or trust funds, and is compliant with federal government travel regulations. This policy applied to the former Secretary, except that his employment agreement allowed him to fly “first class.”

**Recommendation:** All travel by Smithsonian officers and employees should be subject to the Smithsonian travel policy. The Inspector General should be requested to periodically review the travel of the Secretary, officials who report directly to the Secretary, and unit directors and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to management for appropriate action.

#### B. Reimbursement of Travel Expenses for Regents and Advisory Board Members

**Background:** Regents and members of Smithsonian advisory boards may request reimbursement for reasonable travel expenses in attending meetings on behalf of the Smithsonian; there is no reimbursement for spouses or guests of board members. Travel reimbursements to board members have not been subject to the Smithsonian travel policy. The Smithsonian generally arranges hotel accommodations for board members at favorable rates.

**Recommendation:** Reimbursement of travel expenses of Regents and advisory board members should be consistent with the Smithsonian travel policy. The Inspector General should be requested to periodically review reimbursements of travel expenses for Regents and advisory board members and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to the Executive Committee for appropriate action.

#### C. Spousal Travel

**Background:** The Smithsonian does not pay or reimburse spousal travel expenses, except when the spouse’s service in an official capacity is demonstrated in advance and is approved by an Under Secretary or the CEO of Business Ventures, or in connection with authorized relocation expenses. This policy did not apply in the case of the former Secretary, whose employment agreement allowed him to travel with his spouse “when appropriate”.

**Recommendation:** The Smithsonian should not pay or reimburse spousal travel expenses for any employees, except in compliance with the Smithsonian travel policy and with the prior written approval of the Deputy Secretary/COO and the General Counsel. The Inspector General should be requested to periodically review reimbursements for spousal travel and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to management for appropriate action.

#### D. Housing Allowance



**Background:** The former Secretary received a housing allowance as specified in his employment agreement. The Smithsonian pays or reimburses housing expenses in limited cases in connection with relocation of new or transferred employees and overseas assignments. The Smithsonian is currently undertaking a review of its policies and practices for payment or reimbursement of employee housing expenses.

**Recommendation:** The Acting Secretary will not receive a housing allowance. The Smithsonian should expeditiously conclude its review of policies and practices on payment of employee housing expenses and report thereon to the Audit and Review Committee. Prior to concluding this review, any new agreements to pay or reimburse employee housing expenses should require the prior written approval of the Deputy Secretary/COO and the General Counsel.

#### E. Social Club Dues

**Background:** The former Secretary and other designated senior officers and employees with representational responsibilities received reimbursement for social club dues.

**Recommendation:** The Smithsonian should not pay or reimburse social club dues for any officer or employee.

#### F. Chartered Aircraft

**Background:** Smithsonian travel policy requires that the mode of transportation must be the most advantageous and the most practical commensurate with the nature and purpose of the trip. The Inspector General reported on use of chartered aircraft by the former Secretary.

**Recommendation:** The Smithsonian should not pay or reimburse the cost of travel on chartered aircraft in the absence of demonstrated business necessity, such as in the case of transportation of a collection item that cannot be safely transported by common carrier. Any payment for travel on chartered aircraft should be approved in advance in writing by the Deputy Secretary/COO and the General Counsel. The Inspector General should periodically review the use of chartered aircraft and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to management for appropriate action.

#### G. Use of Trust Funds for Representational and Special Event Expenses

**Background:** Smithsonian policy on use of trust funds for representational and special event expenses prescribes limits on and criteria for expenditure of trust funds for meals, gifts, entertainment, flowers, alcohol and similar expenses. The Inspector General reported on expenditures by the Office of the Secretary that were not consistent with this policy. A supplement to this policy has recently been issued as interim clarification.

**Recommendation:** Smithsonian funds should only be expended for reasonable expenses in accordance with Smithsonian policies, and should not be used for expenses that are lavish or excessive. The Inspector General should be requested to periodically review the use of funds for representational and special events by the offices of the Secretary, officials who report directly to

the Secretary, and unit directors and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to management for appropriate action.

#### **H. Use of Smithsonian Travel Card and Purchase Card**

**Background:** The Smithsonian participates in two federal government programs that provide for issuance of credit cards to employees for official use. Smithsonian officers and employees who engage in travel as part of their official duties are issued a Smithsonian travel card to be used solely for travel expenses. Smithsonian offices are issued a purchase card to be used solely by authorized employees for small purchases (less than \$2,500) of office supplies, equipment or services. All expenses charged to a Smithsonian travel card or Smithsonian purchase card must be for authorized business expenses and in accordance with policies governing the use and payment of such cards as specified by the federal government.

**Recommendation:** The Smithsonian should review its practices and procedures to ensure appropriate monitoring and compliance with policy on use of Smithsonian credit cards. The Inspector General should be requested to periodically review the use of Smithsonian travel cards and purchase cards and report to the Audit and Review Committee on compliance with policy on use of Smithsonian credit cards. Any violations of this policy should be reported to management for appropriate action.

