MEHEULA & DEVENS, LLP

WILLIAM MEHEULA (2277)
meheula@pacificlaw.com
Ocean View Center
707 Richards Street, PH1
Honolulu, HI 96813
Telephone No. 808.528.5003
Facsimile No. 808.254.6872

LAW OFFICES OF SEAN KIM

SEAN KIM (1787)
sklawhi@yahoo.com
1188 Bishop Street, Suite 1210
Honolulu, HI 96813
Telephone No. 808.538.1812

Attorneys for Intervenor Defendants
FAITH ACTION FOR COMMUNITY EQUITY,
MELVIN UESATO, AND
THE PACIFIC RESOURCE PARTNERSHIP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

HONOLULUTRAFFIC.COM; CLIFF SLATER; BENJAMIN J. CAYETANO; WALTER HEEN; HAWAI‘I’S THOUSAND FRIENDS; THE SMALL BUSINESS HAWAI‘I ENTREPRENEURIAL EDUCATION FOUNDATION; RANDALL W. ROTH; DR. MICHAEL UECHI; AND THE OUTDOOR CIRCLE Plaintiffs,	CIVIL NO. 11-00307 AWT **INTERVENOR DEFENDANTS** FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO AND THE PACIFIC RESOURCE PARTNERSHIP’S **REPLY MEMORANDUM REGARDING PLAINTIFFS’ CONSOLIDATED MEMORANDUM IN OPPOSITION TO DEFENDANTS’ CROSS-MOTIONS FOR SUMMARY JUDGEMENT [155]** AND **IN**

vs.

FEDERAL TRANSIT ADMINISTRATION; LESLIE ROGERS, in his official capacity as Federal Transit Administration Regional Administrator; PETER M. ROGOFF, in his official capacity as Federal Transit Administration Administrator; UNITED STATES DEPARTMENT OF TRANSPORTATION; RAY LAHOOD, in his official capacity as Secretary of Transportation; THE CITY AND COUNTY OF HONOLULU; WAYNE YOSHIOKA, in his official capacity as Director of the City and County of Honolulu, Department of Transportation Services,

Defendants,

and

FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP,

Intervenor Defendants.

SUPPORT OF INTERVENOR DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT [143]; EXHIBIT A; CERTIFICATE OF SERVICE

HEARING
DATE: August 21, 2012
TIME: 10:00 a.m.
JUDGE: The Hon. A. Wallace Tashima

(Presiding: The Honorable A. Wallace Tashima, United States Circuit Judge Sitting by Designation)

Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTERVENOR DEFENDANTS FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO AND THE PACIFIC RESOURCE PARTNERSHIP'S **REPLY MEMORANDUM REGARDING PLAINTIFFS' CONSOLIDATED MEMORANDUM IN OPPOSITION TO DEFENDANTS' CROSS-MOTIONS FOR SUMMARY JUDGEMENT [155]** AND **IN SUPPORT OF INTERVENOR DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT [143]**

I. DEFENDANTS TREATMENT OF UNKNOWN NATIVE HAWAIIAN BURIALS COMPLIED WITH § 4(f)

Plaintiffs argue that the phased approach regarding unknown burials in the Programmatic Agreement ("**PA**") violated § 4(f) on the grounds that all § 4(f) sites should be identified and evaluated before issuance of the ROD. Plaintiffs' position, however, ignores the factual circumstances and reasons for deferring conducting subsurface testing for unknown and unidentified Native Hawaiian burials. It also ignores the commitment by the FTA and the City to modify the Project design to avoid any eligible Native Hawaiian burials that may be discovered.

It is undisputed that at the time the ROD was executed: (1) the Defendants had conducted the § 106 identification process and § 4(f) evaluation for the entire corridor except for new sub-surface testing, *see* FEIS chapters 4 and 5; (2) that until sufficiently detailed engineering plans are available, the area of testing would be ten times greater thus increasing the chance of disturbing burials, *see* AR00000620; and (3) that higher level of engineering specificity is not authorized

until the ROD is issued, *see City of Alexandria* 198 F.3d 862, 873 (D.C. Cir. 1999), and 23 C.F.R. § 771.113(a)(iii)

Accordingly, the FEIS appropriately committed: "If archaeological resources either are encountered during the AIS or inadvertently during construction and are determined to be eligible for the NRHP and warrant preservation in place, the City will prepare separate Section 4(f) evaluations for such resources." AR00000691. Furthermore, 23 C.F.R. § 774.9(c)(2) permits this type of timing.

Intervenors' memo at pages 64-65 stated:

> The technical report reasoned "[b]ecause of the Project's need for extensive subsurface archaeological investigations, their cost in time and money, the relative inaccessibility of the archaeological resources beneath in-use roadways and sidewalks, and current uncertainty regarding the actual location of the project footprint, it is reasonable to defer to the [phased] approach described previously." AR00037705. The Final EIS at 4-179 states the phased approach "would limit the area disturbed for archaeological investigations and construction to potentially less than 10 percent of what would be disturbed if archaeological investigations were conducted for 100 percent of the alignment." AR00000620. At the time of the Final EIS, the engineering plans, attached as Appendix B and C to the Final EIS, were not sufficiently detailed to note pier and utility locations. In fact, as noted in *City of Alexandria* at 873, 23 C.F.R. § 771.113(a)(iii) prohibits that type of design specificity until after the ROD has been executed. The PA commits the FTA to conduct additional sub-surface testing for potential burials as soon as more detailed engineering studies are available. AR00000096.

Significantly, Plaintiffs' reply memo does not dispute any of these facts. Instead, Plaintiffs' reply memo at pages 22-23 makes three arguments.

