

Minutes of the  
Oahu Metropolitan Planning Organization

**POLICY COMMITTEE**

Friday, December 19, 2014, 2:00 p.m.  
Hawaii State Capitol, Conference Room 309  
415 South Beretania Street, Honolulu, Hawaii

**Members Present:**

Senator Will Espero, Chair		Senator Clarence Nishihara
Councilmember Joey Manahan, Vice Chair		DOT Director Ford Fuchigami
Councilmember Brandon Elefante		DTS Director Michael Formby
Representative Matthew LoPresti		HART Executive Director Dan Grabauskas
Senator Breene Harimoto		

**Member(s) Absent:** Councilmember Carol Fukunaga, Councilmember Ron Menor, Councilmember Kymberly Pine, Representative Henry Aquino, Representative Ryan Yamane

**Guests Present:**

Dion Mesta (CM Elefante)		Joseph Magaldi, Jr. (CAC, Committee
Tricia Sakamoto (CM Elefante)		for Balanced Transportation)
Frank Streed (CM Elefante)		Kathleen Iriarte (CAC, Hunt Companies)
Valerie Sadural (CM Manahan)		Alan Ong (CAC, Hunt Companies)
Matt Caires (CM Pine)		Andrea Anixt (CAC, Kaaawa Community Assn.)
Bryan Jaco Gallarde (Rep. LoPresti)		Ralph Rizzo (FHWA)
Robert Sato (Sen. Harimoto)		Mayela Sosa (FHWA)
Michael Lau (AG)		Alex Cross (HART)
		Dan Purcell (public)

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

*The meeting was called to order at 2:05 p.m. by Chair Will Espero. A quorum was present.*

All members introduced themselves.

**I. MINUTES OF THE NOVEMBER 25, 2014 MEETING**

*Senator Breene Harimoto moved and Vice Chair Joey Manahan seconded that the minutes of the November 25, 2014 meeting be approved as circulated. The motion was unanimously carried.*

**II. CONSIDER CAC MEMBERSHIP**

Executive Director Brian Gibson stated that Hunt Companies had attended the requisite number of Citizen Advisory Committee (CAC) meetings and had requested CAC membership.

*Department of Transportation Services (DTS) Director Michael Formby moved and Honolulu Authority for Rapid Transportation (HART) Executive Director Dan Grabauskas seconded that Hunt Companies be appointed to the CAC.*

Mr. Alan Ong, Hunt Companies Chief Operating Officer for the Hawaii Region, introduced himself and Kathleen Iriarte.

*A vote was taken. The motion was unanimously carried.*

### **III. CONSIDER RECOMMENDATION REGARDING HRS 279**

*[Handout: Policy Committee (PC) Permitted Interaction Group (PIG) Recommended Draft Hawaii Revised Statute (HRS) HRS 279; Draft HRS 279 – PC-PIG Draft and Feedback; TAC Recommendations for HRS 279]*

Director Gibson gave a presentation on the draft HRS 279. The draft HRS 279 presented incorporated the feedback received during the public comment period – including proposed changes from the Attorney General’s office, the CAC, the Technical Advisory Committee (TAC), and the Maui Corporation Counsel, as well as the Hawaii Transportation Association’s enabling legislation. Director Gibson noted that these proposed changes (shown in red) are not being recommended; they are included in the draft for the members’ information.

In response to Department of Transportation (DOT) Director Ford Fuchigami, Chair Espero stated that a legislator, probably from a transportation committee, will introduce the bill.

Director Fuchigami stated that it seemed like the only reason OahuMPO wants to keep the administrative affiliation is to protect the benefits of existing staff. Otherwise, it seemed to make more sense to be independent from the DOT. Director Gibson responded that benefits for staff are only part of it. In addition, the State and DOT provides services – such as legal, human resources, payroll, and accounting. If independent, OahuMPO would have to either contract out or hire additional staff for these services; that means somebody has to pay for it. So, there is some efficiency benefit to being attached. Director Fuchigami questioned OahuMPO wanting independence, yet still wanting administrative support from DOT. OahuMPO needs to choose one or the other.

