Minutes of the
Oahu Metropolitan Planning Organization

TECHNICAL ADVISORY COMMITTEE

Friday, May 15, 2015, 9:00 a.m.
Waterfront Plaza, Tower 4, Suite 520
500 Ala Moana Boulevard, Honolulu, Hawaii

Members Present:

Ken Tatsuguchi, Chair	DOT	Lori Arakaki	DPP
Brian Suzuki, Vice Chair	DTS	Kathy Sokugawa	DPP
Eugene Tian	DBEDT	Gordon Wong, ex officio	FAA
Rodney Funakoshi	DBEDT-OP	Elizabeth Fischer, ex officio	FHWA
Norren Kato, alternate	DOT		

Members Absent: Eileen Mark (DTS), FTA ex officio (vacant), Gareth Sakakida, ex officio (HTA), A. Ricardo Archilla, ex officio (UH)

Guests Present: Kimberly Evans (FAA), Ryan Tam (HART)

OahuMPO Staff Present: Brian Gibson, Chris Clark, Randolph Sykes, Marian Yasuda, Pamela Toyooka

The meeting was called to order at 9:11 a.m. by Chair Ken Tatsuguchi. A quorum was present. Everyone introduced themselves.

I. MINUTES OF THE APRIL 21, 2015 MEETING

With regard to the TAC comments and motions approved at the last TAC meeting, Rodney Funakoshi stated that the matrix for the draft Comprehensive Agreement comments does not reflect the TAC's comments and recommendations made at the April 21, 2015 meeting. Mr. Funakoshi pointed out two instances where, after long discussions, TAC specifically voted to make recommendations to the Policy Committee:

- On page 3, row 1, regarding the director of the State Department of Health (DOH) being a member of the Policy Board: The comment shown as attributed to TAC states: *"Questions the rational for inclusion on the Policy Board and whether the director would have sufficient knowledge of transportation-related issues; questions also whether membership on the TAC would be appropriate."* The recommended disposition by OahuMPO Staff states: *"The TAC and CAC make comments that will be provided to the Policy Committee prior to they['re] take[ing] action on the new Comprehensive Agreement."*

  Mr. Funakoshi stated that the TAC specifically voted to recommend that DOH not be a voting member of the Policy Board. What is shown as a TAC comment doesn't reflect the TAC action taken. Also, given that the CAC and TAC were not in favor of DOH being a voting member, the OahuMPO staff's recommendation should have reflected that.

- On page 3, row 13, item B.2. Membership Delegation to Deputy Directors: The comment shown as attributed to TAC states: *"Not all organizations, e.g., HART, State Office of Planning, have deputy directors; recommended using a different word such as 'equivalent' or 'comparable'"*. The recommended disposition by OahuMPO staff states: *"Regarding the TAC comment, staff recommends the following insertion '...a deputy director or equivalent appointed position may be delegated to serve....'"*

  Mr. Funakoshi stated that, actually, TAC specifically and unanimously voted to recommend that the wording state *"deputy director or designee"* as opposed to what is shown in the comment section. This doesn't reflect what TAC recommended. It was made clear at the TAC meeting that at least a couple of the agencies being considered for inclusion on the Policy Board do not have deputy directors. TAC wanted the directors to have the flexibility to delegate to anyone from their department. That should have been reflected in the recommendation. Instead, the draft Comprehensive Agreement that went to the Policy Committee incorporated OahuMPO staff's recommendations.

In response to Mr. Funakoshi, Mr. Gibson stated that approximately 95% of the comments received were incorporated into the draft Comprehensive Agreement. There were comments that were not included for various reasons. Sometimes, they received contradictory comments, so OahuMPO staff chose which comment to include. Regarding the inclusion of the DOH director, the OahuMPO's staff's position is that the Policy Committee has to decide that. TAC and CAC are advisory bodies that each provide their advice. Ultimately, it's the Policy Committee's decision.

Chair Tatsuguchi stated that TAC's recommendation that are voted on carry a higher level of importance than other comments that are received. These TAC motions received unanimous approval. They should be elevated so that what TAC specifically says goes to the Policy Committee.

Mr. Gibson noted that the last two TAC minutes were included in the Policy Committee's meeting material packets.

