

NOSSAMAN LLP  
ROBERT D. THORNTON (CA 72934)  
Admitted *Pro Hac Vice*  
rthornton@nossaman.com  
Special Deputy Corporation Counsel  
City and County of Honolulu  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
Telephone: 949.833.7800  
Facsimile: 949.833.7878

EDWARD V.A. KUSSY (DC 982417)  
Admitted *Pro Hac Vice*  
ekussy@nossaman.com  
Special Deputy Corporation Counsel  
City and County of Honolulu  
1666 K. Street, NW, Suite 500  
Washington, DC 20006  
Telephone: 202.887.1400  
Facsimile: 202.466.3215

CARLSMITH BALL LLP  
JOHN P. MANAUT (HI 3989)  
jpm@carlsmith.com  
LINDSAY N. MCANEELEY (HI 8810)  
lmcaneeley@carlsmith.com  
Special Deputies Corporation Counsel  
City and County of Honolulu  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, HI 96813  
Telephone: 808.523.2500  
Facsimile: 808.523.0842

DONNA Y. L. LEONG (HI 3226)  
Corporation Counsel  
COR@honolulu.gov  
DON S. KITAOKA (HI 2967)  
dkitaoka@honolulu.gov  
GARY Y. TAKEUCHI (HI 3261)  
gtakeuchi@honolulu.gov

Deputies Corporation Counsel  
City and County of Honolulu  
530 S. King Street, Room 110  
Honolulu, HI 96813  
Telephone: 808.768.5248/808.768.5240  
Facsimile: 808.768.5105

Attorneys for Defendants

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

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; 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; ANTHONY FOXX, in his official capacity as Secretary of Transportation; THE CITY AND COUNTY OF HONOLULU; and MICHAEL FORMBY, in his official capacity as Director of the City and County of Honolulu, Department of Transportation Services,

Defendants, and

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

Intervenor Defendants.

Civil No: 11-00307 AWT

**NOTICE OF COMPLIANCE WITH JUDGMENT AND PARTIAL INJUNCTION (ECF NO. 202) AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT (ECF NO. 182)**

(Presiding: The Honorable A. Wallace Tashima)

Date Action Filed: May 12, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Defendants the City and County of Honolulu and Michael Formby, in his official capacity as Director of the City and County of Honolulu Department of Transportation Services (collectively, “City Defendants”) hereby lodge with the Court notice of Defendants’ compliance with the Court’s Judgment and Partial Injunction (“Judgment”) (ECF No. 202) and with the related Order on Cross-Motions for Summary Judgment (“Summary Judgment Order”) (ECF No. 182).<sup>1</sup>

On September 30, 2013, Defendants approved a Final Supplemental Environmental Impact Statement/Section 4(f) Evaluation (“Final SEIS”) and Amended Record of Decision (“ROD”) for the Honolulu Rail Transit Project (“Project”). *See* Decl. of Faith Miyamoto in Supp. of Notice of Compliance (“Miyamoto Decl.”), ¶¶ 4-5; Ex. A. Defendants have also completed the studies required by the Court regarding above-ground Traditional Cultural Properties (“TCPs”) and received concurrence from the Hawaii State Historic Preservation Officer in the findings of the Federal Transit Administration (“FTA”) that the

---

<sup>1</sup> While the Judgment directs the Federal Transit Administration to file the Notice of Compliance with the Court, counsel for Federal Defendants has informed City Defendants that Federal Defendants are not able to file a Notice of Compliance with the Judgment and Summary Judgment Order during the lapse in Congressional appropriations which has resulted in the ongoing shutdown of the Federal government. *See* Decl. of Robert D. Thornton in Supp. of Notice of Compliance, ¶ 2.

Project would not cause any adverse effect on any TCP eligible for inclusion in the National Register of Historic Places. *Id.*, ¶¶ 7-9; Ex. B.

## **I. THE COURT’S SUMMARY JUDGMENT ORDER**

On November 1, 2012, the Court issued its Summary Judgment Order granting in part and denying in part cross-motions for summary judgment on Plaintiffs’ remaining claims [ECF No. 182]. Specifically, the Court ruled in favor of Plaintiffs on three claims arising under 49 U.S.C. § 303 (“Section 4(f)”), and in favor of Defendants on all other issues and claims.

