



HONOLULU AUTHORITY for RAPID TRANSPORTATION

## MINUTES

### **Audit/Legal Matters Committee Meeting**

**March 29, 2012, 9:00 A.M.**

**Conference Room B, Kapolei Hale**

**1000 Uluohia Street, Kapolei, Hawaii**

PRESENT:	Ivan Lui-Kwan Don Horner	Carrie Okinaga Wayne Yoshioka
ALSO IN ATTENDANCE: (Sign-In Sheet and Staff)	Toru Hamayasu Gary Takeuchi Joyce Oliveira Bill Brennan Jeanne Mariani-Belding Andrea Tantoco	Scott Ishikawa Joe Magaldi Russell Honma Paul Migliorato Mike Levine Maurice Morita Jonella DeLimas

#### I. Call to Order by Chair

At 9:12 A.M., the meeting of the Audit/Legal Matters Committee was called to order by Committee Chair Ivan M. Lui-Kwan, Esq.

#### II. Public Testimony

Mr. Lui-Kwan called for public testimony. No public testimony was offered.

#### III. Approval of Minutes of the December 2, 2011 Audit/Legal Matters Committee Meeting

Mr. Lui-Kwan then called for approval of the December 2, 2011 Audit/Legal Matters Committee minutes. Board member Don Horner moved to do so, with the motion seconded by Board member Carrie Okinaga. The motion carried unanimously.

IV. Gift Policy

Deputy Corporation Counsel Gary Takeuchi introduced the latest draft of the Gift Policy, which had been discussed previously. Mr. Lui-Kwan asked whether the Ethics Commission submitted their comments on the policy, but neither Mr. Takeuchi nor Ms. Okinaga could confirm that. Mr. Lui-Kwan requested that the draft be reviewed by the Ethics Commission, if it had not been.

V. Litigation Status Update

Mr. Takeuchi presented a litigation status update, and stated that although there were matters that might be more appropriate for discussion in executive session, he would provide the public information to the extent that he was able to.

Mr. Takeuchi gave an update of the federal National Environmental Policy Act lawsuit based on the scheduling order issued in the case. He advised that the plaintiffs filed a motion to amend their complaint, among other things, to include the Outdoor Circle as a plaintiff; the defendants filed oppositions. The Pacific Resource Partnership, Faith Action for Community Equity, and Melvin Uesato moved to seek intervention as defendants. The City defendants filed a motion in support of the intervention, while the federal defendants did not take a position. The plaintiffs opposed the intervention. The motion is still pending. Plaintiffs filed declarations in support of the standing claims by the January 23, 2012 deadline. As March 5, 2012 was the deadline for the narrowing of claims by motion, the City defendants filed a motion for partial summary judgment to dismiss certain Department of Transportation Act Section 4(f) claims based on lack of standing, because the sites in question were not mentioned in the plaintiffs' standing declarations, and/or because plaintiffs did not show some injury in fact. There is also a separate motion by the City defendants based on waiver, as the plaintiffs did not raise concerns about certain 4(f) properties during the administrative process for the Environmental Impact Statement. Plaintiffs have filed pleadings in opposition, but have stated that they will not be pursuing claims for some sites. One more round of reply pleadings is due from the moving parties.

On February 24, 2012, the administrative record was filed pursuant to the scheduling order, consisting of approximately 14,300 documents and 150,000 pages. Earlier in the week, a status conference was held in Pasadena, California. The judge is expected to rule shortly on the plaintiffs' motion to amend and the motion to intervene. The judge stated his preference that any additions to the Administrative Record be made soon, and that any late additions would only be allowed under extraordinary circumstances.

The next hearing on the partial summary judgment motions based on standing and waiver is set in Honolulu on April 18, 2012. In the future, hearings on dispositive motions will be held in Honolulu, while status hearings will likely be held on the mainland. The defendants' replies on the pending motions are due on April 4, 2012. Any amendments to the administrative record by the FTA are due on April 6, 2012. Also due on that day is the plaintiff's opening motion for summary judgment. The defendants will then file their

cross motions for summary judgment, as well as their opposition to the plaintiffs' motion for summary judgment by May 18<sup>th</sup>. The plaintiffs' reply to the defendants' opposition will be due on June 8<sup>th</sup>, on which day the opposition to the defendants' summary judgment motion is also due. On June 29<sup>th</sup>, the defendants' reply in support of their motion for summary judgment is due. The hearing on all motions for summary judgment is set for August 21, 2012 in Honolulu.

Mr. Lui-Kwan asked when the administrative record would be stipulated to. Mr. Takeuchi stated that the determination would be based on what the parties seek to add to the record. However, the judge indicated that he would like that to occur promptly, and that the issue could be decided by April 6<sup>th</sup>.