Chair Tatsuguchi stated that this goes beyond the minutes. TAC wants it pointed out to the Policy Committee what TAC specifically voted for – DOH should not be a Policy Board member and non-elected officials' alternates can be deputy directors or designees. Mr. Gibson agreed to do this.

Vice Chair Suzuki stated that the OahuMPO staff can have the discretion to include or not include comments received from various agencies and the public. However, TAC recommendations should be elevated to a status where the Policy Committee is made aware of these recommendations. Mr. Gibson stated that he will make sure to note, specifically, in the Policy Committee presentations, the recommendations that were voted on by the full TAC.

Chair Tatsuguchi asked that the Policy Committee also be notified of the reasons for the TAC's recommendations. Mr. Gibson responded that he would do so to the best of his ability.

Regarding the recommended disposition by OahuMPO staff that a director be able to designate a deputy director or equivalent appointed position, in response to Ms. Sokugawa and Mr. Funakoshi, Mr. Gibson stated that allowing a director to appoint whomever they like would open up the possibility of someone serving on both the TAC and Policy Board. Mr. Gibson stated that this would allow a director in an agency that doesn't have a deputy director to designate someone in an equivalent appointed position to serve as the director's alternate.

Ms. Arakaki stated that this is a terminology issue. She explained that, for the City and State, an appointed position is a non-civil service position. Chair Tatsuguchi added that appointed officials are directors and deputies, not administrators.

Mr. Gibson stated that there's a clear line between the Policy Board members, which are policy makers and political appointees, and the staff-level members on advisory committees like the TAC. If that line is crossed, then the purpose of the TAC is in question. Elizabeth Fischer stated that, from the federal side, they would not recommend allowing TAC member to serve as Policy Board alternates.

Vice Chair Suzuki stated that language should be added that states that a person may not serve on both the Policy Board and TAC.

Mr. Gibson stated that his intent is to only allow a deputy director or equivalent appointed position to be delegated to serve as an alternate on the Policy Board. Chair Tatsuguchi reiterated that some agencies do not have a deputy. Mr. Gibson responded that the director could then appoint someone of an equivalent appointed position. Ms. Sokugawa and Chair Tatsuguchi explained that, for some agencies, there isn't another person in an appointed position; so the director from that department would have no other alternative. Mr. Gibson stated that he did not know how to rectify that. Ms. Sokugawa stated the TAC gave OahuMPO the language in their motion, but OahuMPO staff is not giving that language to the Policy Committee. Mr. Gibson responded that, when he does the presentation for the Policy Committee, he will provide them, word-for-word, all the TAC recommendation that were made, as reflected in their minutes.

In response to Ms. Sokugawa, Vice Chair Suzuki stated that the TAC minutes correctly reflect the motions that were made. However, the motions that were made and passed are not necessarily reflected in this matrix and recommendations. Mr. Funakoshi stated that, more importantly, the TAC motions and comments are not reflected in the draft before the Policy Committee.

Chair Tatsuguchi stated that, if TAC votes and make a recommendation it must go the Policy Committee and be incorporated in the draft. It is not a sidebar; it is not a comment.

Vice Chair Suzuki stated that a column should be added to the matrix that contains TAC's recommendations, in terms of motions that passed.

Mr. Gibson responded that he works for the Policy Committee, and TAC is advisory to the Policy Committee. There are multiple advisory committees – TAC and Citizen Advisory Committee (CAC). To say that a motion passed by an advisory committee should automatically be incorporated leaves out the possibility that one advisory committee may recommend the

opposite of what the other advisory committee recommends. So, it is the Executive Director's duty to provide both recommendations to the Policy Committee and then let them figure it out. Mr. Funakoshi noted that both TAC and CAC recommended that DOH not be included on the Policy Board.

Chair Tatsuguchi stated that he has talked to some of the Policy Committee members, and they do want to hear what TAC is saying and recommending.

Gibson stated that he will provide the Policy Committee all of the recommendations that were passed by TAC prior to the Policy Committee acting on the Comprehensive Agreement. He will take the motions directly out of the minutes, and will make sure that every motion passed by TAC is presented to the Policy Committee. Also, in order to help the Policy Committee understand why a motion was passed, he will provide the TAC minutes to the Policy Committee in case they want to read the discussion that lead to the decision.

