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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.

CIVIL NO. 11-00307 AWT

INTERVENORS FAITH ACTION FOR
COMMUNITY EQUITY, MELVIN
UESATO, AND THE PACIFIC
RESOURCE PARTNERSHIP'S
ANSWER TO FIRST AMENDED
COMPLAINT; CERTIFICATE OF
SERVICE

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

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.

Trial Date: None Set

INTERVENORS FAITH ACTION FOR COMMUNITY EQUITY, MELVIN
UESATO, AND THE PACIFIC RESOURCE PARTNERSHIP'S
ANSWER TO FIRST AMENDED COMPLAINT

Intervenors Faith Action for Community Equity, Melvin Uesato and the
Pacific Resource Partnership ("**Intervenor Defendants**"), by and through its
counsel Meheula & Devens, LLP and Sean Kim, Esq., answers the First Amended
Complaint filed herein on April 14, 2012 ("**FAC**") as follows:

By order entered on April 14, 2012, the Court granted Intervenor Defendants' Motion to Intervene pursuant to Rule 24(b)(1)(B).

Intervenor Defendant Faith Action for Community Equity (“FACE”) is a faith-based grassroots organization that was founded in 1996. FACE has a membership base of twenty-seven institutions on O‘ahu, twenty-four institutions on Maui, and one statewide institution. FACE’s mission is to engage in actions that challenge the systems that perpetuate poverty and injustice, and to advocate for the interests of Hawai‘i’s low-income population, a disproportionate number of which live in Central and Leeward O‘ahu including a significant number of Native Hawaiians. FACE seeks to cultivate diversity and economic opportunity in its work with schools, community organizations and its members. FACE supports, funds, and works with community organizations that equitably meet the environmental, social, and economic needs of Hawai‘i residents. FACE chooses the issues that it will act upon through a democratic process, soliciting the opinions of all the members of its congregations to learn what issues they are facing and what issues they see as important for the low-income community that FACE seeks to serve. Because of FACE’s commitment to finding solutions for the affordable housing crisis on O‘ahu, its commitment to advocating for the needs of the poor, FACE has long-supported the Rail Project, and its members have publicly spoken out for the Rail Project in numerous forums. FACE’s members would benefit from

the creation of affordable mass transportation, less air pollution, and the creation of more transit-oriented affordable housing.

Intervenor Defendant Melvin Uesato is a lifelong resident of O‘ahu who faces the commute between Kapolei and Honolulu each work day. Due to the high cost of owning a car, including gas prices and parking costs, Mr. Uesato commutes to work by taking the bus. Because of the traffic on the H-1, Mr. Uesato must leave his house by 5:40 a.m. in order to ensure he is at work on time at 7:45 a.m., which means he usually arrives in Honolulu an hour before he is required to be at work, and he sacrifices both sleep and precious time to spend with his wife. The Rail Project would provide an affordable, efficient means of transportation for Mr. Uesato, and he will benefit from the decrease in air pollution that will result from less cars on the road.

Pacific Resource Partnership (“PRP”) is a non-profit, joint labor management partnership with the State’s largest construction union, the 6,500-member Hawai‘i carpenters union – the United Brotherhood of Carpenters and Joiners of America, Local 745 (“Union”), and the over 200 contractors signatory to the Union. PRP’s overriding mission is to improve the quality of life for Hawai‘i’s residents. To serve that purpose, PRP has used its position to strengthen Hawai‘i’s economy by working with public and private developers and contractors and the unionized carpenters to bolster the building sector. PRP identifies development

opportunities and assists with legislation and public policy development and support, guides projects through the federal, state, and county development process, and facilitates relationships with potential business and community organizations. PRP has been advocating for the Rail Project since its inception, and its members are depending on the Rail Project for jobs, for affordable transportation, and to curtail the increasing air pollution attributable to Honolulu's auto-centered transportation system. The construction industry faces precarious economic conditions. As of December 1, 2011, 47% of active Union members on O'ahu were unemployed. Statewide, the unemployment level for Union members is 50.3%. Among O'ahu journeymen carpenters, the unemployment level is 42.2%. Among apprentice carpenters, it is 55.5%. The Rail Project is reasonably projected to create over 10,000 jobs per year on average – over 4,000 construction jobs (i.e., 42% for engineers, architects, and laborers, 18% in indirect construction, and 40% for suppliers, retailers, restaurants and services). The construction contractor for the Rail Project estimated that it would employ directly 350 workers just for the first phase of construction of the guideway. In addition, subcontractors and other support and craft workers would be hired – those workers would then spend their wages at local businesses, fueling the state's economy and creating more jobs. As of October 2011, there were 25,000 unemployed persons on O'ahu. The number of people employed in the natural resource, mining, and construction