#### **I. Documentation Requirements for Reimbursement of Expenses**

**Background:** Smithsonian financial policies require prior authorization and submission of adequate documentation supporting the business purpose of any expense to be paid or reimbursed from Smithsonian funds. The Inspector General reported that on occasion expenses were paid or reimbursed without having proper authorization or documentation.

**Recommendation:** The Smithsonian should review its practices and procedures to ensure appropriate monitoring and compliance with policies for documentation of reimbursable expenses. The Smithsonian should adopt a policy providing that reimbursement requests may be denied if adequate documentation is not provided in a timely manner. The Inspector General should be requested to periodically review the Smithsonian's practices on reimbursements for business expenses and report to the Audit and Review Committee on compliance with this policy. Any violations of this policy should be reported to management for appropriate action.

#### **J. Outside Activities and Board Memberships**

**Background:** Smithsonian Standards of Conduct require prior clearance and review of board memberships and paid outside activities that are related to an employee's Smithsonian duties. This review requires approval by the employee's supervisor and unit head to ensure that the activity is compatible with the discharge of official duties and a determination by the General Counsel/Ethics Officer that the activity does not give rise to an apparent or actual conflict of interest.

**Recommendation:** All board memberships and paid outside activities of the Secretary and officials reporting directly to the Secretary should be subject to clearance and review under the Standards of Conduct, whether related or unrelated to Smithsonian duties. The Secretary should receive approval of the Chair of the Executive Committee before engaging in any proposed board memberships or paid outside activities.

#### **K. Regents' Events**

**Background:** Special events and activities hosted by or on behalf of the Board of Regents are governed by Smithsonian policies on representational and special event expenses. There is currently no process for Regents' review of the expenses for these events.

**Recommendations:** Expenses for Regents' events should be reasonable in light of the purpose of the event and should not be lavish or excessive. Expenses for Regents' events involving significant donor development or recognition should be appropriate to the occasion. Proposed budgets for Regents' events should be approved in advance by the Executive Committee.

### **CREATION OF NEW STANDING COMMITTEES OF THE BOARD OF REGENTS**

Ms. Stonesifer next directed the Regents' attention to the Governance Committee's proposed motion to create two additional standing committees for the Board of Regents. Noting that the creation of such committees requires modifications to the Board's bylaws, which in turn require a 30-day advance notice, the Regents discussed the proposed creation of a standing Governance Committee and a standing Facilities Revitalization Committee. Ms. Stonesifer added that the Governance Committee would absorb the responsibilities of the Regents' Nominating Committee. When reviewing the division of committee responsibilities, the oversight of the Institution's collections and research also was discussed, as such efforts make manifest the Institution's mission to support the increase and diffusion of knowledge. Ms. Stonesifer noted that the review of the committees' duties is an ongoing process that is under the purview of the Governance Committee.

Accordingly, the following motion was unanimously approved:

*VOTED that, pursuant to Section 4.04 of the Bylaws and in accordance with the recommendations of the Governance Committee, the Board of Regents establishes the following new Standing Committees to have the responsibilities set forth below:*

*Governance and Nominating Committee: This Committee shall be responsible for oversight of the governance policies and practices of the Board of Regents and the Smithsonian, for making recommendations to the Board to improve governance policies and practices, for assessing the effectiveness of the Board and its members and Committees, for recommending candidates for service as citizen members of the Board, for nominating candidates for election as Chancellor or members of the Executive Committee, and for such other nominations or recommendations as may be required by the Board from time to time. The Committee shall replace the separate Governance and Nominating Committees. Facilities Revitalization Committee: This Committee shall be primarily responsible for providing leadership and oversight in addressing the \$2.3 billion shortfall in funding for the revitalization and maintenance of the Smithsonian physical plant. The Committee shall replace the ad hoc Committee on Facilities Revitalization.*

*The Executive Committee shall propose amendments to the Bylaws to reflect these changes.*

## **APPOINTMENT OF NEW COMMITTEE CHAIRS**

The recommendations of the Governance Committee Report also prompted a decision by the Regents' Executive Committee to propose new Regents' committee chair assignments. These appointments are intended to support the Regents' efforts to review and effect, with a fresh eye, changes to the Institution's governance. The Chancellor thanked the new chairs in advance for their leadership efforts during this critically important time for the Institution. Accordingly, the following motion was unanimously approved:

*VOTED that the Board of Regents approves the appointment of the following Regents to chair the following Committees of the Board: Audit and Review Committee: Phillip Frost; Compensation and Human Resources Committee: Patty Stonesifer; Facilities Revitalization Committee: Robert Kogod; Finance and Investment Committee: Eli Broad; Governance and Nominating Committee: Shirley Ann Jackson.*

## **DISCUSSION OF STATEMENT OF THE BOARD OF REGENTS**

Mr. Sant next presented a draft statement from the Board of Regents that was proposed for public distribution. The Regents agreed that the document provides an important statement of the

Regents' commitment to the comprehensive review and effective transformation of the Institution's governance.