Chair Espero asked Director Gibson who the suggestion for independence and not being attached to DOT came from. Director Gibson responded that it came in part from the MPO’s past decertification. Chair Espero asked for the name of a specific person, entity, or body who suggested this to the MPO in the past three months. Director Gibson responded that it was not stated in those exact words. Chair Espero stated that this is just a thought or idea that is being thrown out there; the Policy Committee (PC) and the PC permitted interaction group (PIG) have never discussed this. Chair Espero stated that he would not be inclined to give the MPO their independence.

Noting that OahuMPO is requesting that the benefits of existing staff be protected even though OahuMPO wants to be independent, Director Fuchigami asked how benefits for new staff would

be handled. Director Gibson responded that the new staff would be contract employees or would be dealt with under some other system.

Senator Clarence Nishihara asked if Director Gibson knew how much it would cost to be independent. Director Gibson responded that he did not know; there haven't been any discussions regarding this and, due to deadlines, there has not been time to come up with an estimate. OahuMPO has proceeded under the assumption that it will continue to be attached. If OahuMPO did move in the direction of complete separation, Senator Nishihara stated that a dollar amount would be needed.

Director Formby asked if the CAC and TAC had the opportunity to review each other's versions of the draft HRS 279. Mr. Gibson responded that CAC and TAC have only reviewed the November 24<sup>th</sup> version, but not each other's versions.

Senator Harimoto stated that section 92-2.5 of the Sunshine Law, regarding permitted interaction among members, needs to be addressed. If Policy Committee members will be defined outside HRS 279 (in the Comprehensive Agreement), there will need to be an exemption to this part of the Sunshine Law so that more than two Councilmembers may attend a Policy Committee meeting. The MPO will need legal clarification on this.

Director Fuchigami stated that the DOT Director submits other administratively-attached agencies' and boards' budgets to the Legislature. If OahuMPO is administratively attached to DOT, the DOT DIR should be submitting the OahuMPO's budget to the State Legislature. He asked who submits the OahuMPO budget to the Legislature. Director Gibson responded that OahuMPO's budget is the Overall Work Program. Currently, the Policy Committee approves it, the federal government endorses it, then the obligation of funds occurs. Once it goes to the DOT, he was not sure how it is handled. Director Fuchigami stated that, right now, DOT only facilitates the Federal dollars; it does not get Legislative approval on anything that comes through. Chair Espero stated that OahuMPO and DOT need to look into this and make certain that the process is understood and everyone knows that it is being done correctly.

Chair Espero asked about the need for a separate bank account; what the purpose of that would be. Director Gibson stated that, if OahuMPO stays attached through DOT, then OahuMPO would be funded through the revolving fund that is setup in the law. For Maui MPO or any other MPO that is independent, they don't have a revolving fund, so they would have to setup a bank account; their dues and their federal reimbursements would go into that account. That would only apply to OahuMPO if they became independent.

Vice Chair Manahan asked Director Gibson if OahuMPO would keep an attorney on retainer if OahuMPO is independent. Director Gibson responded that OahuMPO would procure an attorney and have them on contract. Vice Chair Manahan asked if OahuMPO would be asking for more funds in their budget for these types of administrative costs. Director Gibson stated that, if in-house costs go up, then that would take away from the funds used for consultant contracts.

Councilmember Brandon Elefante asked what would happen if the revision to HRS 279 does not get passed. Director Gibson responded that certain changes to HRS 279 are mandated by the federal government. If the federally-mandated changes do not occur, the OahuMPO would be decertified and no federally-funded projects would be approved for the Overall Work Program, Oahu Regional Transportation Plan, and Transportation Improvement Program.

Representative Matthew LoPresti asked if independence was a federally-mandated change. Director Gibson acknowledged that it was not federally-mandated.

Director Gibson stated that the MPO needs to have sufficient authority to do what it needs to do without undue influence by anyone. MPO cannot do that if it essentially becomes a mouthpiece for a particular agency or person. Its ability to operate independently is part of its value. The federal government does have concerns regarding HRS 26-35 (administrative supervision of boards and commissions). So that's why the draft HRS 279 has limited it to HRS 26-35 (a) 7 and 8 and subsection (b).

In response to Representative LoPresti, Director Gibson stated that, if the MPO stays attached to DOT, the new staff and old staff would receive the same benefits. If the MPO is no longer attached to a State agency, then the language regarding benefits would have to be changed.

In response to Senator Nishihara, Director Gibson stated that, since OahuMPO staff members are non-civil service employees, there is not a one-for-one correlation of benefits.

