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January 18, 2018

TO: Leo Asuncion and Crag Hirai

FROM: Peter Adler and Keith Mattson

RE: Recommendations on Organization and Support for TOD Council Sub-Committees

**Background.** The Hawaii Interagency Council for Transit-Oriented Development (TOD Council) approved the formation of eight (8) sub-committees for the purpose of furthering the work of the TOD Council by enabling *“more in-depth and targeted discussions of regional and project implementation issues among directly affected agencies needed to advance project development.”* The TOD Council established three sub-committees on Oahu for the East Kapolei, Halawa-Stadium, and Iwilei-Kapalama; one each for Kauai, Maui, East Hawaii, and West Hawaii; and a Neighbor Island sub-committee to address issues of common interest to Kauai, Maui, and Hawaii Counties.

As co-chairs of the TOD Council, the Office of Planning (OP) and the Hawaii Housing Finance Development Corporation (HHFDC) are jointly responsible for ensuring that the inter-agency sub-committees are able to achieve their stated purpose of facilitating TOD project implementation statewide. OP requested that we develop recommendations on a framework, guidelines, and timelines for the sub-committees’ work to maximize the effectiveness of the sub-committees in doing the groundwork for the implementation of TOD projects and the TOD strategic plan.

The sub-committees are Permitted Interaction Groups (PIGs) under the State’s Sunshine Law (Part 1 of Chapter 92, Hawaii Revised Statutes) and must operate within the rules established for PIGs. The number of Council member organizations represented on the sub-committees cannot constitute a quorum of the TOD Council nor can the sub-committees take any action independent of the Council. The sub-committees must work independently of the Council until their work is completed. The sub-committees report

back to the TOD Council, which will take any actions needed. Once a sub-committee reports back to the Council, it is dissolved. A sub-committee may be re-established to work on new issues as needed. (See Attachment 1 providing guidance on PIGs from the Office of Information Practices).

After meeting with OP staff and Craig Hirai on November 16, 2017, we recommend the TOD Council consider and adopt the following proposal for specific organizational details and procedures for commencing and managing sub-committee work.

## **PROPOSAL FOR TOD COUNCIL SUB-COMMITTEE ORGANIZATION AND IMPLEMENTATION**

### **A. ORGANIZATION AND GUIDELINES**

#### **1. Mission for Sub-committees**

To facilitate implementation of the TOD Strategic Plan, by identifying and collaboratively working on:

- a. Specific short- and long-term actions needed to implement TOD in the sub-committee area;
- b. Actions to provide essential supporting infrastructure necessary for TOD in the sub-committee area;
- c. Recommendations on funding and timing of TOD CIP requests; and
- d. Identification of other TOD opportunities and needs as implementation progresses.

Understanding that all of these efforts need to remain flexible, the organizational objectives of the individual sub-committees will be to:

- Establish clear ground rules and procedures to support the sub-committees' deliberations;
- Focus attention on their proposed regional mission and purpose;
- Strengthen and enhance communication within and between their multi-agency planning processes;
- Keep their planning efforts on-track and on-schedule through a logical sequence of steps (i.e., workplan) that result in more precise and prescriptive project implementation; and
- Anticipate and address the basic challenges and changes the sub-committees may encounter.

## **2. Organization and Support**

### **a. Membership**

- i. Each sub-committee shall be comprised of a minimum of one representative from each of the organizational entities designated as members of the sub-committee by the TOD Council. Each sub-committee's designated agency representative needs to be named before the first meeting of the respective sub-committee is held. See attached list of sub-committee members.
- ii. Each sub-committee may invite more than one representative and staff of its designated organizational members to participate in sub-committee meetings and activities, provided that an organizational entity is entitled to only one vote if any vote is taken.
- iii. Representatives from other public agencies or stakeholder organizations may be invited to participate in sub-committee meetings and activities, provided that the number of representatives from TOD Council member organizations on the sub-committee shall not exceed a quorum of TOD Council member organizations.

### **b. Leadership**

- i. Each sub-committee shall have two co-chairs: an OP and/or HHFDC co-chair and a regional host co-chair to be determined by the host agency/agencies or the sub-committee.
- ii. The chief executive from each agency represented on the sub-committee should designate in writing one official agency representative and one or more alternates to serve as co-chair on each sub-committee, to ensure maximum continuity for planning and decision-making within each sub-committee. Agency alternates for each sub-committee shall be allowed to attend all meetings of their sub-committee alongside the official agency designee in order to maximize continuity and consistency for any future meetings where they must represent their agency. However, when decisions are made, it is only each agency's official designee's voice or vote that will count. When an agency's official designee is in attendance, the alternate serves in an ex officio role only.
- iii. If no other regional agency is willing to accept the sub-committee co-chair role, then OP and HHFDC will serve as co-chairs.