sector stood at 22,500, down from the September 2007 peak of 27,350. The impact of rail on improving the employment both in O'ahu and throughout the state is clearly significant. The Union is a signatory to the Rapid Transit Stabilization Agreement for the Rail Project, which is a contract between the City and County of Honolulu and various construction unions to ensure that construction of the Rail Project occurs without disruption due to labor disputes, among other things. Kiewit Infrastructure West Co., a PRP member, was awarded the design and build contract to construct the guideway for the first and second phases of the 4-phase Rail Project. In addition, Kiewit teamed with fellow PRP member, Albert C. Kobayashi Inc. as a joint venture and won the bid to construct the maintenance and storage facility for the Rail Project. Other members of PRP have also been retained as subcontractors to work on the Rail Project. If construction of the Rail Project is delayed by this litigation, PRP members will continue to be out work. Delays in construction would have a major negative impact on Kiewit and the many Union workers employed on the Rail Project. The impact on the broader economy would be similarly great, via subcontractors Kiewit employs and the many firms that Honolulu Authority for Rapid Transportation has contracted with to build the Rail Project.

FIRST DEFENSE

1. The FAC fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Intervenor Defendants deny the allegations contained in paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 75, 76, 87, 95, 98, 106, 111 and 121 of the FAC on the grounds that they are incomplete and argumentative purported statements of law and said law speaks for itself, and/or they are incomplete, ambiguous and argumentative purported descriptions of the contents of documents and said documents speak for themselves.

3. Intervenor Defendants deny the allegations contained in paragraphs 77, 79, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 93, 96, 104, 107, 108, 115, 118, 119, and 124 of the FAC.

4. Intervenor Defendants repeat their previous responses as set forth herein in reply to paragraphs 74, 78, 86, 94, 97, 105, 109 and 120 of the FAC.

5. In response to paragraph 1 of the FAC, Intervenor Defendants object to the allegations contained therein as improper argument and legal conclusions and, therefore, deny said allegations. Intervenor Defendants aver that the impacts of the Project, along with appropriate mitigation measures, are properly disclosed in the Final Environmental Impact Statement (the “**FEIS**”).

6. In response to paragraph 2 of the FAC, Intervenor Defendants deny that Plaintiffs' have grounds for judicial review pursuant to Chapter 7 of the Administrative Procedure Act ("APA"), Section 305 of the National Historic Preservation Act ("NHPA"), or otherwise.

7. In response to paragraphs 3 and 4 of the FAC, Intervenor Defendants admit that if this Court does have jurisdiction over some or all of the claims asserted, then venue would be proper in the District of Hawai'i.

8. In response to paragraph 5 of the FAC, Intervenor Defendants admit that 28 U.S.C. §§ 2201 and 2202 may authorize the Court authority to grant declaratory relief and further necessary and proper relief based on a declaratory judgment or decree, but deny that such relief is warranted or appropriate in this case.

9. In response to paragraph 6 of the FAC, Intervenor Defendants admit that final agency action has occurred for the Project, but deny that a viable justiciable controversy exists. Intervenor Defendants aver that final agency action was achieved in full compliance with all applicable laws, statutes, rules and regulations, and that Plaintiffs' allegations to the contrary are based on mischaracterizations of facts and/or law and are otherwise unsupported or unsupportable.

10. In response to paragraph 7 of the FAC, Intervenor Defendants admit that Plaintiff HonoluluTraffic.com is registered with the State of Hawai'i Department of Commerce & Consumer Affairs as a domestic nonprofit corporation, and that HonoluluTraffic.com submitted comment letters regarding the Project. Intervenor Defendants deny that the alternatives advocated by HonoluluTraffic.com in its comment letters were not evaluated in the FEIS in compliance with the National Environmental Policy Act and deny that HonoluluTraffic.com's comments and proposed alternatives were not evaluated or given full consideration during the federal environmental review process. Intervenor Defendants further deny that the Project will affect environmental, aesthetic, natural, recreational, cultural and/or historical resources in any manner that does not comport with applicable laws, rules or regulations and would give rise to an actionable harm to HonoluluTraffic.com. Intervenor Defendants aver that Defendants fully complied with all laws, statutes, rules and regulations applicable to the environmental review process for the Project, including but not limited to properly reviewing, considering and responding to comments submitted by HonoluluTraffic.com and all other timely submitted public comments, and adequately disclosing environmental impacts of the alternatives considered in the FEIS. Intervenor Defendants further aver that HonoluluTraffic.com's organizational and/or political reasons for opposing the Project, including its

general disagreement with the alternative approved by the FTA, are not actionable. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations so those allegations are denied until otherwise proven.

