

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HONOLULUTRAFFIC.COM;
CLIFF SLATER; BENJAMIN J.
CAYETANO; WALTER HEEN;
HAWAII'S THOUSAND
FRIENDS; THE SMALL
BUSINESS HAWAII
ENTREPRENEURIAL
EDUCATION FOUNDATION;
RANDALL W. ROTH; and DR.
MICHAEL UECHI,

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

**REQUEST FOR JUDICIAL
NOTICE; EXHIBITS "A" -
"W"**

REQUEST FOR JUDICIAL NOTICE

In connection with the accompanying Motion for Partial Judgment on the Pleadings (“Motion”) filed by the FEDERAL TRANSIT ADMINISTRATION (“FTA”), LESLIE ROGERS, in his official capacity as FTA Regional Administrator for Region IX, PETER M. ROGOFF, in his official capacity as FTA Administrator, the UNITED STATES DEPARTMENT OF TRANSPORTATION (“DOT”), RAY LAHOOD, in his official capacity as Secretary of Transportation, the CITY AND COUNTY OF HONOLULU (“City”), and WAYNE Y. YOSHIOKA, in his official capacity as Director of the City and County of Honolulu Department of Transportation Services (collectively, “Defendants”) and pursuant to Rule 201 of the Federal Rules of Evidence, Defendants hereby request that the Court take judicial notice of the following facts and documents, attested to and authenticated by the accompanying Declaration of Faith Miyamoto.

A. Documents Incorporated By Reference into the Pleadings

The following documents were referred to in the Complaint for Injunctive and Declaratory Relief filed by Plaintiffs HonoluluTraffic.com, Cliff Slater, Benjamin J. Cayetano, Walter Heen, Hawaii’s Thousand Friends, the Small Business Hawaii Entrepreneurial Education Foundation, Randall W. Roth, and Dr. Michael Uechi (collectively, “Plaintiffs”) on May 12, 2011 (“Complaint”), are central to Plaintiffs’ claims, are properly verified and authenticated by the

accompanying Declaration of Faith Miyamoto, and are thus incorporated by reference into the pleadings for this case. *See Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). These documents are also public records for which this Court may take judicial notice. *See Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

1. The *Honolulu High-Capacity Transit Corridor Project Draft Environmental Impact Statement/Section 4(f) Evaluation* (“Draft EIS”), published by the FTA and the City in or about November 2008. A true and correct copy of the original color hard bound version of the Draft EIS, together with the accompanying DVD, and additional CD containing an electronic copy of the main volume of Draft EIS and all of the Appendices, are attached hereto as **Exhibit “A”**.

2. The *Honolulu High-Capacity Transit Corridor Project Final Environmental Impact Statement/Section 4(f) Evaluation* (“Final EIS”), published by the FTA and the City in or about June 2010. A true and correct copy of the original color hard bound version of the Final EIS, together with the accompanying DVD, and additional CD containing an electronic copy of the main volume of the

Final EIS and all of the Appendices to the Final EIS are attached hereto as **Exhibit “B”**.

3. The *Record of Decision* (“ROD”) for the Honolulu High-Capacity Transit Corridor Project (“Project”), issued by the FTA on or about January 18, 2011. A true and correct copy of the ROD is attached hereto as **Exhibit “C”**.

B. Other Public Record Facts and Documents

The following facts and documents are matters of public record, capable of accurate and ready determination and not subject to reasonable dispute.