Ms. Sokugawa stated that, since TAC's recommendations are not included in the draft Comprehensive Agreement, Mr. Gibson should make it clear to the Policy Committee that this draft represents OahuMPO staff's best guess recommendation, but also say that it does not incorporate all the TAC recommendations. Chair Tatsuguchi agreed that the Policy Committee should be notified that all of TAC's recommendations and comments were not incorporated into the Comprehensive Agreement. Mr. Gibson stated that all of TAC's recommendations were considered, but not all were incorporated.

Ms. Sokugawa suggested that Chair Tatsuguchi write a memorandum directly to the Policy Committee to let them know TAC's strong concerns, that they had extensive discussions regarding certain issues in the Comprehensive Agreement, and that they took motions and unanimously passed those motions; however, their recommendations were not accurately conveyed in the matrix and were not incorporated in the Comprehensive Agreement. Chair Tatsuguchi stated that he will consider writing the memorandum.

In a follow-up to a question from Ms. Sokugawa pertaining to a pooled-fund study, Ms. Fischer stated that City and County staff are allowed to travel for the purposes of that particular effort – training for performance-based planning.

Ms. Sokugawa noted the following corrections to the April 21, 2015 minutes:

- Page 3, paragraph 6, 2nd sentence: "*were*" should be "*are*"
- Page 4, paragraph 5, 2nd sentence: "*may*" should be inserted between "*some directors*" and "*have*".

Mr. Funakoshi moved and Vice Chair Suzuki seconded that the April 21, 2015 minutes be approved with changes mentioned by Ms. Sokugawa. The motion was unanimously carried.

II. CONSIDER OAHUMPO SUPPLEMENTAL AGREEMENTS

[Handout(s): Draft Administrative Services Agreement between OahuMPO and State of Hawaii Department of Transportation (DOT) (04/28/2015); Finance Supplemental Agreement between

the OahuMPO, Hawaii DOT, City and County of Honolulu, Department of Transportation Services (DTS), and Honolulu Authority for Rapid Transportation (HART) (Fiscal Year 2016-2018); Data Sharing Supplemental Agreement between the OahuMPO, and the Hawaii DOT, and the Department of Business, Economic Development, and Tourism (DBEDT) Research and Economic Analysis Division (READ), and the Office of Planning, and the City and County of Honolulu, and the HART; Draft Data Sharing Supplemental Agreement Comments and Disposition (05/15/2015); Draft Comprehensive Agreement (05/05/2015); Draft Comprehensive Agreement (05/12/2015) with track changes; Draft Comprehensive Agreement Comments and Disposition (05/05/2015)]

Data Sharing Supplemental Agreement
Mr. Gibson gave a presentation on the draft OahuMPO Data Sharing Supplemental Agreement (in this section of this agenda item, referred to as "Agreement").

Chair Tatsuguchi stated that his understanding is that OahuMPO will be providing the source of the data. He recommended that it should be stated that the validation and use of the data is the responsibility of the party that is provided the data.

Mr. Gibson stated that when "*data*" is mentioned in Section D., Use of Data and Information, paragraph two, it should be broadened to the accuracy of any data.

Vice Chair Suzuki stated that there needs to be clarification in the heading of the document with regard to the use of "*City and County of Honolulu*". Either each City department providing data should be named in the title of the document or there should be a definition in the document for "*City and County of Honolulu*", which names the various City departments that will be providing data.

Randolph Sykes noted that there is a City ordinance that states that DTS is the point of collection and dissemination of all information, proposals, etc. to OahuMPO from the City. Vice Chair Suzuki stated that there have been discussions and disagreements on this within DTS. It places a very big administrative burden on DTS. Requests for data within the City entails the drafting of a memorandum to the department that has the data, transmitting the memorandum from director to director, having the request get passed down to whoever has the data, that person assembling the data and transmitting it to DTS. DTS does not have the resources to go to all the departments to collect all the data. It is more efficient to have OahuMPO request the data directly from the department where the data resides. Mr. Gibson responded that he did not see a problem with dealing directly with the individual departments.