11. In response to paragraph 8 of the FAC, Intervenor Defendants admit that Plaintiff Cliff Slater is registered with the State of Hawai'i Department of Commerce & Consumer Affairs as the President and Director of Plaintiff HonoluluTraffic.com. The allegations regarding Mr. Slater having been "personally involved in the Project" are vague, ambiguous and misleading and are therefore denied. Intervenor Defendants aver that Mr. Slater did not exhaust administrative remedies. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining vague and ambiguous allegations in this paragraph which were calculated to suggest a basis for standing, including the allegations of generalized concerns about the impact of the Project on views and historic resources found in downtown Honolulu, and therefore deny said allegations and that Mr. Slater has standing in this action. Moreover, Intervenor Defendants aver that the Project's potential impacts on views and historic resources were fully considered as part of the environmental review process and disclosed in the FEIS, along with appropriate mitigation measures. Mr. Slater has been a long time, vocal critic of the City's

efforts to provide relief for traffic congestion in the primary transportation corridor along O‘ahu’s southern coast and most densely populated areas, and has continually opposed the promotion of public works projects to accomplish the objectives of the O‘ahu Metropolitan Planning Organization (“**OMPO**”). Mr. Slater’s personal and/or political differences of opinion about the desirability of the Project or the appropriateness of the decisions by City’s Department of Transportation Services (“**DTS**”) and the Federal Transportation Administration (“**FTA**”) in light of these disclosed impacts are not actionable.

12. In response to paragraph 9 of the FAC, Intervenor Defendants admit Plaintiff Benjamin J. Cayetano’s recited prior public office positions. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations regarding Mr. Cayetano’s alleged time spent downtown and on Halekauwila Street, generalized concerns regarding the impact of the Project on the aesthetic appearance of these areas, or other vague and ambiguous allegations which were calculated to suggest a basis for standing, and therefore deny said allegations and that Mr. Cayetano has standing in this action. Further, Intervenor Defendants aver that Mr. Cayetano did not submit public comments regarding his alleged concerns with the Project during the environmental review process, or otherwise participate in any manner with the

administrative process, and thus failed to exhaust appropriate administrative remedies. Moreover, Intervenor Defendants aver that the Project's potential impacts on views and the aesthetics were fully considered as part of the environmental review process and disclosed in the FEIS, along with appropriate mitigation measures. Mr. Cayetano's personal and/or political differences of opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

13. In response to paragraph 10 of the FAC, Intervenor Defendants admit Plaintiff Walter Heen's recited prior public office positions. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations regarding Mr. Heen's alleged concerns that the Project will be "destructive of the environment along and within the view of the proposed route" and cause disturbance to places of importance to Native Hawaiians, including burial sites, and other vague and ambiguous allegations calculated to suggest a basis for standing, and therefore deny said allegations and that Mr. Heen has standing in this action. Intervenor Defendants further deny that Mr. Heen's past affiliation with the State of Hawai'i Office of Hawaiian Affairs ("OHA") provides an independent basis for him to personally allege violations of the laws, rules and regulations for the environmental review

process without first participating in the public comment process and/or otherwise exhausting appropriate administrative remedies. Moreover, Intervenor Defendants aver that the Project's potential impacts on views, aesthetics and Native Hawaiian culture (including the issues raised by OHA in its comment letter dated February 2, 2009) were fully considered as part of the environmental review process and disclosed in the FEIS, along with appropriate mitigation measures. Mr. Heen's personal and/or political differences in opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

14. In response to paragraph 11 of the FAC, Intervenor Defendants admit Plaintiff Hawaii's Thousand Friends ("**HTF**") is registered with the State of Hawai'i Department of Commerce & Consumer Affairs as a domestic nonprofit corporation, with an original registration date of May 28, 1981. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations regarding HTF's members' use of and interest in lands and historic sites (including burials) which HTF alleges will be adversely affected by construction of the Project, as well as other vague and ambiguous allegations which were calculated to suggest a basis for standing, and therefore Intervenor Defendants deny said allegations and that HTF has standing in

this action. Intervenor Defendants aver that the Project's potential impacts on lands and historic sites (including burials) were fully considered as part of the environmental review process and disclosed in the FEIS, along with appropriate mitigation measures. HTF's organizational and/or political differences of opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

15. In response to paragraph 12 of the FAC, Intervenor Defendants admit that Plaintiff The Small Business Hawaii Entrepreneurial Education Foundation ("SBH") is registered with the State of Hawai'i Department of Commerce & Consumer Affairs as a domestic nonprofit corporation. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations calculated to suggest a basis for standing, and therefore deny said allegations and that SBH has standing in this action.