Plaintiffs first argue that "the Administrative Record demonstrates that the City and FTA can – and, for at least one small segment, ***did*** – complete an AIS prior to final design. *See e.g.*, AR00059459-59932 (AIS for Phase 1 completed prior to ROD); AR0000093 (AIS for Phase 4 to be completed 'prior to beginning final design')." To evaluate Plaintiffs' first argument it is helpful to understand the following sequence of events:

March 2009:	AIS Plan for Phase 1[1]
April 2010:	Final AIS Report for Phase 1, AR00059459
January 2011:	ROD, AR0000030
September 2011:	AIS Plan for Phase 4[2]

In March 2009, when the AIS Plan for Phase 1 was issued, engineering plans were not sufficiently detailed to identify all of the direct ground disturbance areas, such as utilities, and only conceptual designs were available to roughly estimate the locations of the stations and columns. AR00059461, 00059487. Thus, "[t]est excavations were distributed throughout the project area to provide representative coverage and assess the stratigraphy and potential for subsurface cultural resources within the project area." AR00059902. For example, 35 out of 250 pier locations would be tested and "the approach would be to locate on the ground as precisely as possible the footprint of the proposed column foundation". The plans that were

[1] AIS Plan for Phase 1 can be found at http://www.honolulutransit.org/media/96074/20090301-final-WOFH-aisp.pdf

[2] AIS Plan for Phase 4 can be found at http://www.honolulutransit.org/media/50207/20111206-aisp-cc-vol1-sec1.pdf.pdf

used to estimate the approximate location of columns stated that they "are based on conceptual engineering designs". *See* AIS Plan for Phase 1 at 127. This approach was acceptable for Phase 1 because the archaeological history indicated that the area was not likely to include historic resources. AR00059463.

On the other hand, Phase 4 (or "City Center") includes areas that are rated higher for expectation of potential burials. Therefore, the AIS Plan for Phase 4 provides for 232 archaeological subsurface test excavations at column locations, station locations and utility relocation areas. *See* AIS Plan for Phase 4 at iii. The plans used in the AIS Plan for Phase 4 are precise as to the location of the columns, utilities and stations to avoid unnecessary disturbance of burial sites. *See* AIS Plan for Phase 4 at 278-311.

Thus, Plaintiffs' first argument that the AIS for Phase 4 could have been completed before the ROD was executed is not supported by the facts. Since Phase 4 includes areas that have a greater potential for burials, the AIS plan required more testing to increase the likelihood that potential burials are identified. The AIS plan also required more precision to avoid unnecessary disturbance of potential but unknown burial sites. This could not be reasonably accomplished and done in good faith before the ROD was issued. 36 C.F.R. § 800.4(b)(1).

Plaintiffs' second argument is "even if Defendants did not know the precise location of each post, pole and pillar before issuing the ROD, they ***did*** know the

locations of the rail stations, park-and-ride lots, and transit centers along the route, and could therefore have completed AISs for those locations. *See, e.g.*, AR 000247 at 000350-57." Note that these FEIS pages are from conceptual engineering designs and are not precise as to location. Moreover, Defendants and SHPD reasonably concluded that they would significantly reduce unnecessary ground disturbance during testing by waiting for more precise engineering plans in order to identify the APE. Plaintiffs' second argument would also require subsurface testing in downtown Honolulu to occur twice: once for the general location of stations and again for columns and utilities. Furthermore, if burials are identified during initial testing when only conceptual designs are available, Defendants would need to await more detailed engineering plans in order to make decisions on moving piers and stations to avoid said burials. One thing is certain, if testing was performed based on imprecise conceptual designs and subsequent engineering plans moved stations to slightly different locations, Plaintiffs and others would complain that the initial testing was faulty and require additional testing.

Plaintiffs' third argument is that "Defendants' interpretation of the law would excuse federal agencies from identifying any archaeological resources (always located underground) before approving a transportation project, a proposition for which there is no support in Section 4(f) or its implementing

regulations." First, the fact that the AIS Report for Phase 1 issued before the ROD was executed refutes this argument. More importantly, Plaintiffs all or nothing method blinds them to the case by case analysis adopted in *North Idaho, City of Alexandria* and *Corridor H.* Plaintiffs also ignore 23 C.F.R. § 774.9(c)(2) which allows this type of timing.

Plaintiffs' reply memo at page 9 contends that *North Idaho* "squarely rejected Defendants' phased approach to the identification and evaluation of 4(f) resources." Plaintiffs' oppo memo at page 16 also argues that *City of Alexandria* has no application here. And Plaintiffs' oppo memo at page 17 concludes that *Corridor H* "is the most relevant authority." For the following reasons, applying the facts from those cases to the facts in this case demonstrates that under the circumstances, the PA's phased approach was not arbitrary and capricious; especially when one considers that none of Plaintiffs' alternatives qualified as prudent.

In *North Idaho Community Action Network v. United States Department of Transportation*, 545 F.3d 1147 (9th Cir. 2008), the agencies did not conduct the § 106 identification process and § 4(f) evaluation process for three of the four phases of the project before the ROD was approved. These processes were only conducted for the Sand Creek Byway phase but not for the three other phases to widen the existing highway. In other words, the type of phased approach

employed in *North Idaho* completely deferred the § 106 identification process and § 4(f) evaluation process for the three highway widening phases and only conducted them for the byway phase before the ROD issued. The Ninth Circuit concluded that this phased approach violated § 4(f) because the FEIS and ROD completed the alternative analysis for the entire project before the § 106 identification process and § 4(f) evaluation process were performed for three out of the four phases. *Id.* at 1158-59.[3]

In *Corridor H Alternatives Incorporated v. Slater,* 166 F.3d 368 (1999), a programmatic agreement phased the 100-mile new highway project into 14 segments but there was no § 4(f) evaluation, not even a preliminary one, for the entire project before the ROD issued. *Id.* at 245. *Corridor H* also implied that 23 C.F.R. § 774.9(c)(2) might apply under appropriate circumstances. *Id.* at 244-45.

In *City of Alexandria v. Slater*, 198 F.3d 862 (D.C. Cir. 1999), the D.C. Circuit clarified its position in *Corridor H*. In *City of Alexandria,* the project was to replace the six-lane Woodrow Wilson Bridge to reduce unacceptable congestion. The FEIS proposed seven build alternatives all of which had twelve lanes. Although the FEIS discussed a 10-lane alternative, it was not afforded full treatment as a formal alternative because the agencies concluded that it fell short of

[3] In *North Idaho*, the Court commented that often agencies cannot adequately or meaningfully evaluate the environmental impacts until they had more information or the issue came into sharper focus. *Id.* at 1154-55.

meeting the bridge's long-term traffic needs. The decision concluded that the agencies did not violate NEPA by failing to include the ten-lane proposal as a reasonable alternative. *Id.* at 122.

