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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

Civil No: 11-00307 AWT

**[PROPOSED] ANSWER OF
INTERVENOR DEFENDANTS
FAITH ACTION FOR COMMUNITY
EQUITY, THE PACIFIC RESOURCE
PARTNERSHIP, AND MELVIN
UESATO**

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

Date Action Filed: May 12, 2011

EXHIBIT
1

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

Defendants.

Trial Date:

None Set

Defendants in Intervention Faith Action for Community Equity, Hawai‘i Carpenters Market Recovery Program doing business as The Pacific Resource Partnership, and Melvin Uesato (collectively, “Intervenor Defendants”) by and through their undersigned counsel, submit the following Answer in response to Plaintiffs’ Complaint filed on May 12, 2011 (ECF No. 1). The responses in the numbered paragraphs below correspond to the allegations contained in the numbered paragraphs in Plaintiffs’ Complaint. All matters not specifically admitted are hereby denied.

PLAINTIFFS’ INTRODUCTION SECTION

1. The allegations in the first and second sentences of paragraph 1 set forth Plaintiff’s characterization of the nature and basis of their lawsuit and the relief they seek to which no response is required. Intervenor Defendants deny that Plaintiffs are entitled to the relief they seek or any relief whatsoever. The allegations in the third, fourth, and fifth sentences of paragraph 1 constitute conclusions of law to which no response is required. To the extent a response is necessary, Intervenor Defendants deny the allegations in the third, fourth, and fifth sentences.

PLAINTIFFS’ JURISDICTION AND VENUE SECTION

2. The allegations in paragraph 2 constitute Plaintiffs’ characterization of their complaint, to which no response is required.

3. Plaintiffs’ allegations in paragraph 3 contain statements of jurisdiction

to which no response is required. To the extent a response is required, Intervenor Defendants deny the allegations in paragraph 3.

4. Plaintiffs' allegations in paragraph 4 contain statements of venue to which no response is required. 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.

5. Plaintiffs' allegations in paragraph 5 constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor Defendants admit that 28 U.S.C. §§ 2201 and 2202 give 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.

6. Plaintiffs' allegations in paragraph 6 constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor Defendants admit that a 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.

7. Intervenor Defendants lack the knowledge or information sufficient to

form a belief as to the truth of allegations in the first, second, third, fifth, and sixth sentences of paragraph 7 and on that basis deny the allegations. The allegations in the fourth sentence of paragraph 7 purport to characterize Plaintiffs' comments on the Project, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the comments. Intervenor Defendants deny the remaining allegations in the fourth sentence of paragraph 7. The allegations in the seventh sentence constitute conclusions of law to which no response is required. To the extent that a response is required, Intervenor Defendants deny the allegations in the seventh sentence.

8. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8 and on that basis deny the allegations.

9. Intervenor Defendants admit that Plaintiff Benjamin J. Cayetano was the Governor of the State of Hawaii from 1994 to 2002. As to all other allegations, Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 9 and on that basis deny the allegations.

10. Intervenor Defendants admit that Plaintiff Walter Heen was a Hawai'i State Judge and Judge on the Intermediate Court of Appeals. As to all other allegations, Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 and on that basis

deny the allegations.

11. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 and on that basis deny the allegations.

12. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12 and on that basis deny the allegations.

13. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 and on that basis deny the allegations.

14. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14 and on that basis deny the allegations.

15. Plaintiffs' allegations in the first sentence of paragraph 15 constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor Defendants deny the allegations in the first sentence of paragraph 15. Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 15 and on that basis deny the allegations.

16. Intervenor Defendants admit the allegations of in the first and second sentences of paragraph 16. As to the allegations in the third sentence of paragraph

16, Intervenor Defendants admit that the Federal Transit Administration (“FTA”) issued a Record of Decision (“ROD”) for the Project. The remaining allegations in the third sentence of paragraph 16 constitute conclusions of law to which no response is required.

17. Intervenor Defendants admit the allegations of paragraph 17.

18. Intervenor Defendants admit the allegations in the first sentence of paragraph 18. The allegations in the second sentence of paragraph 18 are overly vague, and on that basis, Intervenor Defendants deny the allegations.

19. Intervenor Defendants admit that the Department of Transportation is the parent department of the FTA. The remaining allegations in paragraph 19 are overly vague and Intervenor Defendants therefore lack sufficient knowledge or information to form a belief as to their truth and on that basis deny the allegations.

20. Intervenor Defendants admit the allegations in the first sentence of paragraph 20. The allegations in the second sentence of paragraph 20 are overly and on that basis Intervenor Defendants deny the allegations.