Moreover, Intervenor Defendants aver that SBH did not submit public comments regarding its alleged concerns with the Project during the environmental review process, or otherwise participate in any manner in the administrative process, and thus failed to exhaust appropriate administrative remedies. Moreover, Intervenor Defendants aver that the Project's potential impacts on the environment were fully considered as part of the environmental review process and disclosed in the FEIS,

along with appropriate mitigation measures. SBH's organizational and/or political differences in opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

16. In response to paragraph 13 of the FAC, Intervenor Defendants admit Plaintiff Randall W. Roth's recited professional positions. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations calculated to suggest a basis for standing, and therefore deny said allegations and that Mr. Roth has standing in this action. Moreover, Intervenor Defendants aver that Mr. Roth did not submit public comments regarding his alleged concerns with the Project during the environmental review process, or otherwise participate in any manner with this administrative process, and thus failed to exhaust appropriate administrative remedies. Moreover, Intervenor Defendants aver that the Project's potential impacts on view planes, aesthetics and the environment were fully considered as part of the environmental review process and disclosed in the FEIS, along with appropriate mitigation measures. Mr. Roth's personal and/or political differences in opinion about the desirability of the Project or the appropriateness of the

decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

17. In response to paragraph 14 of the FAC, Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations in this paragraph, including the vague and ambiguous allegations calculated to suggest a basis for standing, and therefore deny said allegations and that Plaintiff Michael Uechi, M.D., has standing in this action. Moreover, Intervenor Defendants aver that Dr. Uechi's concerns, as articulated during the public comment period of the environmental review process and in paragraph 14 of the FAC were fully considered and responded to as part of the environmental review process, and the potential impacts identified were disclosed in the FEIS, along with appropriate mitigation measures. Dr. Uechi's personal and/or political differences in opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

18. In response to paragraph 15 of the FAC, Intervenor Defendants admit that Plaintiff The Outdoor Circle ("**Outdoor Circle**") is registered with the State of Hawai'i Department of Commerce & Consumer Affairs as a domestic nonprofit corporation. According to the State of Hawai'i Department of Commerce & Consumer Affairs' website, at the time of this

Answer, Outdoor Circle is delinquent with its annual filings and is not in good standing. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations in this paragraph, including the vague and ambiguous allegations calculated to suggest a basis for standing, and therefore deny said allegations and that Outdoor Circle has standing in this action. Moreover, Intervenor Defendants aver that Outdoor Circle's concerns, as articulated during the public comment period of the environmental review process and in paragraph 15 of the FAC were fully considered and responded to as part of the environmental review process, and the potential impacts identified were disclosed in the FEIS, along with appropriate mitigation measures. Outdoor Circle's organizational and/or political differences in opinion about the desirability of the Project or the appropriateness of the decisions by DTS and the FTA in light of these disclosed impacts are not actionable.

19. In response to the first paragraph 16 of the FAC, Intervenor Defendants deny that all Plaintiffs have participated in the public process related to the approval of the Project and have exhausted available administrative remedies. Intervenor Defendants are without sufficient knowledge or information to form a belief as to the truth or accuracy of the remaining allegations so those allegations are denied until otherwise proven.

20. In response to the second paragraph 16 of the FAC, Intervenor Defendants admit that the FTA is an agency within the U.S. Department of Transportation and was the joint lead agency with the City and County of Honolulu for the Project. Intervenor Defendants further admit that the FTA issued a Record of Decision (“**ROD**”) for the Project. Intervenor Defendants deny the remaining allegations and other characterizations and conclusions in paragraph 16 and affirmatively state that the Defendants’ actions with respect to the Project were taken in full compliance with all laws, rules and regulations applicable to the environmental review process.

21. In response to paragraph 17 of the FAC, Intervenor Defendants admit that Leslie Rogers is the Regional Administrator of Region IX of the FTA, which includes western states, territories and Hawai’i, and that Mr. Rogers signed the ROD on behalf of the FTA. Intervenor Defendants deny the remaining allegations and other characterizations and conclusions in paragraph 17 and affirmatively state that the Defendants’ actions with respect to the Project were taken in full compliance with all laws, rules and regulations applicable to the environmental review process.

22. In response to paragraph 18 of the FAC, Intervenor Defendants admit that Peter Rogoff is the FTA Administrator. Intervenor Defendants deny the remaining allegations and other characterizations and

conclusions in paragraph 18 and affirmatively state that the Defendants' actions with respect to the Project were taken in full compliance with all laws, rules and regulations applicable to the environmental review process.

23. In response to paragraph 19 of the FAC, Intervenor Defendants admit that the FTA is an agency within the U.S. Department of Transportation. Intervenor Defendants deny the remaining allegations and other characterizations and conclusions in paragraph 19 and affirmatively state that the Defendants' actions with respect to the Project were taken in full compliance with all laws, rules and regulations applicable to the environmental review process.

24. In response to paragraph 20 of the FAC, Intervenor Defendants admit that Ray LaHood is the Secretary of Transportation. Intervenor Defendants deny the remaining allegations and other characterizations and conclusions in paragraph 20 and affirmatively state that the Defendants' actions with respect to the Project were taken in full compliance with all laws, statutes, rules and regulations applicable to the environmental review process.