The FEIS in *City of Alexandria* included a full § 4(f) evaluation but it deferred identification of historic properties on construction staging, dredge disposal, wetland mitigation and other ancillary activity areas until the construction stage. *Id.* at 118. The Court noted that this is quite distinguishable from *Corridor H* since the agencies had identified historic properties along the entire corridor and documented their findings in a memorandum of agreement and the FEIS. *Id.* at 126. The decision also noted that state regulatory constraints will limit the potential use of any resources that are identified in the construction stage. *Id.* at 123. The Court acknowledged that precise identification of sites requires substantial engineering work that is not performed until the design stage, which is after acceptance of the FEIS and ROD, citing to 23 C.F.R. § 771.113(a)(iii). *Id.* at 126. Although plaintiffs argued that even without final designs the ancillary sites could have been feasibly identified, the Court held that the agencies are not required to do so under § 4(f) regulations, particularly where sites postponed are ancillary to the project and the planning process is rational. *Id.* at 126. Finally, the Court concluded that the timing of this phased approach did not violate § 4(f)

because the Court found that plaintiffs' ten-lane alternative was not prudent in any event. *Id.* at 126.[4]

Under *North Idaho*, *Corridor H* and *City of Alexandria*, Plaintiffs cannot establish that the PA's phased approach is arbitrary and capricious because: (1) Defendants conducted the § 106 identification process and § 4(f) evaluation for the entire corridor and documented their findings in the FEIS and PA and documents incorporated therein by reference; (2) Defendants, ACHP and SHPO rationally concluded that the phased approach subjected unknown burials to less risk if the AIS was deferred until more detailed engineering plans were available, AR00000620; (3) State regulations and the PA provide significant protections to unknown burials, AR00000618; AR00000092-95; (4) the Halekauwila downtown alignment was selected in part because it is less likely to encounter burials than other downtown routes, AR00000325; and (5) as demonstrated in prior memoranda and below, the MLA, downtown tunnel alternative and alternative technologies are not prudent.

[4] Plaintiffs' reply memo at pages 11-12 contends that 36 C.F.R. § 800.4(b)(2) does not authorize the phased approach under § 4(f). However, *City of Alexandria* correctly concluded that identification of historic sites for purposes of § 4(f) is predicated upon completion of the § 106 process and thus NHPA regulations that pertain to phasing may be relevant in the § 4(f) analysis. *Id.* at 124, 126.

II. PROJECT'S PURPOSE AND NEED STATEMENT DID NOT PROHIBIT REASONABLE CONSIDERATION OF ALTERNATIVES

Perhaps knowing that the MLA, downtown tunnel and alternative technologies do not satisfy the Project's purpose and need, Plaintiffs continue to argue that the purpose and need was defined so narrowly that it precluded consideration of reasonable alternatives. Plaintiffs' reply memo, however, did not even attempt to refute Intervenors' memo at 42- 55 that addressed this argument.

Plaintiffs' reply memo at 74-75 fabricated a chronology to support their position that Defendants only seriously considered the steel wheel on steel rail alternative throughout the entire preliminary process. Intervenors suspected that Plaintiffs would continue to employ this revisionist tactic and thus Intervenors devoted the first forty pages of their memo to set forth a chronology based on quotes from the administrative record to prove that "the 6/10 Final EIS purpose and need statement properly evolved from the 12/05 NOI, 4/06 ORTP, 4/06 Scoping Report, 10/06 Screening Memo, 11/06 AA Report, 3/07 NOI and 5/07 Scoping Report, and, pursuant to 40 C.F.R. § 1502.21, these preliminary studies were appropriately incorporated by reference in the Final EIS." *See* Intervenors' memo at 46-47. Intervenors' forty page chronology also established that during the preliminary process, the agencies reasonably considered the MLA and other alternatives. Later in this reply memo, Intervenors further discuss that the MLA,

downtown tunnel alternative and alternate technologies were fully vetted during the preliminary process.

Intervenors' memo at 52-53 also included a full discussion of *Sierra Club v. U.S. Dept. of Transp.*, 310 F. Supp. 2d 1168 (D. Nev. 2004) that approved of a FEIS that similarly derived from the preliminary process and that rejected the same type of argument that Plaintiffs are making in this case. The Nevada District Court held:

> CEQ regulations mandate federal and state cooperation "to the fullest extent possible to reduce duplication between NEPA and State and local requirements, including joint planning, environmental research and studies, public hearings, and environmental assessments." 40 C.F.R. § 1506.2(b). Accordingly, a federal agency does not violate NEPA by relying on prior studies and analyses performed by local and state agencies. *See Laguna Greenbelt*, 42 F.3d at 524 n. 6 ("[T]he absence of a more thorough discussion in the EIS of alternatives that were discussed in and rejected as a result of prior state studies does not violate NEPA."); *see also North Buckhead Civic Ass'n v. Skinner*, 903 F.2d 1533, 1542–43 (11th Cir.1990) (finding federal reliance on state and local assistance in NEPA process was not arbitrary and capricious).

Id. at 1192-93. Plaintiffs' reply memo did not address the *Sierra Club* case.

Intervenors' memo at 53-54 also distinguished Plaintiffs' three purpose and need cases: *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt*., 606 F.3d 1058 (9th Cir. 2010) (concerned private interest that is not applicable here), *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002) (alternatives were dismissed in a perfunctory manner that is not applicable here) and *Simmons v. U.S. Army Corps of*

Engineers, 120 F.3d 664, 667 (7th Cir. 1997) (there was no preliminary analysis that evaluated rejected alternatives which is not applicable here.) However, Plaintiffs' reply memo continues to heavily rely on *National Parks*.

In *National Parks*, the Bureau of Land Management ("BLM") proposed several alternatives to the land exchange for the Kaiser landfill project. Those alternatives included a landfill on other Kaiser property, waste diversion, offsite landfill locations and landfill mining. The Ninth Circuit found a NEPA violation because BLM did not "consider these options in any detail because each of these alternatives failed to meet the narrowly drawn project objectives, which required that Kaiser's private needs be met." *Id.* at 1072.

National Parks does not apply here because as shown above the rejected alternatives were considered in detail. For example, the *12/05 NOI* for the alternative analysis process expressly included TSM and MLA[5], AR00009700; *10/06 Screening Memo* expressly included TSM, MLA, three downtown tunnel alternatives and several technologies[6], AR00009580, 9598, 9655-58; *11/06 AA*

[5] The MLA includes "twenty-nine bus routes operating as bus rapid transit, with approximately 93 buses per hour." AR00000325.