Senator Nishihara asked about the disparity between the OahuMPO (exempt) benefits and the civil service benefits, and if OahuMPO staff would be locked into those benefits as they moved forward. Senator Nishihara suggested that Director Gibson discuss this with Director Fuchigami.

Chair Espero stated that there are still questions and clarifications needed. He recommended that the Policy Committee meet in January to act on a draft HRS 279 bill. He noted that, even if the Policy Committee passes a draft bill for introduction to the Legislature, any Legislative member, including the Legislative Policy Committee members, could write and introduce their own bills. There may be multiple OahuMPO bills going through the Legislature. He stated that the Policy Committee does not even need to approve a draft bill, though it would make sense to include its input in a bill.

In response to Vice Chair Manahan, Chair Espero stated that having the TAC and CAC review each other's draft versions and comments could happen during the time the Legislature is in session; however, he did not think that it would help the members' decision-making.

Mayela Sosa, Federal Highway Administration (FHWA) Hawaii Division Administrator, noted that there was some confusion in terms of the term "*independence*". She wanted to clarify that the federal government is not asking that the MPO stand up as its own organization. They are looking for a decision-making body that is autonomous, which is separate from being independent administratively. The Policy Committee needs to be autonomous – needs to be a decision-maker for the federal funds and the planning process that occurs here on Oahu.

Director Fuchigami noted that, though OahuMPO is administratively attached to DOT, DOT is just one vote out of the entire the Policy Committee. So, OahuMPO actually has its independence to do what it wants to do and the autonomy to make its own decisions. DOT is just the facilitator of funds. The way the OahuMPO is setup today is okay, there's not a problem with it. Also, he would not want the staff to lose their benefits.

In response to Representative LoPresti, Ms. Sosa stated that addressing the revolving fund will address past issues surrounding funding, where the State and City could withdraw funds on an item-by-item basis. The agencies had veto power over what the Policy Committee had agreed upon. She also stated that they are also concerned about HRS 26-35, because it puts the DOT Director in a position to veto actions of the Policy Committee. Director Fuchigami stated he was recently made aware of this law. Because the DOT Director is a member of the Policy Committee, he felt that the DOT Director should not be making certain decisions for OahuMPO. He is requesting clarification from the Attorney General's office on this law; then he will meet with OahuMPO to discuss it. Chair Espero stated that this will probably be resolved before the end of the Legislative session; language can be inserted in the bill that would allow the Committee to have autonomy where DOT and DTS Directors currently have veto power. Director Fuchigami stated that he would support that.

Representative LoPresti stated that his understanding was that the makeup of the Policy Committee would remain more or less the same; the real potential conflict lies in the veto power of the agencies. Director Gibson responded that, since the makeup of the board would be dealt with in the Comprehensive Agreement, there have not been discussions regarding that particular issue. Director Gibson noted that, part of the issue is that the Legislative members are in session five months out of the year, so the OahuMPO is hamstrung; it can't meet during that time because the Legislative members make up almost half of the Policy Committee. So, OahuMPO will be looking at the makeup of the Policy Committee. Chair Espero stated that the meetings could be held on Saturdays. Director Gibson stated that the meeting could also be held in the evenings. Chair Espero stated that being in session is not an issue.

#### Testimony

Andrea Anixt stated that she would like the CAC to be a Policy Committee voting member.

Joseph Magaldi stated that he would like the CAC to be on the Policy Committee as a voting member and on the TAC as a non-voting member.

#### **IV. REPORT ON 2014 CERTIFICATION REVIEW ACTION PLAN**

Director Gibson gave a status report on the 2014 Certification Review Action Plan. He stated that there were no comments received on the Action Plan. Once the HRS bill is introduced, then the PC PIG will work on the Comprehensive Agreement and the sub-agreements.

#### **V. CAC HIGHLIGHTS**

CAC Vice Chair Joseph Magaldi reported the highlights of the last CAC meeting.

**VII. OTHER BUSINESS (ANNOUNCEMENTS ONLY)**

Councilmember Elefante recognized Frank Streed, longtime staff at both the City Council and State Legislature, for his service to government. Mr. Streed will be retiring at the end of the year.

*There being no other business, the meeting was adjourned at 3:09 p.m.*