Mr. Lui-Kwan asked if there was any discussion about injunctions, and Mr. Takeuchi advised that the plaintiffs did not state that they intended to seek an injunction. Ms. Okinaga asked who made the request to augment the administrative record. Mr. Takeuchi clarified that both the plaintiffs and defendants are seeking to include additional records.

On the Kaleikini lawsuit in state court, in which plaintiffs seek to establish that an archaeological inventory survey must be done for the entire project prior to the start of any work, the Circuit Court previously granted the City defendants' motion for summary judgment. The matter was appealed by the plaintiff. The case has been transferred from the Intermediate Court of Appeals to the Hawaii Supreme Court upon plaintiff's motion. The case has been fully briefed, but no date for oral argument has been set. Recently, Justices Acoba and Duffy recused themselves; no basis for the recusals are required, nor were any given. Circuit Court Judges Browning and To'oto'o have been selected as replacements to hear the case.

Mr. Lui-Kwan asked about the Bombardier procurement case. Mr. Takeuchi explained that it was heard in the Circuit Court, on appeal from the administrative process. The Circuit Court upheld the decision of the administrative hearings officer to uphold the procurement process, and the plaintiff appealed to the Intermediate Court of Appeals. Appellant Bombardier filed its opening brief in February, and answering briefs by Appellees City and County of Honolulu and Ansaldo are due in April. Once the case is fully briefed, the court will probably ask for oral argument from the parties. Bombardier also filed an appeal with the FTA last year, but Mr. Takeuchi is unaware of any activity on that matter.

#### VI. Archaeological Inventory Survey Status Update

HART Planning Manager Faith Miyamoto presented an update on the Archaeological Inventory Survey (AIS) by alignment phase. She reported that the AIS fieldwork report for the West Oahu/Farrington Highway phase has been completed according to the State Historic Preservation Division approved plan. Ms. Miyamoto reported that no burials were found. Near the Waipahu Transit Center station, however, a *lo'i*, or taro field, deposit was found. The results of this find were documented in the AIS report, and a data

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recovery plan for the *lo'i* has been approved by the State Historic Preservation Division (SHPD). The data recovery plan will be implemented upon the final property acquisition for that location.

In the Kamehameha Highway phase, fieldwork has also been completed according to the SHPD approved AIS plan. Again no burials were found, but another *lo'i* deposit was discovered near the Pearlridge station. Staff is reviewing the AIS report for submission to SHPD, and will be proposing a monitoring plan for the *lo'i* deposit.

Ms. Miyamoto reported that the Airport phase plans will be submitted for SHPD review the following week. SHPD has approved the AIS plan, and staff is in the final stages of scheduling the fieldwork. Fieldwork, which comprises digging approximately 40 trenches, will take two to three months to complete, commencing in April 2012.

Mr. Horner asked if the location of the Airport station is known, as he understood that discussions with the Department of Transportation and the airport were still ongoing. Interim Executive Director Toru Hamayasu advised that the station will be located on the mauka side of the new parking structure, near the interisland terminal. Mr. Horner asked whether HART made the location known to the public, and Mr. Hamayasu stated that the location was contained in the Environmental Impact Statement. Although the alignment and approach to the station has changed, the station location has been the same since 2006 when the project began. He stated that the alignment is what HART and the DOT agreed to, which was reflected in the budget. Mr. Hamayasu stated that a contract for the station design had just been let. Mr. Horner emphasized the importance of the airport station both for residents and visitors from the neighbor islands and other places.

Board member Wayne Yoshioka agreed with Mr. Horner regarding the airport station's importance, and stated that he was involved in several presentations on the airport station. Mr. Horner stated that he thought most consumers do not understand the airport station location, and stressed the need for HART to communicate to the public how multimillions of dollars are to be spent there. Mr. Yoshioka agreed that information on the airport station has been presented to the public many times, and the public has expressed a keen interest in it. Mr. Lui-Kwan stated that he appreciates the presentations that were made, but also said that it is appropriate to be redundant in educating the public. Mr. Yoshioka reiterated his feeling that staff has done a good job in informing the public on where the stations are.

Ms. Miyamoto continued with her presentation by reporting that 232 trenches are scheduled to be dug in the City Center phase (Middle Street to Ala Moana Center), with approximately 10% of trenches completed so far. No burials have been found to date. Mr. Horner requested information on how many trenches will be dug for the whole project, how many have been dug, and how many *'iwi* have been found. Ms. Miyamoto advised that more trenches are being dug in the City Center phase, due to the sensitivity for *'iwi* in that area. She advised that all AIS work in City Center will be complete before the end of final design, and we are currently on schedule.