[6] The Screening Memo retained the following technologies for further study: conventional bus, guided bus, light rail transit, people mover, monorail, magnetic levitation and rapid transit technologies. *See* AR00009598; *See also* Table 3-2: Summary of Technology Screening at AR00009600. The conventional bus is included in the No Build and TSM alternatives and incorporated "into each build alternative in a modified fashion to serve as a component of the background bus system that will feed and complement each rapid transit build technology.

Report recommended moving forward with TSM, MLA and two rail alignments, and explained its reasons for rejecting the tunnel alternatives, AR00009468-73, 9520-79; *3/07 NOI* did not include TSM and MLA in part because in 12/06 the City selected rail as its locally preferred alternative but it included five different technologies that would be considered and that other reasonable alternatives may be added, AR00017157, 166; *5/07 Tunnels Technical Report* explained that tunnel alternatives were not reasonable, AR00065309; *2/08 Technology Panel* reviewed the light-rail transit, rapid-rail transit, rubber-tired guided vehicles, magnetic levitation system and monorail system technologies, AR00007254, and five out of the six panel members recommended steel wheel on steel rail system, AR00055207; *11/08 DEIS* included three rail alignments as formal alternatives but extensively discussed rejected alternatives, AR00007283; and the *6/10 FEIS* only considered the airport rail route as a formal alternative but again extensively discussed the TSM, MLA, and other alternatives including downtown tunnel and various technologies, AR00000316-331, 684-85. Furthermore, the *6/10 FEIS* explained that technologies were limited to the proposed elevated system because:

> An at-grade system would not have provided a reliable, high-capacity, exclusive right-of-way system. Short blocks in the downtown area would limit the length of trains to two vehicles, and coordination of signals would limit headways to three minutes. This would prevent any future expansion of capacity. Average speed would be approximately one-half of that of an

---

Conventional bus would also be the technology used in the Managed Lane Alternative." AR00009598.

> exclusive right-of-way system. Any automobiles that block the tracks, either at intersections or by trespass onto the tracks, as well as accidents that affect the tracks, would delay the transit system. This would not occur with an exclusive right-of-way system.
>
> Because trains come every few minutes and are quieter than cars and buses, pedestrians and motorists are often unaware of their approach. The potential for collisions with an at-grade light rail is high compared to a separated right-of-way system, where the probability of collisions is practically zero. Excavation to a depth of between 4 and 5 feet would be required for the entire length of the at-grade system to construct track support. As a result, the potential for disturbance to archaeological resources or burials would be much greater than it would be for an elevated system.

AR00000322. Thus, the factual predicate that resulted in the purpose and need ruling in *National Parks* – that BLM proposed alternatives were not considered in any detail – does not apply to this case.

The purpose and need ruling in *National Parks* was also based on department of interior NEPA guidelines that required the purpose and need to be derived from BLM objectives and not those of the applicant. *Id.* at 1071. As noted in Intervenors' memo at 45, DOT guidelines directed the process by which the Project's purpose and need was determined. 23 C.F.R. § 450 App. A, ¶ 11A ("The transportation planning process should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process."); 23 C.F.R. § 450.318 (NEPA allows an "MPO(s), State(s), or public transportation operator(s)

[to] undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process[,]" and to use such studies to determine the project's "[p]urpose and need or goals and objective statement(s)"); 49 U.S.C. § 5309(c)(1)(A) (SAFETEA-LU allows the FTA to approve transportation planning developed by MPOs and local government.)

Finally, Plaintiffs' reply memo at 78 contends that the Project's statement of purpose and need violates NEPA because it incorporates a wide range of factors – including, in plaintiffs' words, "serving specific areas and demographics". Plaintiffs' re-wording of the purpose and need statement actually refers to one of the four "needs" addressed throughout the transportation process: "improve transportation equity." AR0000014; AR00000312-14. By downplaying the importance of this need, Plaintiffs demonstrate their lack of understanding of the central importance of transportation equity, not only in the legal context but also in terms of the goals and needs of the people of Oahu.

For families who live in 'Ewa and Leeward Oahu, traffic congestion has an enormous corrosive effect on their lives. The extra hours lost each week is time stolen from these families. This is a quality of life matter, but in many cases, it is even more than that – it strikes at the core of citizens' abilities to find work and support themselves and their families. Access to affordable and reliable transportation widens opportunity and is essential to addressing poverty and

unemployment, and to ensuring access to good schools and health care services. At a time when many workers cannot find jobs and families are struggling to get by, the EIS's focus on assessing whether affordable, reliable transportation will provide access to jobs and services is not frivolous. Rather, transportation equity is integral both to the goals of the community and to the goals of the New Starts statute under which Congress authorized funding for the Project.

As Department of Transportation Secretary Ray LaHood stated, during a video message to FACE in 2011:

> In a free society, transit is a pathway to economic opportunity. It's more than the train, streetcar, subway, or motor coach that brings us from Point A to Point B. It's the way we lead our lives and pursue our dreams. It gives people new choices – or first chances – to get from home to school, to work, to the store, or to see family friends or a doctor.
> That's why outstanding projects like Oahu Rail Transit – one of the best transit projects in America – deserve our continued support. That's why we'll maintain our focus on making transportation systems more accessible and more affordable at a time when transportation has become America's second highest household expense.[7]

The FEIS similarly discusses the significance of transportation equity, by noting the importance of transit to many lower-income and minority workers who live in the corridor outside of the urban core, and describes the burdens borne by these workers because of traffic congestion:

[7] Transcript of Secretary Ray La Hood's Video Message, Jan. 23, 2011, at http://www.transportationequity.org/index.php?option=com_content&view=article&id=383:usdot-head-pledges-long-and-fruitful-relationship-with-ten&catid=30:press-releases&Itemid=154

> Transit-dependent households concentrated in the Pearl City, Waipahu, and Makakilo areas rely on transit availability, such as TheBus, for access to jobs in the PUG Development Plan area. Delay caused by traffic congestion accounts for nearly one-third of the scheduled time for routes between ‘Ewa and Waikiki.

AR00000313.

The FEIS emphasizes that many lower-income workers rely on transit because of its affordability:

> These transit-dependent and lower-income workers lack a transportation choice that avoids the delay and schedule uncertainty currently experienced by TheBus. In addition, Downtown median daily parking rates are the highest among U.S. cities, further limiting access to Downtown by lower-income workers. Improvements to transit availability and reliability would serve all transportation system users, including minority and moderate-and low-income populations.

AR00000313.