25. In response to paragraph 21 of the FAC, Intervenor Defendants admit the existence of the City and County of Honolulu as a governmental entity on the island of O'ahu in the State of Hawai'i. Intervenor Defendants further admit that DTS served as joint lead agency for the Project with the FTA. Intervenor Defendants deny the remaining allegations and other

characterizations and conclusions in paragraph 21 and affirmatively state that the Defendants' actions with respect to the Project were taken in full compliance with all laws, statutes, rules and regulations applicable to the environmental review process.

26. In response to paragraph 22 of the FAC, Intervenor Defendants admit that Wayne Yoshioka is the Director of DTS, but deny that the Court has jurisdiction over him that is separate and apart from the City and County of Honolulu in this dispute. Intervenor Defendants deny the remaining allegations, and other characterizations and conclusions in paragraph 22, and affirmatively state that the Defendants' actions with respect to the Project were taken in full compliance with all laws, statutes, rules and regulations applicable to the environmental review process.

27. In response to paragraph 55 of the FAC, Intervenor Defendants submit that the allegations contained therein are vague, ambiguous and overbroad and, therefore, Intervenor Defendants deny those allegations as stated. Notwithstanding the foregoing, Intervenor Defendants admit that in or about November 2002, DTS issued a document entitled "Final Environmental Impact Statement for the Primary Corridor Transportation Project," and that in or about July 2003, the FTA and DTS jointly issued a separate document entitled "Primary Corridor Transportation Project, Final Environmental Impact Statement." Said

documents are public records and otherwise speak for themselves. Intervenor Defendants aver that the FEIS at 1-1 through 1-5 and other sections of the FEIS provides an appropriate description of the history of the Project and, therefore, Intervenor Defendants further deny the allegations in paragraph 55 to the extent that they mischaracterize or distort the factual background as set forth in the FEIS.

28. In response to paragraph 56 of the FAC, Intervenor Defendants submit that the allegations contained therein are vague, ambiguous and overbroad and, therefore, Intervenor Defendants deny those allegations as stated. Notwithstanding the foregoing, Intervenor Defendants admit that on or about December 7, 2005, FTA published a notice of intent to prepare an alternatives analysis and EIS related to the Project in the Federal Register. Intervenor Defendants submit that said document is a public record and speaks for itself; however, Intervenor Defendants note that said document expressly provided in part that: “Alternatives proposed to be considered in the AA and draft EIS include No Build, Transportation System Management, Managed Lanes, and Fixed Guideway Transit.” Intervenor Defendants further admit that on or about December 8, 2005, DTS published an EIS Preparation Notice related to the Project in the State of Hawai’i Environmental Notice. Intervenor Defendants submit that said document is a public record and speaks for itself; however, Intervenor Defendants note that said document expressly provided in part that “the purpose of the [Project] is to

provide improved person-mobility in the highly congested east-west corridor[.]”

Intervenor Defendants aver that the FEIS at 1-1 through 1-5 and other sections of the FEIS provides an appropriate description of the history of the Project and, therefore, Intervenor Defendants deny the allegations in paragraph 56 to the extent that they mischaracterize or distort the factual background as set forth in the FEIS.

29. In response to paragraphs 57 and 58 of the FAC, Intervenor Defendants admit that the Alternatives Screening Memo Honolulu High-Capacity Transit Corridor Project (“**2006 Alternatives Screening Memo**”), which describes the initial screening of various alternative modes of travel, technologies and alignments for the study corridor, was prepared on or about October 24, 2006, consistent with FTA guidance on New Starts projects. Intervenor Defendants submit that the 2006 Alternatives Screening Memo is a public record and speaks for itself. Therefore, to the extent that allegations set forth in paragraph 57 and 58 regarding the 2006 Alternatives Screening Memo are incomplete, inconsistent with the 2006 Alternatives Screening Memo, attempt to re-characterize the information contained within that document, or seek to attribute any meaning or relevance to that document, said allegations are denied. The remaining allegations contained within paragraphs 57 and 58 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

30. In response to paragraphs 59 and 60 of the FAC, Intervenor Defendants admit that the Honolulu High-Capacity Transit Corridor Project Alternatives Analysis Report (“**2006 Alternatives Report**”), which provided further analysis of the four alternatives that were advanced from the 2006 Alternatives Screening Memo (i.e., the No Build Alternative, Transportation System Management Alternative, Managed Lane Alternative, and Fixed Guideway Alternative), was produced on or about November 1, 2006. Intervenor Defendants submit that the 2006 Alternatives Report is a public record and speaks for itself. Therefore, to the extent that allegations set forth in paragraphs 59 and 60 regarding the 2006 Alternatives Report are incomplete, inconsistent with the 2006 Alternatives Report, attempt to re-characterize the information contained within that document, or seek to attribute meaning or relevance to that document, said allegations are denied. The remaining allegations contained within paragraphs 59 and 60 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

