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Attorneys for Defendants

THE CITY AND COUNTY OF HONOLULU and
WAYNE YOSHIOKA, in his official capacity as
Director of the City and County of Honolulu
Department of Transportation Services

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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, and

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

Intervenor Defendants.

Civil No: 11-00307 AWT

[PROPOSED] ORDER REGARDING REMEDIES

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

Date Action Filed: May 12, 2011

Trial Date: None Set

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 an earlier summary judgment ruling (ECF No. 137). *See HonoluluTraffic.comv. Fed. Transit Admin.*, 2012 WL 1805484 (D. Hawaii 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), including all claims arising under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370h, and Section 106 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470f.

The 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 this __ day of December, 2012

A. WALLACE TASHIMA
United States Circuit Judge
Sitting by Designation