Accordingly, Defendants respectfully submit that this Court should take judicial notice of these public facts and documents. *See* Fed. R. Evid. 201(a), (d); *see also Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

4. Pursuant to the Federal-Aid Highway Act of 1973, the Urban Mass Transportation Act of 1964 and Hawai‘i Revised Statutes Chapter 279E, the O‘ahu Metropolitan Planning Organization (“O‘ahu MPO”) was established to act as an advisory urban transportation planning organization for the island of O‘ahu and to coordinate continuing, comprehensive, transportation planning. *See* Haw. Rev. Stat. §§ 279E-1, -2. The O‘ahu MPO is responsible for, *inter alia*, producing the O‘ahu Regional Transportation Plan (“ORTP”), which “communicates the long-range

vision and transportation goals, objectives, and policies for O‘ahu. The document also identifies specific highway and transit projects and programs that are planned for the next twenty years.” See <http://www.oahumpo.org/programs/ortp.html>. In or about April 2006, the Policy Committee of the O‘ahu MPO (comprised of five members from the City Council, three State Senators, three State Representatives, the Director of the State Department of Transportation and the Director of the City Department of Transportation Services) approved the *O‘ahu Regional Transportation Plan 2030* (“ORTP 2030”), and then modified it through Amendment #1 in May 2007. A copy of this official plan, as of Amendment #1, is found at http://www.oahumpo.org/ortp_docs/ortp_2030_report_amend_1_final.pdf, and attached hereto for convenience as **Exhibit “D”**.

5. In 2005, the Hawai‘i State Legislature passed Act 247, authorizing the City to levy an excise and use tax surcharge to construct and operate a mass transit system serving O‘ahu. A true and correct copy of Act 247 is attached hereto as **Exhibit “E”**.

6. On or about August 10, 2005, the Honolulu City Council adopted Ordinance 05-027 to levy a tax surcharge to fund the Project. A true and correct copy of Ordinance 05-027 is attached hereto as **Exhibit “F”**.

7. In November 2008, the voters of O‘ahu passed a charter amendment that declared that the City should establish a steel-wheel on steel-rail

transit system. A true and correct copy of the Certificate of Results from the Office of the City Clerk, City and County of Honolulu, dated December 30, 2008, certifying the results of the November 4, 2008 General Election, is attached hereto as **Exhibit “G”**.

8. On or about December 7, 2005, a notice of the *Preparation of an Environmental Impact Statement for the High-Capacity Transit Improvements in the Southern Corridor of Honolulu, HI* was published in the *Federal Register* at 70 Fed. Reg. 72,871 (“December 2005 NOI”). A true and correct copy of this notice is attached hereto as **Exhibit “H”**. The December 2005 NOI informed the public that, *inter alia*, the FTA and City intended to prepare an alternatives analysis and environmental impact statement on potential transit improvements and called for “public and interagency input on the purpose and needs to be addressed by the project, the alternatives to be considered, and the scope of the EIS for the corridor, including the alternatives and the environmental and community impacts to be evaluated” through attendance at two scoping meetings in December 2005 or submission of written comments through January 9, 2006.

9. By completion of an undated comment form provided to attendees at the scoping meetings held pursuant to the December 2005 NOI, Plaintiff Dr. Michael Uechi submitted written comments in connection with the December 2005 NOI and the alternatives scoping process. This comment form is a

matter of public record. A true and correct copy of Dr. Uechi's comment form (with personal information redacted) is included within Appendix E to the Draft EIS at digital page 1346 of 2120 of the Draft EIS, and attached hereto for convenience as **Exhibit "T"**.¹

10. By letter dated January 9, 2006, Plaintiff HonoluluTraffic.com (through its Chair, Plaintiff Cliff Slater) submitted written comments in connection with the December 2005 NOI and the alternatives scoping process. This comment letter is a matter of public record. A true and correct copy of this letter is included within Appendix E to the Draft EIS at digital pages 1639 through 1651 of the Draft EIS, and attached hereto for convenience as **Exhibit "J"**.

11. All comments submitted in connection with the December 2005 NOI and the alternatives scoping process are matters of public record and contained within Appendix E to the Draft EIS. The public record is devoid of any comments from Plaintiffs Cliff Slater (in his individual capacity), Benjamin Cayetano, Walter Heen, Hawaii's Thousand Friends, the Small Business Hawaii Entrepreneurial Education Foundation, and Randall Roth in response to the NOI and the alternatives scoping process.