Mr. Lui-Kwan asked what HART team members were involved in AIS matters. He also asked who on the HART staff is responsible for outreach to the Native Hawaiian community, and what outreach has occurred. Ms. Miyamoto replied that she and two other planners work on AIS matters, and in ensuring that the Programmatic Agreement is complied with. One staff person is responsible for cultural outreach. She stated that the Programmatic Agreement contains about 30 consulting parties of which over 25 are Native Hawaiian organizations. HART's general engineering consultant also has someone who assists with outreach to the Native Hawaiian community. Cultural Surveys Hawaii provides the archaeologists to do the work for the AIS.

Mr. Lui-Kwan suggested HART may want to reach out to the Sovereign Councils of Hawaiian Homelands Assembly, as the organization that represents all of the Hawaiian Homelands associations. Ms. Miyamoto thanked Mr. Lui-Kwan for his suggestion, and pointed out that the development of a burial consultation protocol is required under the Programmatic Agreement to provide guidance should any *'iwi* or bone fragments be found.

Mr. Horner asked how many *puka* would be dug. Ms. Miyamoto stated that about 300 holes were planned: 232 in City Center, 40 for Airport, 30 for Kamehameha Highway, and about 25 for West Oahu/Farrington Highway. So far over 100 holes have been dug, representing about one third of the total planned holes. Mr. Horner asked how many *'iwi* had been found in the first one-third of the planned holes; Ms. Miyamoto replied that none had been found. Mr. Horner stated that this news provides comfort and confidence about this sensitive issue. Mr. Lui-Kwan said that HART should be proactive in sharing this important, sensitive information with the broader community, and particularly with the Native Hawaiian community.

## VII. Executive Session

Mr. Lui-Kwan called for any request for executive session, and none was made.

Mr. Lui-Kwan called for any more public testimony.

Russell Honma provided testimony that if something happens with the core systems contract, the train could be built via a joint venture with Bombardier, Sumitomo, and Mitsubishi. He also stated that in 2009, nine people died and dozens were hurt because of Washington Metro's negligence in maintaining trains. He also cautioned the committee regarding the negative effect the European economy may have on Finmeccanica.

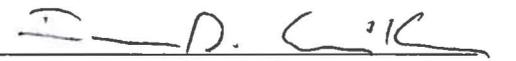
VIII. Adjournment

There being no other matters before the committee, Mr. Lui-Kwan adjourned the meeting at 10:06 AM.

Respectfully Submitted,

  
Cindy Matsushita  
Board Administrator

Approved:

  
Ivan M. Lui-Kwan, Esq.  
Chair, Audit/Legal Matters Committee

MAY - 3 2012

Date

# ATTACHMENT A

**Honolulu Authority for Rapid Transportation**

**RESOLUTION NO. 2011-8**

**RELATING TO THE REPORTING OF GIFTS TO THE BOARD OF DIRECTORS OF  
THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City & County of Honolulu 1973, as amended (Charter); and

WHEREAS, the Charter empowers the Executive Director/CEO to request, and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities; and

WHEREAS, gifts to HART from individuals or organizations or the public or private sector can be useful supplements to appropriated funds; and

WHEREAS, gifts may be used to carry out activities that further HART's mission, programs, functions or responsibilities, provided that such expenditures are not prohibited by law or regulation applicable to HART;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That the Gifts Policy, as shown in Exhibit A attached hereto and made a part hereof by reference, be and hereby are, adopted as the policy of HART; and
2. That the Executive Director/CEO is authorized to implement the policies described in Exhibit A and to ensure that Authority staff and contractors, as appropriate, adhere to these policies; and
3. That this Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of the Honolulu Authority for Rapid Transportation on

\_\_\_\_\_.

Exhibit A –Gifts Policy of the Honolulu Authority for Rapid Transportation

\_\_\_\_\_  
Board Chair

ATTEST:

\_\_\_\_\_  
Board Administrator

## **The Honolulu Authority for Rapid Transportation Gifts Policy**

### **Policy**

The Charter empowers the Executive Director/CEO to request and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities. HART's Financial Policies, as approved on August 25, 2011, further states that HART will pursue opportunities with private and public sector interests that will benefit from the implementation of the Honolulu High-Capacity Transit Corridor Project and HART's capital projects.

### **Definition of Gift:**

"Gift" is defined as a voluntary contribution to the Honolulu Authority for Rapid Transportation for a public purpose whether for a specific purpose or not, of money, security, personal property or real property. More specifically, HART's Financial Policies state that contributions could take the form of direct cash contributions, donation of rights-of-way, structured payments over time or the actual construction of project elements as examples.