### **c. Organizational Support**

- i. OP and/or HHFDC shall provide designated staff members for each sub-committee unless another participating agency offers and is prepared to assume this function. The designated staff's job is to ensure communication, scheduling, minute taking, and record keeping for the sub-committee.

- ii. The role of the sub-committee co-chairs shall include: (1) scheduling and agenda setting; (2) calling meetings to order and adjourning; (3) calling for either straw votes or actual votes on specific issues; (4) overseeing/reviewing the official minutes; and (5) presenting the sub-committee's report to the TOD Council.
- iii. The regional host agency co-chair shall be responsible for locating and reserving meeting rooms, assisting in providing equipment as needed, and setting up for and breaking down meeting rooms for sub-committee meetings.
- iv. It shall be the joint responsibility of the OP/HHFDC co-chair and the regional host co-chair for scheduling of meetings and communicating and disseminating meeting information and materials to sub-committee members.
- v. Sub-committee members shall be responsible for their own travel arrangements and costs related to meetings or other activities, unless it is determined and communicated beforehand that funding is available to cover travel-related expenses.

### **3. Conduct of Meetings**

- a. The sub-committees function mainly as 'working groups' that tackle levels of detail not generally addressed by the TOD Council. The sub-committee co-chairs will lead each meeting with that in mind, plan the agenda, and moderate the discussion.
- b. Sub-committee activities shall generally follow a work plan that charts out key activities and a general timeline for TOD project implementation in the sub-committee area.
- c. Maintaining a full administrative record for each sub-committee is essential for eventually reporting the sub-committee's work back to the TOD Council. The sub-committee co-chairs shall establish a list of proposed data and information needs and a specific web location or other means for sharing the assembled information among sub-committee members. The information could include master schedules, decision trees, Gant charts, or other planning documents.
- d. Sub-committee co-chairs should continuously request that each sub-committee member indicate what pertinent data and information they will provide for discussion at the next meeting so that agendas and action items can be developed.
- e. Meeting notes and attendance lists shall be circulated following each sub-committee meeting for sub-committee review and reference.

### **4. Communications**

- a. OP and HHFDC co-chairs will provide the TOD Council general procedural updates on each sub-committee's activities by reporting on who attended and

what general subjects were discussed, but not providing details of the discussions or the positions of different agencies.

- b. State rules for PIG communications are defined by OIP guidance and provide a certain amount of flexibility for communications with others not on the TOD Council. To maintain continuity and consistency, the following procedures shall apply:
  - i. All significant interaction on TOD sub-regional planning between members of the sub-committee outside the full sub-committee meetings should be communicated or copied to the designated OP or HHFDC staff.
  - ii. Information from these interactions outside full sub-committee meetings should be briefly summarized and distributed to all sub-committee members prior to, or at the following sub-committee meeting.
  - iii. If a significant number of such interactions are anticipated between full-sub-committee meetings, a regularly-scheduled conference call or web meeting time should be established to facilitate information sharing between meetings and notes taken for the administrative record.

#### **5. Sub-Committee Report/Recommendations to the TOD Council**

- a. The critical objectives for the first sub-committees are to identify actions needed and a work plan to coordinate TOD projects for the selected sub-regions in the TOD Strategic Plan. Each sub-committee must identify when these objectives have been met, such that recommendations can be forwarded to the TOD Council for consideration and the sub-committee dissolved or reconstituted to address new issues.
- b. Each sub-committee should identify and periodically update simple 'percentage of completion' benchmarks for their work plans, based on criteria relevant to the objectives and tasks set for the sub-committee.
- c. To the degree recommendations may be generated by the sub-committees, each sub-committee should attempt to reach the highest levels of consensus possible. Consensus recommendations are those everyone can support, or at a minimum, for which there is "no objection." If, after full discussion of all points of view, consensus proves impossible, the co-chairs should call for a vote of those members present, which will be recorded. Recommendations with a simple majority of sub-committee members' support should be forwarded to the TOD Council for consideration with a summary of any dissenting viewpoints.
- d. OP and/or HHFDC staff shall be responsible for preparing the sub-committee reports to the TOD Council for action.