¹ The Appendices to the Draft EIS and Final EIS referenced in this Request for Judicial Notice are available in digital form on the DVDs and CDs included within Exhibits A and B submitted to the Court Clerk. The pages in these Appendices are not individually numbered on the documents themselves, but page numbers can be identified when viewing the document in its digital pdf form. Thus, the page references provided reflect these digital page numbers.

12. On or about March 15, 2007, a notice of *Intent to Prepare an Environmental Impact Statement for High-Capacity Transit Improvements in the Leeward Corridor of Honolulu, HI* was published in the *Federal Register* at 72 Fed. Reg. 12,254 (“March 2007 NOI”). A true and correct copy of this notice is attached hereto as **Exhibit “K”**. This notice informed the public that, *inter alia*, the FTA and City intended to prepare an environmental impact statement for a proposed fixed-guideway system and called for “public and interagency input on the purpose and needs to be addressed by the project, the alternatives to be considered in the EIS, and the environmental and community impacts to be evaluated” through attendance at two scoping meetings or submission of written comments.

13. By way of letter dated March 18, 2007, Plaintiff HonoluluTraffic.com (through its Chair, Cliff Slater) submitted written comments regarding the March 2007 NOI. This comment letter is a matter of public record. A true and correct copy of this letter is contained within Appendix E to the Draft EIS at digital pages 1551 through 1579, and attached hereto for convenience as **Exhibit “L”**.

14. By way of letter dated April 13, 2007, Plaintiff HonoluluTraffic.com (through its Chair, Cliff Slater) submitted written comments regarding the March 2007 NOI. This comment letter is a matter of public record.

A true and correct copy of this letter is contained within Appendix E to the Draft EIS at digital pages 1580 through 1651, and attached hereto for convenience as **Exhibit “M”**.

15. All comments submitted in connection with the March 2007 NOI are matters of public record and contained within Appendix E to the Draft EIS. The public record is devoid of any comments from Plaintiffs Cliff Slater (in his individual capacity), Benjamin Cayetano, Walter Heen, Hawaii’s Thousand Friends, the Small Business Hawaii Entrepreneurial Education Foundation, Randall Roth and Dr. Michael Uechi in response to the NOI.

16. On or about November 21, 2008, a *Notice of Availability* of the Draft EIS was published in the *Federal Register* at 73 Fed. Reg. 70,639. This notice informed the public of the 45-day comment period (ending January 7, 2009) for the Draft EIS. On or about December 12, 2008, an *Amended Notice* was published in the *Federal Register* at 73 Fed. Reg. 75,715. This *Amended Notice* corrected an error in the previous notice regarding the sponsoring federal agency for the Project (*i.e.*, FTA, rather than FHWA). On or about December 19, 2008, another *Amended Notice* published in the *Federal Register* at 73 Fed. Reg. 77,688. This *Amended Notice* informed the public that the comment period was extended to February 6, 2009. True and correct copies of these *Notices* are attached hereto as **Exhibit “N”**.

17. The FTA and the City conducted five noticed public hearings on the Draft EIS in December 2008. A true and correct copy of the notice published in the Honolulu Star-Bulletin newspaper on November 21, 2008 is contained within Appendix G to the Final EIS at digital page 113, and is attached hereto for convenience as **Exhibit “O”**. *See also* the “Public Hearing Materials” contained within Appendix G to the Final EIS (other notices of the five public hearings held in December 2008).

18. The FTA and the City also conducted an extensive public outreach program to inform the public of the Project’s environmental impacts and to solicit public comments on the Draft EIS. *See* Appendix G to the Final EIS (containing public and stakeholder correspondence and evidence of coordination efforts including newsletters, community workshops and scoping reports); *see also* Chapter 8 of the Final EIS (describing public outreach methods).

19. By letter dated February 6, 2009, Plaintiff HonoluluTraffic.com (through its Chair, Cliff Slater) submitted written comments to the Draft EIS. This comment letter is a matter of public record. A true and correct copy of this letter is contained within Appendix A to the Final EIS at pages 1161 through 1227, and attached hereto for convenience as **Exhibit “P”**.