In response to Mr. Sykes, Vice Chair Suzuki stated that all the departments who have the data are signatories of the Agreement. Ms. Fischer stated that including all the departments as signatories of the Agreement adds a level of complexity to this process. Chair Tatsuguchi stated that going directly to the source to get the data will expedite the process. If these departments are signatories, they agree to be on board and will be made aware that they are responsible for providing the data.

Chair Tatsuguchi wanted it put on the record that he appreciated Chris Clark's work on this Agreement. The first draft of the Agreement did not sound cooperative; it sounded like a

contract and it was pointed. However, after Mr. Clark updated the document, following their meeting, the Agreement sounded cooperative. Mr. Funakoshi agreed with Chair Tatsuguchi; in the beginning, it sounded more punitive.

Dr. Eugene Tian stated that sending data transmittals directly to his division will make the process more efficient and faster. He asked that the division's title shown in the first paragraph be corrected to read "*Research and Economic Analysis Division (READ)*".

Regarding Section H.2., Termination, Mr. Funakoshi questioned the clause stating that a party must give the other parties at least 180 days notice prior to terminating the Agreement. He felt that his was too long a period.

Ms. Sokugawa asked what scenario would cause a party to want to terminate. No one came up with one. Mr. Gibson stated that this clause is in there so that the option is preserved.

Mr. Funakoshi moved and Vice Chair Suzuki seconded that the number of days be changed to 90 days. The motion was carried with one abstention (Sokugawa).

Ms. Sokugawa stated that she did not have a basis for voting for or against it.

Ms. Sokugawa questioned the elimination of the indemnification clause. Mr. Gibson stated that it was the result of a comment received. Ms. Sokugawa stated that, without the clause, they can be personally sued. Mr. Clark stated that, if there was a lawsuit and you lost, you would be liable for the legal fees. Ms. Sokugawa requested that the clause be put back into the document.

Mr. Suzuki stated that, in the past, DTS' Corporation Counsel has never agreed to an indemnification clause. Mr. Clark stated that Corporation Counsel's comment was that indemnity should be allowed to the limit of the law, to the limit of the budget. Mr. Suzuki stated that he will be meeting with DTS' Corporation Counsel on Monday.

Ryan Tam stated that HART's Corporation Counsel's review did not include any comments on the indemnification clause.

Mr. Tam noted that DTS and HART have a lot of the same reporting data, with a few exceptions. He would provide those exceptions to OahuMPO.

Regarding Section B., Collection of the Data Necessary to Carry Out the Multimodal Transportation Planning Process, last sentence in paragraph two, Ms. Sokugawa stated that the assignment of data should be flexible and not siloed. It was discussed and agreed that the following phrase be added onto the end of the last sentence: "*..., nor a strict assignment of responsibilities.*"

Vice Chair Suzuki moved and Ms. Sokugawa seconded that the Data Sharing Supplemental Agreement, as amended on May 15, be recommended for approval, subject to DTS' Corporation Counsel's review and possible amendments. Chair Tatsuguchi requested that the motion be amended to include "and subject to the DOT's Attorney General's review and possible amendments."

The amendments from today's meeting were listed to include:

- Clarification of the term "*City and County of Honolulu*" either in the heading or in the document;
- Correction to the name of the DBEDT's "*Research and Economic Analysis Division (READ)*" in the first paragraph;
- The addition of the phrase, "*nor a strict assignment of responsibilities*" to Section B, 2nd paragraph, end of last sentence;
- The addition of HART's data to the table in Section B;
- The modification of the wording in Section D, 2nd paragraph, that the providers of data do not guarantee the accuracy of <u>any</u> data;
- The change of days from 180 to 90 in the first sentence in Section H.2;
- The addition of a modification clause in Section H., including the process that needs to be followed.

A vote on the motion was taken. The motion was unanimously carried.

<u>Financial Supplemental Agreement</u>
Mr. Gibson gave a presentation on the draft OahuMPO Financial Supplemental Agreement (in this section of this agenda item, referred to as "Agreement").

In response to Vice Chair Suzuki, Mr. Gibson stated that, by Federal regulations, the Policy Committee is the decision-making body.