## **B. RECOMMENDED NEXT STEPS**

1. **Organizational meetings of sub-committees.** Convene organizational meetings for each sub-committee in the first quarter of CY 2018 to develop initial work plans for sub-committees per TOD Council discussion. Initial work plans should be submitted as first reports to TOD Council with recommendations for re-establishment of sub-committees to execute the work plans.
2. **Objectives for initial meetings.** Prior to first meeting, poll sub-committee members to determine who else should be invited to participate or be informed of meetings. Objectives for the initial meeting should include:
  - a. Orientation of sub-committee members to mission and organizational guidelines;
  - b. Establishment of sub-committee leadership and “chains of command;”
  - c. Establishment of future meetings and communication procedures;
  - d. Initial discussion of work plan issues and needs; and
  - e. Setting of a meeting date for detailed work plan development/discussion.

### Agenda for initial sub-committee meetings might include the following:

- Welcome and Introductions
- Selection of a regional co-chair for sub-committee
- Specific mission for sub-committee – Long term plan, infrastructure, other actions required for implementation
- Organizational issues for sub-committee
  - PIG instructions and ground rules (Office of Information Practices)
  - Decision-making
- Discussion:
  - Major opportunities and constraints on State-owned land in sub region (*from TOD Strategic Plan*)
  - Major opportunities and constraints on other lands in the sub region
  - Workplan objectives for sub-committee – what do we want to achieve?
  - What is desired and needed by participating sub-committee agencies?
  - Who is involved in ultimate decision-making?
  - Anticipated challenges
  - Public engagement strategies
- Information needed from each agency for next meeting
- Schedule of future meetings

**3. Preparation before Initial Sub-Committee Meetings.** Understanding that the details of regional planning will be somewhat different in each area, OP and HHFDC should, in advance of all the sub-committees, prepare a framework and general timeline for each sub-committee and a proposed specific list of questions for them to answer. Some of the questions may be generic to all sub-committees, others specific to the particular areas being planned.

Generic questions could be: *'what new infrastructure is required for this area to support State TOD projects'* and *'what projects are already in the CIP'*? Others will be more specific, such as *'what is the optimal sequence for building new sewage capacity in the Stadium area?'* A specific advance list of questions marked "draft" should be developed and on the table at the first meeting.

## Attachment 1 – Guidance from the Office of Information Practices

*Quick Review: Who Board Members Can Talk To and When (Part 3) (August 8, 2013)*

OIP often is asked whether board members can talk to one another in various situations when not in a meeting. To help board members understand what they can talk about when they are not in a meeting, OIP put together a three-part Quick Review. The entire series can be found online on [OIP's Sunshine Law training webpage at oip.hawaii.gov](http://oip.hawaii.gov).

Boards subject to the Sunshine Law, Part I of Chapter 92, Hawaii Revised Statutes (HRS), are generally required to conduct all business in open meetings that have been properly noticed to allow for public participation. This Quick Review discusses an exception to the open meeting requirement for “permitted interaction groups” or “PIGs,” as set forth in section 92-2.5, HRS. While other types of permitted interactions were previously discussed in Part 2 of this Quick Review series, this article explains how members of a board may form a PIG to investigate or to negotiate a matter.

### **PIGs Established to Investigate**

Two or more members of a board, but less than the number of members which would constitute a quorum, may be assigned to investigate a matter relating to the official business of their board.

In order for a board to take action on a matter investigated by a PIG, **three meetings must occur**. At the **FIRST** meeting of the full board, the scope of the investigation and the scope of each member's authority are defined. The PIG may then conduct its investigation.

At a **SECOND** meeting of the full board, findings and recommendations of the PIG are presented to the board, but the board cannot discuss or act on the report at this meeting.

- A PIG may present its findings to the full board in an executive session *if* the reason for entering into the executive meeting is one of those set forth in section 92-5(a), HRS, or other law. For example, if a PIG was created to investigate whether to take certain disciplinary action against an employee, it may present its findings to the full board in accordance with section 92-5(a)(2), HRS, which allows board to enter executive meetings to consider the discipline of an employee.

If the board would like to discuss, deliberate, or make any decisions regarding the PIG's report, it must do so only at a **THIRD** meeting held separately and after the meeting at which the findings and recommendations of the investigation were presented by the PIG.

- The public must be allowed to testify on any agenda item of the board, including



those concerning PIGs and reports by PIGs.