Because the Project's "need" included transportation equity, the EIS evaluated how well a fixed guideway system would serve "communities of concern," including "linguistically isolated households, transit-dependent populations, and areas with public housing and community services." AR00000403. The EIS concluded that these communities will benefit substantially from the Project. *Id*. A fixed guideway system will "improve transit equity by reducing travel times for transit-dependent populations to major employment areas." AR00000285. Areas with high transit dependence, such as Waipahu,

Pearl City, Aiea, Kalihi, Iwilei, Chinatown, Downtown, Kaka`ako, Ala Moana, and Waikiki will experience substantial benefits. AR00003001.

These findings are essential to the FTA's statutory mandate. When Congress adopted the New Starts program, it found that the welfare of lower income individuals may be "seriously and adversely" affected when public transportation is either unavailable or unaffordable. 49 U.S.C. § 5301(b)(5). A central purpose of the New Starts program is "to provide financial assistance to . . . help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals." 49 U.S.C. § 5301(f)(4). For New Starts projects, the Secretary must analyze, evaluate and consider "the cost of suburban sprawl" and "the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development." 49 U.S.C. § 5309(d)(3)(F)-(G).

In summary, Plaintiffs fail to prove that the FEIS' purpose and need statement and the actual consideration of the rejected alternatives as set forth in the administrative record were arbitrary and capricious.

III. MLA IS NOT PRUDENT

Plaintiffs' reply memo at 55-61 argues that the preliminary process did not determine that the MLA is not prudent under § 4(f), and that the MLA is in fact prudent. On page 60, Plaintiffs remarkably state: "Defendants failure to evaluate

the MLA under Section 4(f) was not a harmless error, for unrebutted evidence in the administrative record indicates that the MLA is both prudent and feasible." Plaintiffs' reply memo at 60-61 then cites Mr. Slater's November 4, 2009 letter as it's only supporting evidence.

Oddly, Plaintiffs never addressed the June 11, 2010, 24-page letter that DTS sent to Cliff Slater that fully discussed the problems with the MLA and was extensively discussed in Intervenors' memo at 38-40. In addition, Intervenors' memo at 59-62 included the following rebuttal evidence that Plaintiffs chose not to address:

> The administrative record clearly demonstrates that Plaintiffs' MLA and related detailed information were considered and incorporated into the preliminary analysis. *See* AR00151243 (12/6/05, City email to Slater enclosing draft purpose and need statement); AR00150974 (1/25/06, DTS email re adds elevated, 2-lane, reversible roadway for HOVs, HOTs, and buses in response to Slater's proposal); AR00150627 (4/6/06, FTA email re ensuring that the Honolulutraffic.com alternative will be considered); and AR00016601-636 (2006 Scoping Report, "A second option was added to the Managed Lanes Alternative that would include operating the managed lanes as a two-lane reversible facility.")
>
> Ultimately, the Final EIS concluded that MLA was unable to meet the Project's purpose and need. *See* AR00002085 (MLA "performed poorly compared to the Fixed Guideway Alternative on a broad range of metrics"); AR00000327 (MLA did not sufficiently meet the project's purpose and need); and AR00000798-802 (explaining the agencies' decision not to include or revisit MLA). Studies done during the preliminary analysis supported the rejection of the MLA because it "would not have qualified for local excise and use tax surcharge funding [and] [b]ecause single-occupant vehicles would have been permitted, even if tolled, Federal New Starts funding could not have been used" (AR00000329); "would not have resulted in substantially fewer

> environmental impacts" (AR00000329); "would not have been financially feasible" (AR00000329); was not practicable, (AR00000329); "would not have supported [the] Honolulu General Plan" (AR00000321); would have caused an "increase in vehicle miles traveled and vehicle hours of delay" (AR00000321); would have resulted in "increased traffic on arterials trying to access the facility" (AR00000325); "Transit reliability would not have been improved except for express bus service operating in the managed lanes" (AR00000325); "would not have supported planned concentrated future population and employment growth because it would not provide concentrations of transit service that would serve as a nucleus for the development" (AR00000325-7); "The cost-per-hour of transit-user benefits for the Managed Lane Alternative would have been two to three times higher than that for the Fixed Guideway Alternative" (AR00000327); "would not have substantially improved service or access to transit for transit-dependent communities" (AR00000327); "does not moderate anticipated traffic congestion" (AR00000327); "Because of the estimated high toll cost for users, the Managed Lane Alternative would also not support the identified need to improve transportation equity to all users, including low-income populations" (AR00000327); "would have generated the greatest amount of air pollution and required the greatest amount of energy for transportation use" (AR00000327); "would have been more visually intrusive because its elevated structure, with a typical width of between 36 and 46 feet, would have been much wider than the Fixed Guideway Alternative" (AR00000327); and "would have provided little community benefit as it would not have resulted in substantially improved transit access in the corridor." (AR00000327).

Even if this Court were to find that the administrative record did not sufficiently find that MLA did not meet the Project's purpose and need, MLA's lack of funding made it impossible to build. The AA Report found:

> The Managed Lane Alternative has no defined funding source. Because it would be open to general purpose vehicles, neither the GET surcharge nor FTA funds could be used for its construction. The toll revenues would cover only 23 percent of the total debt service and the remaining 77 percent would need to come from other sources that are not available at this time.

AR00009546. This funding problem is of an extraordinary magnitude which renders the MLA imprudent under 23 C.F.R. § 774.17(vi). *See Adler v. Lewis*, 675 F.2d 1085, 1093-94 (9th Cir. 1982) (citing *Overton Park*, 401 U.S. at 413, 91 S.Ct. at 822, 28 L.Ed.2d at 151) (an alternative is not prudent if its cost reach "extraordinary magnitudes"). Thus, even if the MLA met the Project's purpose and need, which it did not, it was properly excluded from the § 4(f) evaluation because of its lack of funding.

Plaintiffs also argue that "Federal Defendants then compounded the problem by refusing to reconsider the City's decision to exclude the MLA from detailed consideration in the EIS." However, although several comments were received requesting reconsideration of the MLA, the Final EIS determined that "no new information was provided that would have substantially changed the findings of the Alternatives Analysis process regarding the Managed Lane Alternative." AR00000282. And "[w]hile there may be some minor details of the proposed alternatives that differ from the Alternatives Analysis alternatives, the evaluation assesses the concept fairly in the context of the Project's Purpose and Need." AR00000802. *See also* City's May 21, 2010 letter to Slater, AR00002090. Defendants' had a rational basis for rejecting Plaintiffs' request for reconsideration of the MLA and explained their findings in significant detail throughout the FEIS (AR00000282-3, 296, 321-330, 612, 790, 798-802); specifically in Chapter 8 of

the Final EIS (AR00000798-802); and in a letter to Honolulutraffic.com (AR00071701, AR00002084-2093).