In response to Chair Tatsuguchi, Mr. Gibson stated that the amount of dues to be collected from each entity ($125,000) came about because: 1) in the past couple of years, the amount from each entity has been approximately $100,000 to $125,000; and 2) $375,000 ($125,000 from each of 3 entities) allows OahuMPO to leverage approximately 90% of the federal planning funds. Chair Tatsuguchi requested that the Agreement include a discussion on how the amount came about.

There was a discussion clarifying that the old practice of each entity paying the matching share for their own work element (study) would no longer be used. The new practice would be a dues-based system whereby the three entities would each contribute the same amount of dues, and it would all be put into one pot of money. The dues would be used to pay the matching share for the entities' work elements, as well as for OahuMPO's administrative costs; basically, anything in the OWP.

Chair Tatsuguchi stated that, per the Governor's memorandum, specific projects and program need to be attached to the funds. He would need to check if this new practice would be eligible under the Department of Budget and Finance process. Also, it might not be allowable to release funds for dues that go away; the funds need to be for specific project that can be line itemed. Ms. Fischer stated that that cannot occur in this process. Chair Tatsuguchi stated that DOT may not be able to participate if the funds are not for specific projects. Ms. Fischer stated that DOT

could have a line item for Metropolitan Transportation Planning. Ms. Sokugawa stated that there are City and State processes that don't reflect that; it's not a minor thing. DOT needs to figure out how to justify its CIP requirements, when the $125,000 is coming under their operating budget, but is being spent on capital improvement projects (CIP).

Regarding the question of funds lapsing, Mr. Gibson stated that, OahuMPO would keep track of the funds by the year it comes in. At the end of three years, if the funds are not encumbered, they could either be returned to the entities as a refund or they could be used to offset the next year's dues. Ms. Sokugawa stated that the money in the City and County's operating budget lapses in one year. However, if it's CIP money, then it lapse in two years. Mr. Gibson responded that these funds are not used for CIP, only planning studies. Chair Tatsuguchi stated that DOT uses their CIP money for planning studies.

Chair Tatsuguchi asked what happens if $375,000 comes in for the year, but the OWP only requires $350,000. What happens to the remaining $25,000? Mr. Gibson responded that the funds stay in the account until they lapse. Chair Tatsuguchi stated that DOT's position is that these leftover funds should get returned to the entities. The next year, the entities will contribute another $375,000 for the next year's program. Chair Tatsuguchi stated that he is looking at a way to ensure that there is financial management – the incoming funds match the budget and the expenditures. Mr. Gibson stated that, anything the dues get spent on would be in the OWP. The Policy Board is the decision-making body; they make the decision about how the funds get expended.

Chair Tatsuguchi stated that the due are on an annual basis. Mr. Gibson agreed.

Chair Tatsuguchi stated that the entities are paying dues for the OWP. Mr. Gibson and Ms. Fischer responded that the entities are paying dues to be part of the process.

Chair Tatsuguchi asked what the entities were paying extra (above and beyond the OWP) for. Mr. Gibson responded that the entities are not paying extra. The $125,000 in dues is the cost of participating in the MPO process for the year. Ms. Fischer stated that the entities are paying to play. Chair Tatsuguchi stated that DOT would agree to only pay for the budget in the OWP.

Ms. Fischer used an example where she talked about paying for the enjoyment factor, which is not tangible. She stated that this goes to the non-tangible component of the planning process, which is the enjoyment factor.

In response to Vice Chair Suzuki, Mr. Gibson stated that, whether or not the Policy Committee takes an action on the unencumbered funds, in three years, the money lapses. It will either be refunded or be used to offset the next year's dues.

Ms. Sokugawa stated that, if there is a State majority on the Policy Board, the State could conceivably spend all the funds on State projects. Vice Chair Suzuki noted that, historically, the City has actually been the one putting in all the studies. Mr. Gibson stated that the he would discourage looking at who programs the projects, since both parties will benefit from a project.

Ms. Sokugawa asked if an entity can write a proviso stating that their dues could only be used for a specific project. Ms. Fischer cautioned against doing that.

Chair Tatsuguchi requested that, in Section D, there be language that there be an annual financial table in the OWP that shows the incoming dues and the annual balance; the overall funds, including the unspent dues. It's important to keep a record of all the funds.

Chair Tatsuguchi excused himself and handed the gavel over to Vice Chair Suzuki.