20. By letter dated February 2, 2009, Plaintiff Hawaii’s Thousand Friends submitted written comments to the Draft EIS. This comment letter is a

matter of public record. A true and correct copy of this letter is contained within Appendix A to the Final EIS at pages 1053 through 1076, and attached hereto for convenience as **Exhibit “Q”**.

21. On or about December 8, 2008, Plaintiff Dr. Michael Uechi provided oral comments on the Draft EIS at the public hearing held at the Neal S. Blaisdell Center, Hawai‘i Suites, 777 Ward Avenue in Honolulu. On or about December 9, 2008, Plaintiff Dr. Michael Uechi provided oral comments on the Draft EIS at Salt Lake District Park, 1159 Ala Lilikoi Place in Honolulu. These comments were transcribed by one of the court reporters in attendance and are a matter of public record. True and correct copies of the transcripts of Dr. Uechi’s oral testimony regarding the Draft EIS are contained within Appendix A to the Final EIS at pages 2901 through 2903 and 3077 through 3079, and attached hereto for convenience as **Exhibit “R”**.

22. By letter dated February 6, 2009, Plaintiff Dr. Michael Uechi submitted written comments to the Draft EIS. This comment letter is a matter of public record. A true and correct copy of this letter is contained within Appendix A to the Final EIS at pages 2600 through 2604, and attached hereto for convenience as **Exhibit “S”**.

23. All comments submitted during the comment period on the Draft EIS are matters of public record and included in Appendix A to the Final

EIS. The public record is devoid of any comments from Plaintiffs Cliff Slater (in his individual capacity), Benjamin Cayetano, Walter Heen, the Small Business Hawaii Entrepreneurial Education Foundation, and Randall Roth on the Draft EIS.

24. On or about June 25, 2008, a *Notice of Availability* of the Final EIS was published in the *Federal Register* at 75 Fed. Reg. 36,386. This notice informed the public of the 30-day comment period (ending July 26, 2010) for the Final EIS. On or about July 23, 2010, an *Amended Notice* was published in the *Federal Register* at 75 Fed. Reg. 43,161. This *Amended Notice* made a correction to the title and extended the review and comment period for the Final EIS from July 26, 2010 to August 16, 2010. On or about August 13, 2010, the FTA published notice on its website, extending the review and comment period for the Final EIS an additional ten days, to August 26, 2010. *See* http://www.fta.dot.gov/news/news_events_11915.html. True and correct copies of these *Notices* are attached hereto as **Exhibit “T”**.

25. On or about July 14, 2010, Plaintiff Cliff Slater provided oral testimony regarding the Final EIS before the Honolulu City Council. The City transcribed the audiotape of the meeting, which is a matter of public record. A true and correct copy of the transcript of Mr. Slater’s oral testimony regarding the Final EIS is attached hereto as **Exhibit “U”**.

26. By letter dated August 26, 2010, Plaintiff HonoluluTraffic.com (through its Chair, Cliff Slater) submitted written comments to the Final EIS. This comment letter is a matter of public record. A true and correct copy of this letter is attached hereto as **Exhibit “V”**.

27. By email dated July 20, 2010, Plaintiff Hawaii’s Thousand Friends (through its Executive Director, Donna Wong) submitted written comments to the Final EIS. By letter dated August 25, 2010, Plaintiff Hawaii’s Thousand Friends submitted further written comments to the Final EIS. These comment letters are a matter of public record. True and correct copies of these letters are attached hereto as **Exhibit “W”**.

28. All comments submitted during the comment period on the Final EIS are matters of public record and summarized in Appendix C to the ROD. The public record is devoid of any comments from Plaintiffs Benjamin Cayetano, Walter Heen, the Small Business Hawaii Entrepreneurial Education Foundation, Randall Roth and Dr. Michael Uechi on the Final EIS.

DATED: September 9, 2011.

/s/ Peter Whitfield

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