Despite Defendants thorough evaluation of the MLA, Plaintiffs' reply memo at 59 n.37, disingenuously argues that the following cases cited in Intervenors' memo at 59 do not apply because Defendants failed to undertake an analysis of the MLA: *Citizens for Smart Growth v. Sec'y of Dept. of Transp*., 669 F.3d 1203, 1217-18 (11th Cir. 2012); *See Comm. to Pres. Boomer Lake Park v. Dep't of Transp*., 4 F.3d 1543, 1550–51 (10th Cir.1993) (explaining that the "mechanical use" of magic words "is unrelated to the [4(f)] documents' substantive merit"); *Hickory Neighborhood Def. League v. Skinner*, 910 F.2d 159, 162–63 (4th Cir.1990) (holding that it was unnecessary for the Secretary to use the terms "unique" and "extraordinary" in the § 4(f) analysis).

Plaintiffs also fail to address that the MLA failed to meet the important project need of improving transportation equity. The AA found that the MLA "would not substantially improve service or access to transit for transit-dependent communities". AR00009544. Because congestion on arterials and on the parts of bus routes outside of the "managed lanes" would increase, bus travel would be slower and bus access to the "managed lanes" would be unreliable. *Id*. The comparison of alternatives in the AA shows that the Fixed Guideway Alternative performed best when measured against all of the objectives relating to the goals of

improving corridor mobility and transportation equity. AR00009547-48; *see also* AR00002089 (describing the reasons, including transportation equity, that the MLA was not selected for evaluation in the EIS).

As further explained in the FEIS, the MLA limits access because of the high tolls (up to $6.40 during peak periods) required to maintain free-flow speeds. These tolls are "not consistent with an equitable solution given most people's inability to pay." AR00002092-93; *see also* AR00000327 ("Because of the estimated high toll cost for users, the Managed Lane Alternative would also not support the identified need to improve transportation equity to all users, including low-income populations.")

In addition, under any version of the MLA, the "necessarily limited number of access points, even if strategically placed as in the Alternatives Analysis, provides convenient access to only a select population." AR00002092. As a result, the MLA would not "improve the fairness of and access to the transportation system." AR00002847. In contrast, the Project "will provide service where the transit need is greatest, connecting areas that have the highest transit dependency, which includes communities of concern. Thirty-six percent of the population within communities of concern will be located within one-half mile of a transit station in 2030." AR00000772.

As the FEIS states, "the island as a whole gains by having future development concentrate around station areas as opposed to the present sprawl that ultimately costs everybody more." AR00001684. This "saving" is aimed, particularly, at those who need it the most: the transit-dependent, lower-income, economically vulnerable "communities of concern". Of the 35 percent of the population that resides in areas containing concentrations of communities of concern, over half would realize a substantial transit travel-time savings. AR00000772.

Improving transportation equity means helping to make sure that all individuals living in Oahu have an opportunity to succeed. Under both NEPA and the New Starts program, it is appropriate to ensure that this significant transportation investment will benefit those whose need for affordable, reliable transportation is the greatest.

In conclusion, Plaintiffs have not established that the Defendants were arbitrary and capricious in rejecting the MLA because the MLA did not meet the purpose and need for the Project and thus was not prudent.

IV. DOWNTOWN TUNNEL IS NOT PRUDENT

Plaintiffs' reply memo at 61 alleges that there are at least two prudent and feasible locations where a tunnel could have been built: King Street and Beretania Street. Plaintiffs contend that Defendants arbitrarily and capriciously rejected both

tunnel alternatives because: (1) Defendants improperly relied on the King Street tunnel's cost estimate to eliminate the Beretania tunnel alternative; (2) Defendants impermissibly relied on a 2006 cost estimate, rather than newer information; and (3) Defendants unreasonably rejected the King Street tunnel alternative. Figure 2-7 from the AA Report, attached hereto as Exhibit A, depicts the proposed routes for the Beretania tunnel in yellow and the King Street tunnel in blue. AR00009479.

1. **Beretania tunnel alternative was properly eliminated**

Plaintiffs' reply memo at 62 argues that DTS and the FTA improperly relied on the King Street tunnel's cost estimate to eliminate the Beretania tunnel alternative. However, the administrative record explains the valid reasons for its elimination.

The Beretania tunnel included two variations which originate at different points but run along the same alignment. The first originates at Dillingham Boulevard. The second originates at North King Street. AR00067428.

A major problem with both Beretania tunnel routes is that they completely bypass Kaka`ako and the Ala Moana Center. The Halekauwila alignment was selected as part of LPA because it best serves Kaka`ako and the Ala Moana Center:

> The Downtown area, with 63,400 jobs, has the highest employment density in the study corridor (Figure 1-6). The Kaka`ako and Ala Moana neighborhoods, comprised historically of low-rise industrial and commercial uses, are being revitalized with a mixture of high-rise residential, commercial, retail, and entertainment-related development. Ala Moana

> Center, both a major transit hub and shopping destination, is served by more than 2,000 weekday bus trips and visited by more than 56 million shoppers annually.

AR00000300.[8]

Furthermore, the FEIS and AA Report made persuasive findings that the Beretania tunnel provides poor transit benefits, serves the fewest residents and jobs, serves substantially fewer transit riders than the other alignments, and increased costs. AR00000707, AR00000715; AR00009520, AR00009540.[9]

2. Use of 2006 cost estimates was appropriate

Plaintiffs next contend in their reply memo at 63 that Defendants violated § 4(f) by relying on the 2006 cost estimates when newer and more accurate

[8] 49 C.F.R. § 611.7(4) and Hawaii's Act 247 (2005) require that an LPA be identified and followed in order to qualify for Federal New Starts funding and the State's surcharge tax respectively. *See* Intervenors' memo at 22. Without this funding, the project cannot proceed. In addition, avoiding the LPA would compromise the project to a degree that it would have been unreasonable to proceed in light of its stated purpose and need and therefore render it imprudent for 4(f) purposes. *See* 23 C.F.R. § 774.17 (3); Intervenors' memo at 56-57.