31. In response to paragraph 61 of the FAC, Intervenor Defendants admit that following review of the alternatives analysis materials and consideration of nearly 3,000 comments received from the public, the City Council selected the Fixed Guideway Transit System as the Locally Preferred Alternative on December 22, 2006. Any remaining allegations contained within paragraph 61

are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

32. In response to paragraph 62 of the FAC, Intervenor Defendants admit only that on or about March 15, 2007, the FTA published a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register, which requested public and agency input on proposed alternatives, the Purpose and Need, and the range of issues to be evaluated in the EIS. The remaining allegations contained within paragraph 62 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

33. In response to paragraph 63 of the FAC, Intervenor Defendants admit that HonoluluTraffic.com and other persons and entities submitted written statements in response to the referenced Notice of Intent to Prepare an Environmental Impact Statement. Intervenor Defendants submit that all such written statements speak for themselves. Therefore, to the extent that allegations set forth in paragraph 63 are incomplete, inconsistent with those written statements, attempt to re-characterize the content of those statements, or seek to attribute any meaning or relevance to those statements, said allegations are denied.

34. In response to paragraph 64 and 65 of the FAC, the Intervenor Defendants admit that as part of the technical review process, various transit

vehicle manufacturers provided submittals detailing features of different vehicle technologies. Intervenor Defendants further admit that an independent panel of transit technology experts performed an extensive evaluation of the various proposed transit technologies and prepared a report summarizing its evaluation, which speaks for itself. Intervenor Defendants further admit that the steel wheel on steel rail technology was subsequently identified as the preferred technology for the Project. The remaining allegations contained within paragraph 64 and 65 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

35. In response to paragraph 66 of the FAC, Intervenor Defendants admit that the FTA and DTS jointly prepared and issued the Draft Environmental Impact Statement (the “DEIS”) for the Project in November 2008, and that the DEIS evaluated four alternatives in detail identified as a result of the alternatives screening process and NEPA scoping process. Intervenor Defendants deny that other alternatives were not evaluated during the federal environmental review process. Intervenor Defendants aver that appropriate alternatives were evaluated under FTA’s New Starts” procedures and guidelines. Intervenor Defendants further submit that the DEIS speaks for itself. Therefore, to the extent that allegations set forth in paragraph 66 are incomplete, inconsistent with the DEIS, attempt to re-characterize the content of the DEIS, or seek to attribute any

meaning or relevance to the DEIS, said allegations are denied. Any remaining allegations contained within paragraph 66 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

36. In response to paragraph 67 of the FAC, Intervenor Defendants submit that any written comments to the DEIS speak for themselves. Therefore, to the extent that allegations set forth in paragraph 67 are incomplete, inconsistent with those comments, attempt to re-characterize the contents of those comments, or seek to attribute any meaning or relevance to those comments, said allegations are denied. Any remaining allegations contained within paragraph 67 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

37. In response to paragraphs 68 and 69 of the FAC, Intervenor Defendants admit that HonoluluTraffic.com submitted written comments in connection with the DEIS. Intervenor Defendants submit that said written comments speak for themselves. Therefore, to the extent that allegations set forth in paragraphs 68 and 69 are incomplete, inconsistent with those comments, attempt to re-characterize the contents of those comments, or seek to attribute any meaning or relevance to those comments, said allegations are denied. Intervenor Defendants further admit and aver that Defendants fully considered and responded to all timely submitted comments from HonoluluTraffic.com regarding the DEIS.

The exact contents and context in which these responses were provided are included as part of the FEIS and speak for themselves. Any allegations set forth in paragraphs 68 and 69 that are incomplete, inconsistent with any such response, attempt to re-characterize the contents of any such response, or seek to attribute any meaning or relevance to any such response are denied. Any remaining allegations contained within paragraphs 68 and 69 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

38. In response to paragraph 70 of the FAC, Intervenor Defendants admit that the FTA and DTS jointly prepared and issued the FEIS for the Project in June 2010. The remaining allegations in paragraph 70 are vague, ambiguous, overbroad, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

39. In response to paragraph 71 of the FAC, Intervenor Defendants admit that HonoluluTraffic.com and others submitted written comments in connection with the FEIS. Intervenor Defendants submit that said written comments speak for themselves. Therefore, to the extent that allegations set forth in paragraph 71 are incomplete, inconsistent with those comments, attempt to re-characterize the contents of those comments, or seek to attribute any other meaning or relevance to those comments, said allegations are denied. Any

remaining allegations contained within paragraphs 71 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