Acknowledging that the draft statement was thoughtfully crafted, the Regents discussed modifications intended to better express the Regents' commitment to these changes. The Regents' immediate adoption of interim policies and procedures in response to the events of recent months was emphasized as a critical first step in the Institution's movement towards better governance. The recent launch of a search for the twelfth Secretary of the Smithsonian also was cited as a positive action that signals the forward-looking efforts of the Board. In addition, the Regents' commitment to transparency and accountability was made clear by the inclusion of a publicly accessible website address in the statement.

In closing, the Regents expressed their deep appreciation for the ongoing commitment and efforts of Smithsonian staff and volunteers, noting that it is their dedication that enables the Institution to reach and enrich the lives of millions every day.

\* \* \* \* \*

***DRAFT***

**A STATEMENT FROM THE BOARD OF REGENTS ON THE REPORT AND RECOMMENDATIONS OF THE GOVERNANCE COMMITTEE**

Nearly three months ago, in response to intense congressional and public interest about executive compensation and the handling of certain expenses by the former-Secretary, the Regents initiated a comprehensive review of governance at the Smithsonian. Since that time, we have been scrutinizing the way we had been overseeing the Smithsonian both from the inside and out.

Internally, we created a standing Governance Committee of the Board, with a mandate to swiftly and comprehensively review the Smithsonian policies and practices as well as how the Board could better oversee this vast and complex Institution. We asked the Governance Committee to look forward and report back to the Board with recommendations to strengthen the Regents' leadership and governance of the Institution. The Governance Committee, chaired by Regent Patty Q. Stonesifer, has admirably done so.

At the same time that committee was working, we also wanted an outside/external perspective. The Regents commissioned the Independent Review Committee (IRC), chaired by Charles Bowsher, former Comptroller General of the United States, to review those matters identified by Inspector General and Senator Charles Grassley. Last Monday, the IRC met with the full Board of Regents to discuss their preliminary findings and recommendations. The Regents welcomed

this opportunity to engage the IRC directly in a frank review and discussion of their work. We expect that the IRC's final report will be released later this week

The Regents are pleased to adopt the 25 recommendations suggested by the Governance Committee in its report. The Governance Committee's recommendations address the serious problems respecting executive compensation and expenses that the IRC was directed to study, and take account of the IRC's helpful findings and suggestions. The Governance Committee, however, looked beyond those problems. Its recommendations represent a "Blueprint for Better Governance," address weaknesses in a variety of existing policies and practices, and seek to position the Board as a leader in 21st Century nonprofit governance.

The recommendations are wide-ranging and will result in concrete change. They will strengthen board and committee structure, enhance monitoring and accountability, reinforce the Smithsonian's strong ethical foundation, increase effective transparency, ensure that the critical "gatekeepers" — the General Counsel, the Chief Financial Officer, and the Inspector General — have direct access to the Board, and promote robust and informed deliberations. We expect that adoption of those recommendations will immediately improve the management, governance, and transparency of the Institution.

We recognize, however, that much work remains. Over the next seven months, the Board will be studying issues ranging from the appropriate size and composition of the Board to creating an improved framework to strengthen our relationships with the dedicated Advisory Boards of individual museums and research centers. We will build the strong constructive partnership with Acting Secretary Cristián Samper and his staff necessary to advance the Smithsonian's mission and maintain the public trust.

The Regents appreciate the hard work of Patty and her fellow committee members, Robert Kogod, Walter Massey, Congresswoman Doris Matsui, and Diana Aviv, the President and CEO of Independent Sector, in producing this report.

We are particularly grateful to the nearly 6200 members of the Smithsonian staff. Above all, it is their dedication and passion for the Smithsonian's mission that enables the Institution to enrich the lives of millions of Americans every day.

June 18, 2007

## **EXECUTIVE SESSION**

This special meeting of the Board of Regents concluded at about 9:00 a.m., after which the Regents met in executive session. At 2:05 p.m. Mr. Sant held a press conference to announce the Regents' adoption of the Governance Committee's recommendations. He also made known Deputy Secretary and Chief Operating Officer Sheila Burke's decision of to resign, effective September 30, 2007. A meeting with the Institution's directors was then held at 3:00 p.m. and

included the participation of Mr. Sant, Mr. Spoon, and Ms. Stonesifer, as well as Acting Secretary Samper.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Cristián Samper K." The signature is written in black ink and is positioned below the typed name.

CRISTIÁN SAMPER  
ACTING SECRETARY