[9] Plaintiffs continue to contend that DTS and the FTA violated Section 4(f) by relying on the AA process to eliminate certain alignment alternatives. This issue was addressed in Intervenors' memo at 44–54 and 58-59. *See also* 40 C.F.R. § 1502.21 (The AA Report can be incorporated into the Final EIS if cited and their content briefly described); *Sierra Club v. Us. Dept. of Transp.*, 310 F. Supp. 2d 1168 (D. Nev. 2004) (Final EIS can be properly derived from the preliminary analysis process.) Moreover, the FEIS concluded that based on the AA process described in chapter 2 that none of the rejected alternatives met the Project's purpose and need and were therefore not prudent under 23 CRF 774.17. AR00000684.

information was available. This contention is based on an incorrect reading of the record.

The October 23, 2006, Final Capital Costing Memorandum ("**2006 Cost Memorandum**") considered "hundreds of individual items [that were] detailed and priced[,]" including guideway and track elements, stations , stops, terminals, intermodals, site work & special conditions, systems, right-of-way, land acquisitions, existing improvements, professional services (soft costs), unallocated contingency and finance charges. AR00067419; AR00067465.

On May 14, 2007, the Tunnels and Underground Stations Technical Memorandum ("**2007 Tunnels Memorandum**") presented narrow costs estimates:

> The cost estimates presented in this report are **strictly for the construction** of the underground tunnel structure and **do not include** utility relocation costs, underground station costs, track work that would be installed in the tunnels, or transit system controls that would be installed in the tunnels (i.e. train control systems and ventilation). The cost estimates to relocate utilities and build the stations were presented in the ***Capital Costing Memorandum*** for the project.

AR00065334 (emphasis added).

Plaintiffs' reply memo at 64 states that the 2007 Tunnel Memorandum proved that the tunnel alignments would cost 80% less than the estimates derived from the 2006 Cost Memorandum. However, the 2007 Tunnel Memorandum represents costs associated with the construction of the tunnel alone, and did not include costs for the trackwork, underground stations, utilities and utility

relocation, or any of the hundreds of other cost factors included in the 2006 Cost Memorandum. AR00065334 In fact, the 2007 Tunnel Memorandum cites to the 2006 Cost Memorandum for further costs figures and certainly does not represent the total expected costs. AR00065334.

3. Defendants reasonably rejected the King Street tunnel alignment

Plaintiffs' reply memo at 66 contends that Defendants impermissibly eliminated the King Street alternative by failing to balance costs against the importance of avoiding historic resources in downtown Honolulu. The King Street tunnel alternative was reasonably rejected because it increased costs "by an extraordinary magnitude[10] of more than $650 million" in 2006 dollars, *see* AR00000705[11], and had other significant problems.[12]

The administrative record includes extensive information on the King Street tunnel alternative. In March of 1992, the City conducted the King Street Subway

[10] 23 C.F.R. § 774.17(3) states: "An alternative is not prudent if: (iv) It results in additional construction, maintenance, or operational costs of an extraordinary magnitude." The FEIS statement that "a tunnel in the Downtown area alone would have increased the costs by an extraordinary magnitude of more than $650 million" was a reference to 23 C.F.R. § 774.17(3)(iv) because it was included in the chapter 5 section 5(f) evaluation. AR00000705.

[11] The FEIS's reference to "more than $650 million" came from a table in the 2006 Costs Memorandum that estimated the additional cost to construct the King Street tunnel at $670 million. AR00067428.

[12] As discussed in Intervenors' memo at 62, an alternative is imprudent if the additional costs would prevent the project from being built. *See* 23 C.F.R. § 774.17(vi); *Adler* v. *Lewis*, *675* F.2d 1085, 1093-94 (9th Cir. 1982) (citing *Overton Park*, 401 U.S. at 413) (an alternative is not prudent if its cost reach "extraordinary magnitudes").

Alignment Study ("**King Street Study**") to examine its feasibility. AR00013392.[13] In that report, several challenges in constructing a tunnel under King Street were identified including: varying widths of the King Street right-of-way that would "limit train speed to approximately 30 miles per hour[,] AR00051566; complications due to the "mixed and highly complex" geology of the underground soil (AR00051566); local groundwater elevation complications, AR00051567; "[g]round displacement, settlement and deflections" caused by the soft or uncemented soils along the developed King Street alignment, AR00051567; vertical clearance challenges for guideway and support structures, AR00051572; challenges with the placement of the portal structure, AR00051572; passing under the Nuuanu Stream, AR00051572; staying within "the King Street right-of-way[,]which is "further compounded by historic buildings at the Ewa end and high rise structures Koko Head of Bethel Street," AR00051572; severe traffic impacts at King Street that "would require rerouting up to five lanes of traffic," AR00051630; the demolition of a building within the Chinatown Historic District that "would be permanently displaced by a station access with the historic district[,]" AR00051635; and the extensive excavation that might uncover sites of archaeological value including Native Hawaiian burials. AR00051632. The study

[13] The King Street Study was part of the 1992 FEIS for the Honolulu Rapid Transit Program, AR00013392, which was referenced in the Project's FEIS, *see* AR00000810.

also estimated costs to build the tunnel, rail system and stations at "$402 million in calendar-year 1991 dollars." AR00051640; AR 00051637-638 (factors in cost analysis.)

The King Street Study was considered by the City in its 2007 Tunnels Memorandum. AR00065309. The 2007 Tunnels Memorandum cited many construction challenges including: "very limited right of way in the downtown Honolulu area with many constraints existing in the form of historic fences, structures, and the like[,]" AR00065317, complex geological conditions, AR00065317, shallow groundwater and saturated construction environment, AR00065321, "Ground and structure settlement" due to shallow groundwater and fine-grained nature of the many soil deposits, AR0006532, and final leakage from groundwater. AR00065326.

The King Street Study and the 2007 Tunnels Memorandum are part of the administrative record. Under the "arbitrary and capricious" standard, a court's review is based on the whole record. 5 U.S.C. § 706(2); *Arizona Past & Future Foundation v. Lewis*, 722 F.2d 1423, 1425 (9th Cir. 1983). The court is not limited to the evidence cited in the agency decision document as long as the evidence is in the record. *City of Carmel-by-the-Sea v. United States DOT*, 123 F.3d 1142, 1167 (9th Cir. 1997) ("Although the Final Environmental Impact Statement/Report does not discuss the potential for economic or population growth, it does reference

several local planning documents, . . . which specifically include construction of the Hatton Canyon freeway . . . .")