On December 27, 2012, the Court issued its Judgment, remanding three matters to the FTA for additional studies and analyses consistent with its findings in the Summary Judgment Order, and enjoining construction and real estate acquisition activities in Phase 4 of the Project [ECF No. 202]. The Judgment requires Defendants to (1) complete identification of above-ground TCPs within the Project corridor; (2) reconsider their no-use determination for Mother Waldron Park; and (3) fully consider the prudence and feasibility of the Beretania Street Tunnel Alternative. Depending upon the outcome of these additional analyses, Defendants were also required to either supplement the Final EIS and ROD, or to withdraw the Final EIS and ROD, and reconsider the Project.

## **II. DEFENDANTS' COMPLIANCE WITH THE SUMMARY JUDGMENT ORDER**

As noted in the Defendants' Joint Status Report (ECF No. 232), Defendants prepared a Draft Supplemental Environmental Impact Statement/Section 4(f) Evaluation ("Draft SEIS"), which included (1) an evaluation of whether the Beretania Street Tunnel Alternative is a feasible and prudent alternative to the use of sites subject to Section 4(f), (2) a reconsideration of whether the Project will "use" Mother Waldron Park, and (3) a discussion of the status of Defendants' identification and evaluation of above-ground TCPs within the Project corridor. On May 30, 2013, the FTA circulated the Draft SEIS for public review and comment. On June 7, 2013, the Environmental Protection Agency ("EPA") published notice in the Federal Register of the availability of the Draft SEIS. 78 Fed. Reg. 34377 (June 7, 2013). On July 9, 2013, Defendants conducted a public hearing regarding the Draft SEIS. Miyamoto Decl., ¶ 3. The comment period for the Draft SEIS closed on July 22, 2013. *Id.*

After the close of the public comment period, Defendants considered the comments received on the Draft SEIS. Miyamoto Decl., ¶ 4. Defendants prepared responses to the comments submitted on the SEIS and prepared the Final SEIS. *Id.*

On September 30, 2013, FTA Region IX Administrator Leslie Rogers and Daniel A. Grabauskas, Executive Director and CEO for the Honolulu Authority for

Rapid Transportation, signed the Final SEIS. Miyamoto Decl., ¶ 5; Ex. A. Leslie Rogers also signed the Amended ROD on September 30, 2013. *Id.*

As detailed in the Final SEIS (including Appendix E to the Final SEIS), in addition to the Final SEIS, the FTA and the City have completed an identification of previously unidentified above-ground TCPs within the Project corridor. The TCP studies were incorporated by reference into the Final SEIS. Miyamoto Decl., ¶ 7. Defendants made the TCP studies available for public review and comment. Meetings regarding the TCP studies were held with the State Historic Preservation Division, consulting parties including the National Trust for Historic Preservation, and Native Hawaiian organizations as specified in the Programmatic Agreement among the FTA, City, U.S. Navy, State Historic Preservation Officer, and Advisory Council on Historic Preservation. *Id.*, ¶ 8.

For Phases 1 through 3 of the Project, FTA identified one previously unidentified TCP within the Area of Potential Effects (“APE”) that was eligible for the National Register of Historic Places (“NRHP”), but determined that the Project would have no adverse effect on that TCP. Miyamoto Decl., ¶ 9. For Phase 4 of the Project, the FTA found that there were no previously unidentified TCPs within the APE that were eligible for inclusion on the NRHP and, as a result, determined that the Project would have no adverse effect on any newly-identified TCPs eligible for inclusion the NRHP. *Id.*, ¶ 10. The Hawaii State Historic Preservation

Officer concurred with the FTA's determinations that the Project would not result in an adverse effect on any NRHP-eligible TCP. *See id.*, ¶¶ 9-10; Ex. B.

DATED: October 8, 2013

/s/ Robert D. Thornton  
ROBERT D. THORNTON  
EDWARD V. A. KUSSY  
JOHN P. MANAUT  
LINDSAY N. MCANEELEY  
DONNA Y. L. LEONG  
DON S. KITAOKA  
GARY Y. TAKEUCHI

Attorneys for Defendants  
CITY AND COUNTY OF HONOLULU AND  
MICHAEL FORMBY, IN HIS OFFICIAL  
CAPACITY AS DIRECTOR OF THE CITY  
AND COUNTY OF HONOLULU  
DEPARTMENT OF TRANSPORTATION  
SERVICES