Mr. Tam stated that the City is paying a disproportionate share of the dues – 2/3rds of the total dues. He requested that there be clarification on the purpose of the dues, how that amount was determined, and why the City is paying 2/3rds.

Chair Tatsuguchi stated that, if DOT is asked to pay 50% of the $375,000 in matching funds, that would be too high. He didn't know if DOT could afford that.

In response to Mr. Tam, Mr. Sykes stated that HART is being included as a player because it is a direct recipient of federal funds. The funds are not going through the City; it's independent of the City. That's a key factor in how this decision was made. Mr. Gibson added that, from OahuMPO's perspective, HART is an authority. An authority means that you report to a board, not the City Council. Mr. Tam stated that HART's budget still goes through the City.

Ms. Sokugawa stated that the section on purpose needs to be expanded. For instance, the explanation of dues, the allocation of funds, the use of funds for the local match for projects, etc. Mr. Gibson stated that this can be addressed in Section D.1., Use of Funds.

In response to Ms. Sokugawa, Ms. Fischer stated that the funds contributed from each entity will be co-mingled. Mr. Gibson stated that whatever is leftover at the end of the three-year lapsing would be distributed equally back to the contributing entities.

Mr. Tam stated that HART's Corporation Counsel requested clarification on dispute resolution in Section J., Disputes. Mr. Gibson stated that he sees the Dispute section as being similar to an arbitration clause. The parties are agreeing that, rather than suing one another, any dispute would go through arbitration.

Mr. Tam asked if there was a dispute, for example, regarding a refund, would the Policy Board be the body to make the decision. Mr. Gibson responded in the affirmative. Ms. Sokugawa pointed out that the Policy Board is the body that decides on your refund in the first place.

Norren Kato noted that Section C.4. was missing from the Comprehensive Agreement.

[Gordon Wong left at 11:08 a.m.]

<u>Administrative Supplemental Agreement</u>
Mr. Gibson gave a presentation on the draft OahuMPO Administrative Supplemental Agreement (in this section of this agenda item, referred to as "Agreement"). This Agreement is between OahuMPO and DOT. It is being presented to TAC for informational purposes only.

III. CONSIDER REVISION TO OAHUMPO'S PARTICIPATION PLAN

[Handout(s): Draft Amendment to the OahuMPO Participation Plan for the Metropolitan Transportation Planning Process]

Mr. Gibson gave a presentation on the OahuMPO Participation Plan, noting the 2 minor changes that need to be made to help the City satisfy an FTA requirement.

Mr. Kato moved and Mr. Funakoshi seconded that the OahuMPO Participation Plan be recommended for approval along with the changes as presented.

Ms. Sokugawa noted that Part 4, Title VI and Limited English Proficiency Outreach Plan, is not complete in terms of what the federal requirements are. Mr. Gibson responded that OahuMPO has an RFP out right now to update the document in total.

A vote was taken on the motion. The motion was unanimously carried.

Vice Chair Suzuki stated that he would like to push the other agenda items to the next meeting. Ms. Fischer requested that Mr. Gibson give the Legislative report.

V. LEGISLATIVE REPORT

[Handout(s): TAC memo, dated May 5, 2015, regarding Legislative Report]

Mr. Gibson stated that Senate Bill 1180 CD1 was passed at the Legislature. However, shortly before the Conference Committee was to vote on the bill, the Attorney General's office submitted testimony stating that they felt that the bill was unconstitutional. Within the bill, there was language that said that the MPO could expend funds without legislative appropriation. The Attorney General's office stated that Article 7 of the Constitution states that any public funds have to be appropriated by the Legislature. This directly contradicts the federal requirement that the MPO operates independently. Basically, if the Legislature has to approve the OWP budget every year, then they control the MPO. That contradicts the federal requirement. The language was taken out in order for the bill to pass. So, it passed conference committee, and the Attorney General's office will not tell the Governor's office that the bill is unconstitutional.

The OahuMPO now has a year to figure out how to operate independent of legislative oversight, legislative approval. We have to figure out how to replace the State revolving fund. We'll be asking the Policy Committee to direct staff to begin taking steps to make this separation. This will separate OahuMPO financially from the State.

The meeting was adjourned at 11:22 a.m.