### Some Practical Considerations for Investigative PIGs

- PIGs are not subject to the Sunshine Law's requirements for giving notice, holding open meetings, or keeping minutes.
- PIG members may communicate by interactive technology (Skype, teleconference, etc.), and by e-mail, telephone, etc., on matters within the scope of the PIG's authority without violating the Sunshine Law.
- Although a PIG is not required to hold public meetings, it can choose to do so if it wishes.
- PIGs may solicit input from the public as part of an investigation without the need of filing a meeting agenda in accordance with the Sunshine Law.
- A PIG may include among its members people who are not members of the board that created the PIG. A PIG may also consult with others (i.e., staff, members of the public, individuals with expertise in a field) in furtherance of its investigation, but should NOT consult with other members of its parent board.
- Members of a board who are not part of the PIG may NOT attend PIG meetings.
- Before the PIG reports to the board, PIG members should not discuss the status of their investigation with other board members who are not part of the PIG.
- A standing committee of a board may create a PIG, and such PIGs must follow all the requirements of section 92-2.5(b), HRS.
- If a member of a PIG ceases to be a member of the parent board, the board should not substitute another board member into that vacant PIG position. The PIG's membership was previously established at the initial meeting that created the PIG. If a board wants to change the PIG's membership, it should dissolve the PIG and create a new one.

### **PIGs Established to Negotiate**

Another less common type of PIG can be formed when two or more members of a board, but less than a quorum, are assigned to present, discuss, or negotiate any position adopted by the board at a meeting. The assignment of members to a PIG for the purpose of negotiation, and the scope of each member's authority, must be defined at a board meeting prior to the presentation, discussion, or negotiation. The three-meeting requirement for investigative PIGs does not apply to PIGs established to negotiate.

As a final note, boards should keep in mind that they may be subject to other laws or rules in addition to the Sunshine Law, which could affect members' ability to discuss pending matters. This may be particularly relevant for boards that exercise adjudicatory functions (which are not subject to the Sunshine Law), as they must generally avoid *ex parte* communications. Boards should consult with their own attorneys on the application of such laws and rules.

## Attachment 2 TOD Council Sub-Committees

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### **Iwilei-Kapalama Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Comptroller, DAGS
- 4) Executive Director of the Hawaii Public Housing Authority
- 5) Chairperson of the Hawaiian Homes Commission
- 6) Superintendent of Education
- 7) President of the University of Hawaii
- 8) Director of Transportation
- 9) Mayor of the City and County of Honolulu; or their designees

### **Halawa-Stadium Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Chairperson of the Stadium Authority
- 4) Comptroller
- 5) Executive Director of the Hawaii Public Housing Authority
- 6) Superintendent of Education
- 7) Director of Public Safety
- 8) Director of Transportation
- 9) Mayor of the City and County of Honolulu; or their designees

### **East Kapolei Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) President of the University of Hawaii
- 4) Chairperson of the Hawaiian Homes Commission
- 5) Chairperson of the Board of Land and Natural Resources
- 6) Superintendent of Education
- 7) Director of Transportation
- 8) Mayor of the City and County of Honolulu; or their designees

### **County of Kauai Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Comptroller
- 4) Chairperson of the Board of Land and Natural Resources
- 5) Director of Health
- 6) President of the University of Hawaii
- 7) Chairperson of the Hawaiian Homes Commission
- 8) Mayor of the County of Kauai; or their designees

**County of Maui Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Comptroller
- 4) Chairperson of the Hawaiian Homes Commission
- 5) Superintendent of Education
- 6) Chairperson of the Board of Land and Natural Resources
- 7) Director of Transportation
- 8) Mayor of the County of Maui; or their designees

**County of Hawaii – West Hawaii Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Chairperson of the Board of Land and Natural Resources
- 4) President of the University of Hawaii
- 5) Director of Transportation
- 6) Chairperson of the Hawaiian Homes Commission
- 7) Mayor of the County of Hawaii; or their designees

**County of Hawaii – East Hawaii Sub-Committee Members:**

- 1) Director of the Office of Planning
- 2) Executive Director of the Hawaii Housing Financing and Development Corporation
- 3) Chairperson of the Hawaiian Homes Commission
- 4) Chairperson of the Board of Land and Natural Resources
- 5) Executive Director of the Hawaii Public Housing Authority
- 6) President of the University of Hawaii
- 7) Director of Transportation
- 8) Mayor of the County of Hawaii; or their designees

**Neighbor Island Sub-Committee Members:**

- 1) Mayor of the County of Hawaii
- 2) Mayor of the County of Kauai
- 3) Mayor of the County of Maui
- 4) Executive Director of the Hawaii Housing Financing and Development Corporation
- 5) Director of OP; or their designees