40. In response to paragraph 72 of the FAC, Intervenor Defendants admit that various consulting parties executed the Programmatic Agreement (“PA”) for the Project in January 2011. Intervenor Defendants submit that the PA speaks for itself. Therefore, to the extent that allegations set forth in paragraph 72 are incomplete, inconsistent with the PA, attempt to re-characterize the content of the PA, or seek to attribute any other meaning or relevance to the PA, said allegations are denied. Intervenor Defendants deny that the PA only “purported” to be in compliance with NHPA and affirmatively aver that the PA comports with the applicable requirements of the NHPA and its implementing regulations, which specifically allow for the handling of this Project and related historic properties by a programmatic agreement, as well as the use of a phased approach to the identification and treatment of certain properties as set forth in 36 CFR § 800.4. All remaining allegations contained within paragraph 72 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

41. In response to paragraph 73 of the FAC, Intervenor Defendants admit that the FTA issued the ROD on January 18, 2011, as executed by Defendant Rogers acting in his official capacity on behalf of the FTA. Intervenor Defendants submit that the ROD speaks for itself. Therefore, to the extent that allegations set forth in paragraph 73 are incomplete, inconsistent with the ROD, attempt to re-characterize the contents of the ROD, or seek to attribute any meaning or relevance to the ROD, said allegations are denied. All remaining allegations contained within paragraph 73 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

42. In response to paragraph 99 of the FAC, Intervenor Defendants admit that a Section 4(f) analysis was performed for the Project. Any remaining allegations contained within paragraph 99 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

43. In response to paragraphs 100 and 101 of the FAC, Intervenor Defendants submit that the FEIS speaks for itself, and therefore deny the allegations contained in said paragraphs, which are incomplete, inconsistent with the FEIS, attempt to re-characterize the contents of the FEIS, or seek to attribute meaning or relevance to the FEIS. Intervenor Defendants further object to the allegations in paragraphs 100 and 101 as vague, ambiguous, misleading and/or

incomplete and, therefore, deny those allegations as stated. Intervenor Defendants aver that the potential impact of the Project on any possible yet-to-be discovered historical, cultural and/or archaeological resources (including Native Hawaiian burials) was fully considered and disclosed in the FEIS and PA. Moreover, appropriate mitigation measures, and procedures for handling and protecting such resources were developed in consultation with SHPD, the Hawai'i State Historic Preservation Officer ("SHPO") and numerous other Section 106 consulting parties and are set forth in the FEIS, PA and other documents. In a prior lawsuit filed in the First Circuit Court, State of Hawai'i pertaining to the Project's disclosure of potential impacts to and plan for handling historical, cultural and/or archaeological resources, the court therein concluded that there was no violation of applicable Hawai'i laws and that the City was entitled to summary judgment as a matter of law. That ruling should be entitled to deference or comity.

44. In response to paragraphs 102 and 103 of the Amended Complaint, Intervenor Defendants object to the allegations contained therein as vague, ambiguous, misleading and/or incomplete and, therefore, Intervenor Defendants deny those allegations as stated. Intervenor Defendants submit that any documents referenced in paragraphs 102 and 103 speak for themselves and, therefore, deny any allegations contained in said paragraphs, which are incomplete, inconsistent with those documents, attempt to re-characterize the contents of those

documents, or seek to attribute meaning or relevance to those documents.

Intervenor Defendants aver that comprehensive evaluations of historic, cultural and archaeological resources were performed to satisfy Section 106 and Section 4(f) prior to the issuance of the ROD. Intervenor Defendants further aver that the PA, which was developed in consultation with and signed by Hawai'i's SHPO, expressly provides for further identification and treatment of historic, cultural and archaeological resources. This approach to the further review of resources was incorporated by reference into the FEIS and ROD, and is proceeding as expressly provided for in the PA. These issues were already resolved in favor of the City Defendants in a prior challenge under State law in State court, which is entitled to judicial deference or comity.

45. In response to paragraph 110 of the FAC, Intervenor Defendants admit that the Section 4(f) analysis (“**Section 4(f) Analysis**”) included in the FEIS evaluates the “use” of Section 4(f) Resources and that the Section 4(f) Analysis and the FEIS speak for themselves and Intervenor Defendants therefore deny any allegations in paragraph 110 that are incomplete, inconsistent with the FEIS, attempt to re-characterize the contents of those documents, or seek to attribute meaning or relevant to those documents.

46. In response to paragraph 112 of the FAC, Intervenor Defendants admit that the referenced documents identify alternatives to the Project,

but deny the remaining allegations in paragraph 112. Intervenor Defendants aver that appropriate consideration was given to alternatives and that the decision to proceed with the Project was made in full compliance with all applicable statutes, rules and regulations.

47. In response to paragraph 113 of the FAC, Intervenor Defendants object to the allegations contained therein as improper argument and legal conclusions, and, therefore, deny said allegations. Intervenor Defendants aver that all reasonable and prudent alternatives were properly considered, as required by the statutes, rules and regulations applicable to this Project.