### **Authority to Accept Gifts**

The authority to solicit, accept, refuse, return or negotiate the terms for accepting a gift under this Gifts Policy ("Policy") resides with the Executive Director//CEO. This authority may be delegated to another HART employee in writing and this delegated authority may be limited to accepting specific types of gifts or gifts for a specific purpose or event. Approval of the acceptance of a gift after its receipt may be granted as deemed appropriate by the Executive Director/CEO.

Employees, other than the Executive Director/CEO or his/her designee, shall forward all offers of gifts regardless of value to the Executive Director/CEO or his/her designee for consideration and shall provide a description of the gift offered. Employees shall also inform the Executive Director/CEO or his/her designee of all discussions related to the possibility of a gift. An employee shall not provide a donor with any commitment, privilege, concession or other present or future benefit, other than an appropriate acknowledgment, in return for a gift.

### **Types of Gifts Accepted**

HART may solicit or accept any type of gift that may be used to carry out activities that further its mission, programs, functions or responsibilities. However, as a matter of policy, any cash gifts will only be accepted if made by check or money order to "Honolulu Authority for Rapid Transportation."

### **Conditions for Accepting Gifts**

HART shall not accept any gift that:

- Attaches conditions inconsistent with applicable laws, regulations, or ethical standards of conduct;
- Is received or accepted from an anonymous donor;
- Is conditioned upon or will require the expenditure of appropriated funds that are not available to HART;
- Is offered to or is for the exclusive benefit of individual HART employees;

- Requires HART to adhere to particular requirements as to deposit, investment, or management of funds donated, if those requirements inure to the exclusive benefit of third parties;
- Requires HART to spend taxpayer dollars to endorse the donor or its products, services, activities, or policies;
- Requires HART to provide the donor with some privilege, concession or other present or future benefit in return for the gift; or
- Requires HART to undertake or engage in activities that are not related to its mission, programs or statutory authorities.

In making a determination as to whether any of these conditions apply, the Executive Director/CEO or his/her designee should consider whether the gift would reflect unfavorably upon the ability of HART employees or the HART Board of Directors to carry out their responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs. The Executive Director/CEO or his/her designee may be guided by all relevant considerations, including, but not limited to the following:

- The identity of the donor;
- The monetary or estimated market value or the cost to the donor;
- The purpose of the gift as described in a written or oral proposal by the donor;
- The identity of any other expected recipients of the gift on the same occasion, if any;
- The timing of the gift;
- The nature and sensitivity of any matter pending at the agency affecting the interests of the donor;
- The significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to the employee;
- The nature of the gift offered;
- The frequency of other gifts received from the same donor; and,
- The agency activity, purpose or need that the gift will aid or facilitate

The Executive Director/CEO or his/her designee may ask the donor to provide in writing any additional information needed to assist in making the determination under this section. Such information may include a description of the donor's business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

The Executive Director/CEO or his/her designee may find that in some cases it is in the best interest of HART to limit the gift or qualify its acceptance or to decline it as a matter of agency discretion, even though its acceptance would not otherwise be precluded. A donor may be advised of the reason why the gift has been qualified or declined.

In the event that a gift is clearly worth more than \$100,000, or is a gift that requires ongoing maintenance, security, or storage, or any costs not previously budgeted for, as in the case of a gift of real property, the Executive Director/CEO should consult with the Board prior to accepting or rejecting said gift. Although the Executive Director/CEO maintains, by Charter, the responsibility for acceptance of gifts on behalf of HART, the Executive Director/CEO shall consult with the Board and/or the Ethics Commission if questions arise as to implementation of this policy.

### **Acknowledgement of Gifts**

Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift shall be specified. In the case of non-monetary gifts, the letter shall not make reference to the value of the gift. Valuation of non-monetary gifts is the responsibility of the donor. Letters of acknowledgement shall not include any statement regarding the tax benefits or implications of a gift, and such determinations shall remain the responsibility of the donor. In addition, letters of acknowledgement shall not include any statement of endorsement of the donor.

### **Reporting of Gifts**

The Executive Director/CEO or his/her designee will report all gifts received, with a value of \$2,500.00 or more, to the HART Board of Directors no later than at the regularly scheduled Board meeting following receipt of the gift. For gifts of \$2,500.00 or less, the Executive Director/CEO or his/her designee will submit to the HART Board of Directors a quarterly report listing all gifts accepted or rejected during the quarter. The report shall be submitted at the next regularly scheduled Board meeting following the close of the applicable quarter.

### **Accounting of Gifts**

- HART shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures;
- HART shall maintain an inventory of donated personal property worth more than \$2,500.00. The inventory shall be updated each time an item is sold, surplus, destroyed or otherwise disposed of or discarded; and,
- HART shall maintain a log of all gifts accepted under this policy. This log shall include: the name and address of the donor; a description of the gift; and, the date the gift was accepted.