

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice
DAVID B. GLAZER (D.C. 400966)
Natural Resources Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
TEL: (415) 744-6491
FAX: (415) 744-6476
e-mail: david.glazer@usdoj.gov
FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii
HARRY YEE
Assistant U.S. Attorney
United States Attorney's Office
300 Ala Moana Blvd. #6-100
Honolulu, Hawai`i 96850

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HONOLULU TRAFFIC.COM, *et al.*,

Plaintiffs,

v.

FEDERAL TRANSIT ADMINISTRATION, *et al.*,

Defendants.

Case No. 1:11-cv-00307 AWT

FEDERAL DEFENDANTS'
[PROPOSED] ORDER ON REMEDY

Date: December 12, 2012

Time: 10:00 a.m.

Hon. A. Wallace Tashima

This Court's Order on Cross-Motions for Summary Judgment ("SJ Order"), ECF No. 182, addressed all remaining claims in Plaintiffs' First Amended Complaint, ECF No. 117, and not previously disposed of by the Court in its earlier summary judgment ruling, ECF No. 137. *See HonoluluTraffic.com v. Fed. Transit Admin.*, 2012 WL 1805484 (D. Hawai'i 2012). Specifically, the Court granted Plaintiffs' motion for summary judgment in part with respect to three claims arising under Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303 ("Section 4(f)"). The Court granted Defendants' summary judgment motions with respect to all of Plaintiffs' remaining claims under Section 4(f) and all of Plaintiffs' claims arising under the National Environmental Policy Act, 42 U.S.C. §§ 4321–4370h, and Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.

The Court's SJ Order invited further briefing on the scope of any remedies and any equitable relief in order to properly assess the balance of equities between the parties, as well as where the public interest lies. The parties have submitted additional briefing on remedies and this Court held a hearing on December 12, 2012, to consider those issues.

THEREFORE, for good cause appearing and for the reasons more fully explained in the Court's SJ Order, the Court orders as follows:

1. The matter is remanded to the Federal Transit Administration without vacatur.

2. Pending Defendants' compliance with the SJ Order, Defendants shall not conduct construction activities in Phase 4 of the Project. The injunction on construction activities in Phase 4 of the Project shall terminate 30 days after Defendant Federal Transit Administration files with the Court notice of Defendants' compliance with the SJ Order and evidence of such compliance.

3. Defendants may prepare engineering and design plans, acquire real property, conduct geotechnical testing, and conduct other pre-construction activities including, but not limited to, any activities that are appropriate to complete the additional analyses required by the SJ Order. Defendants may conduct any pre-construction and construction activities in Phase 1 through and including Phase 3 of the Project.

4. Defendants shall submit a report to the Court regarding the status of Defendants' compliance with the SJ Order within 180 days of this order.

Dated: _____

A. WALLACE TASHIMA
United States Senior Circuit Judge
(Sitting by designation)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 30, 2012, a true and correct copy of the foregoing was served on the following through the Court's ECF system:

Matthew G. Adams	matthew.adams@snrdenton.com
Michael Jay Green	michaeljgreen@hawaii.rr.com
Nicholas C. Yost	nicholas.yost@snrdenton.com
Edward V.A. Kussy	ekussy@nossaman.com
Lindsay N. McAneeley	lmcaneley@carlsmith.com
Robert D Thornton	rthornton@nossaman.com
John P. Manaut	Jpm@carlsmith.com
Don S. Kitaoka	dkitaoka@honolulu.gov
Robert Carson Godbey	rgodbey@honolulu.gov
Gary Y. Takeuchi	gtakeuchi@honolulu.gov
William Meheula	meheula@pacificlaw.com
William J. Cook	william_cook@nthp.org
Elizabeth S. Merritt	betsy_merritt@nthp.org

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2012

/s/ David B. Glazer
David B. Glazer