48. In response to paragraph 114 of the FAC, Intervenor Defendants submit that the 2006 Alternatives Report speaks for itself. Therefore, to the extent that allegations set forth in paragraph 114 are incomplete, inconsistent with the 2006 Alternatives Report, attempt to re-characterize the contents of the 2006 Alternatives Report, or seek to attribute any meaning or relevance to that document, said allegations are denied. All remaining allegations contained within paragraph 114 are vague, ambiguous, misleading and/or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

49. In response to paragraph 116 of the FAC, Intervenor Defendants submit that the public documents referenced speak for themselves. Therefore, to the extent that allegations set forth in paragraph 116 are incomplete,

inconsistent with those documents, attempt to re-characterize the content of those documents, or seek to attribute any other meaning or relevance to those documents, said allegations are denied. All remaining allegations contained within paragraph 116 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

50. In response to paragraph 117 of the FAC, Intervenor Defendants submit that the documents referenced speak for themselves. Therefore, to the extent that allegations set forth in paragraph 117 are incomplete, inconsistent with the referenced documents, attempt to re-characterize the contents of the referenced documents or seek to attribute any meaning or relevance to those documents, said allegations are denied. All remaining allegations contained within paragraph 117 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated.

51. In response to paragraph 122 of the FAC, Intervenor Defendants admit that the FTA's approval of the project is subject to Section 106 of the NHPA, and aver that all necessary consultation and other requirements of Section 106 were satisfied, as disclosed in the FEIS, PA, ROD and other documents.

52. In response to paragraph 123 of the FAC, Intervenor Defendants admit that various consulting parties executed the PA for the Project in

January 2011, but submit that the PA speaks for itself. Therefore, to the extent that allegations set forth in paragraph 123 are incomplete, inconsistent with the PA, attempt to re-characterize the contents of the PA, or seek to attribute any meaning or relevance to the PA, said allegations are denied. All remaining allegations contained within paragraph 123 are vague, ambiguous, misleading or incomplete and, therefore, Intervenor Defendants deny those allegations as stated. Intervenor Defendants aver that the PA, which was developed in consultation with and signed by Hawai'i's SHPO, expressly provides for a comprehensive phased approach to the identification and treatment of archaeological resources, as allowed under 36 CFR § 800.4. This phased approach to archaeological resources was incorporated by reference into the FEIS and ROD, and is proceeding as expressly provided for in the PA. These issues were resolved in favor of the Intervenor Defendants in a prior challenge under State law in State court.

53. In response to the PRAYER FOR RELIEF of the FAC, Intervenor Defendants deny all grounds stated for Relief, and affirmative aver that Plaintiffs cannot satisfy all of the requirements under *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2757, 177 L. Ed. 2d 461 (2010).

54. Intervenor Defendants further deny each and every allegation not specifically admitted above.

THIRD DEFENSE

55. The Court lacks subject matter jurisdiction over some or all of the alleged claims in the FAC.

FOURTH DEFENSE

56. Plaintiffs lack standing to assert some or all of the claims in the FAC.

FIFTH DEFENSE

57. Plaintiffs failed to exhaust their administrative remedies and/or waived the right to assert some or all of the claims in the FAC.

SIXTH DEFENSE

58. Plaintiffs' claims are not ripe for judicial review.

SEVENTH DEFENSE

59. Plaintiffs' claims are moot, or were otherwise previously resolved for environmental and/or historical review compliance by a prior Hawai'i state court action on the same or related issues under State law.

EIGHTH DEFENSE

60. Plaintiffs' claims are barred or precluded from review by the doctrine of primary jurisdiction.

NINTH DEFENSE

61. Plaintiffs failed to name and identify parties who are required to be joined in the action under Rule 19 of the Federal Rules of Civil Procedure, including but not limited to the Honolulu Authority for Rapid Transportation, City and County of Honolulu.

TENTH DEFENSE

62. Plaintiffs' claims are barred by the doctrine of laches.

WHEREFORE, INTERVENOR DEFENDANTS pray that:

1. The FAC filed herein be dismissed;

2. The Court award Intervenor Defendants their costs and

attorneys' fees, and such other and further relief as may be just and equitable under the circumstances.

MAY 07 2012

DATED: Honolulu, Hawaii _____

/S/ William Meheula _____

WILLIAM K. MEHEULA

KEANI ALAPA

SEAN KIM

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HONOLULU TRAFFIC.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; 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:

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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:

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William J. Cook	Associate General Counsel National Trust for Historic Preservation 1785 Massachusetts Ave., NW Washington, DC 20036

Dated: Honolulu, Hawai‘i, May 7, 2012

/s/ William Meheula

WILLIAM MEHEULA
SEAN KIM

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FAITH ACTION FOR COMMUNITY
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