Plaintiffs have failed to demonstrate that Defendants arbitrarily and capriciously rejected the downtown tunnel alternatives.

V. PLAINTIFFS HAVE NOT SUSTAINED THEIR BURDEN ENTITLING THEM TO INJUNCTIVE RELIEF

Intervenors reply memo at 67-70 stated that Plaintiffs cannot sustain their burden of proving the balance of hardship and public interest requirements for injunctive relief because Plaintiffs' enjoyment of views, aesthetics, ambiance and historic and cultural resources in downtown Honolulu are insignificant compared to Intervenor Defendants' hardship of "continued inequitable and insufferable traffic delays and environmental suffering from auto emissions to Honolulu's lower income and minority groups who reside in West O'ahu residents, loss of construction jobs and contracts from the Project, and loss of the only foreseeable resolution to one of the worst urban traffic problems in the United States".

Plaintiffs did not address either of these two elements that are required to establish an entitlement to any injunction under *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743, 2756 (2010).

Instead, Plaintiffs' reply memo at 109, illogically and insensitively concludes that "Intervenors' showing of harm is minimal" because they admit that there is amply time to cure any violations in Phase 4 before construction starts in Phase 4 without stopping construction in Phase 1. Yet in the same breath Plaintiffs ask this Court to immediately stop construction in Phase 1 without even addressing the requirements of *Monsanto*.

North Idaho did not stop construction in the byway phase while completion of the § 4(f) evaluation proceeded in the highway phases. *Id.* at 545 F.3d at 1160-61. Thus, even assuming for purposes of argument that the Court finds a technical NEPA or § 4(f) violation, which it should not, the ROD should not be invalidated and Phase 1 construction should not be enjoined because appropriate interim relief can be fashioned to address any violation, and Plaintiffs have not satisfied the *Monsanto* requirements.

VI. CONCLUSION

Intervenors incorporate by reference the City and Federal Defendants reply memoranda. Intervenors request that Plaintiffs' motion for summary judgment be

denied and that Intervenors and Defendants' motions for summary judgment be granted.

DATED: Honolulu, Hawaii July 13, 2012

/s/ William Meheula
WILLIAM MEHEULA
SEAN KIM

Attorneys for Attorneys for Intervenors FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

HONOLULUTRAFFIC.COM; ET AL., Plaintiffs, vs. FEDERAL TRANSIT ADMINISTRATION; ET AL., Defendants, and FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP, Intervenor Defendants.	CIVIL NO. 11-00307 AWT LR 7.5(e) **WORD COUNT COMPLIANCE CERTIFICATE**

LR 7.5(e) **WORD COUNT COMPLIANCE CERTIFICATE**

I, William Meheula, certify that **Intervenor Defendants** Faith Action for Community Equity, Melvin Uesato and the Pacific Resource Partnership’S **Reply Memorandum Regarding Plaintiffs’ Consolidated Memorandum In Opposition To Defendants’ Cross-Motions For Summary Judgement [155]** and i**n Support of Intervenor Defendants’ Cross Motion For Summary Judgment [143]** filed herein**,** complies with Local Rule 7.5(c) and 56.1 of the United States District Court for the District of Hawai‘i.

I further certify that, in preparation of this memorandum, I used *Microsoft Word 2010, using the Times New Roman font, size 14*, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above referenced reply memorandum contains 7,704 words.

DATED: Honolulu, Hawaii, July 13, 2012.

/s/ William Meheula
WILLIAM MEHEULA
SEAN KIM

Attorneys for Attorneys for Intervenors FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

HONOLULUTRAFFIC.COM; CLIFF SLATER; BENJAMIN J. CAYETANO; WALTER HEEN; HAWAI‘I’S THOUSAND FRIENDS; THE SMALL BUSINESS HAWAI‘I ENTREPRENEURIAL EDUCATION FOUNDATION; RANDALL W. ROTH; DR. MICHAEL UECHI; and THE OUTDOOR CIRCLE,

Plaintiffs,

vs.

FEDERAL TRANSIT ADMINISTRATION; LESLIE ROGERS, in his official capacity as Federal Transit Administration Regional Administrator; PETER M. ROGOFF, in his official capacity as Federal Transit Administration Administrator; UNITED STATES DEPARTMENT OF TRANSPORTATION; RAY LAHOOD, in his official capacity as Secretary of Transportation; THE CITY AND COUNTY OF HONOLULU; WAYNE YOSHIOKA, in his official capacity as Director of the City and County of Honolulu, Department of Transportation Services,

Defendants,

CIVIL NO. 11-00307 AWT

CERTIFICATE OF SERVICE

and

FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP,

Intervenor Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following persons electronically through CM/ECF on the date indicated below:

David B. Glazer	david.glazer@usdoj.gov,
Derrick K. Watson	derrick.watson@usdoj.gov
Don S. Kitaoka	dkitaoka@honolulu.gov
Elizabeth S. Merritt	betsy_merritt@nthp.org
Gary Takeuchi	gtakeuchi@honolulu.gov
Harry Yee	harry.yee@usdoj.gov

John P. Manaut	Jpm@carlsmith.com
Lindsay N. McAneeley	lmcaneeley@carlsmith.com
Matthew G. Adams	Matthew.adams@snrdenton.com
Michael J. Green	michaeljgreen@hawaii.rr.com
Nicholas C. Yost	nicholas.yost@snrdenton.com
Peter C. Whitfield	peter.whitfield@usdoj.gov
Robert Carson Godbey	rgodbey@honolulu.gov
Robert Thornton	rthornton@nossaman.com
William J. Cook	William_cook@nthp.org

I further certify that a true and correct copy of the foregoing document was duly served upon the following persons by U.S. Mail on the date indicated below:

Robert P. Richards, Esq.	Hughes Richards & Associates 1003 Bishop Street, Suite 2525 Honolulu, HI 96813
Edward V.A. Kussy, Esq.	Nossaman, LLP 1666 K. Street, NW, Suite 500 Washington, DC 20006

Dated: Honolulu, Hawai‘i, July 13, 2012

/s/ William Meheula
WILLIAM MEHEULA
SEAN KIM

Attorneys for Intervenors
FAITH ACTION FOR COMMUNITY EQUITY, MELVIN UESATO and THE PACIFIC RESOURCE PARTNERSHIP