21. Intervenor Defendants admit the allegations in the first sentence of paragraph 21. As to the allegations in the second sentence of paragraph 21, Intervenor Defendants admit that the City and County of Honolulu (“City”) served as joint lead agency for the Project with FTA. The remaining allegations in the second sentence of paragraph 21 constitute conclusions of law to which no response is required.

22. Intervenor Defendants admit the allegations in the first sentence of paragraph 22. As to the allegations in the second sentence in paragraph 22, Intervenor Defendants admit that Wayne Yoshioka had some responsibility for the City's compliance with the National Environmental Policy Act ("NEPA"), Section 4(f) of the Department of Transportation Act of 1966, and the National Historic Preservation Act ("NHPA"), but deny that the Court has jurisdiction over him that is separate and apart from the City and County of Honolulu in this dispute. The remaining allegations in the second sentence constitute conclusions of law to which no response is required.

23. Plaintiffs' allegations in paragraph 23 purport to characterize information about the Project described in the Final Environmental Impact Statement ("FEIS"), which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

24. Plaintiffs' allegations in paragraph 24 purport to characterize information about the Project described in the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

25. Plaintiffs' allegations in paragraph 25 purport to characterize information about the Project described in the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation

contrary to the plain language, meaning, and context of the FEIS.

26. Plaintiffs' allegations in paragraph 26 purport to characterize information about the Project described in the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

27. Plaintiffs' allegations in paragraph 27 purport to characterize information about the Project described in the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

28. Plaintiffs' allegations in paragraph 28 purport to characterize information about the Project described in the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

29. The allegations in paragraph 29 purport to characterize the Project's FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

30. Intervenor Defendants deny the allegations in the first sentence of paragraph 30. Plaintiffs' allegations in the second and third sentences of paragraph 30 purport to characterize the Project's FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the

plain language, meaning, and context of the FEIS.

31. Intervenor Defendants deny the allegations in the first sentence of paragraph 31. Plaintiffs' allegations in the second, third, and fourth sentences of paragraph 31 purport to characterize the Project's FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

PLAINTIFFS' APPLICABLE LAW SECTION

32. Plaintiffs' allegations in paragraph 32 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

33. Plaintiffs' allegations in paragraph 33 purport to characterize NEPA, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegations contrary to NEPA's plain language, meaning, and context.

34. Plaintiffs' allegations in paragraph 34 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

35. Plaintiffs' allegations in paragraph 35 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best

evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

36. Plaintiffs' allegations in paragraph 36 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

37. Plaintiffs' allegations in paragraph 37 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

38. Plaintiffs' allegations in paragraph 38 purport to characterize NEPA, its implementing regulations, and a Supreme Court opinion, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute, regulations, and cited opinion.

39. Plaintiffs' allegations in paragraph 39 purport to characterize NEPA and the Council on Environmental Quality's ("CEQ") regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

40. Plaintiffs' allegations in the first, third, and fourth sentences of

paragraph 40 purport to characterize the CEQ NEPA regulations and the Department of Transportation NEPA regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the regulations. Plaintiffs' allegations in the second sentence of paragraph 40 constitute conclusions of law to which no response is required.

41. Plaintiffs' allegations in paragraph 41 purport to characterize 23 U.S.C. section 139(c)(3), which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of this statute.

42. Plaintiffs' allegations in paragraph 42 purport to characterize the Department of Transportation Act, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Department of Transportation Act.

43. Plaintiffs' allegations in paragraph 43 purport to characterize the Department of Transportation Act, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Department of Transportation Act.

44. Plaintiffs' allegations in paragraph 44 purport to characterize the Department of Transportation Act, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain

language, meaning, and context of the Department of Transportation Act.

45. Plaintiffs' allegations in paragraph 45 purport to characterize the Department of Transportation Act's implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the regulations.

46. Plaintiffs' allegations in paragraph 46 purport to characterize the Department of Transportation Act's implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the regulations.

47. Plaintiffs' allegations in paragraph 47 purport to characterize the Department of Transportation Act's implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the regulations.

48. Plaintiffs' allegations in paragraph 48 purport to characterize the Department of Transportation Act's implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the regulations.

49. Plaintiffs' allegations in paragraph 49 purport to characterize the Federal Highway Administration's 4(f) Policy Paper, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 4(f) Policy Paper.

50. Plaintiffs' allegations in paragraph 50 purport to characterize an FTA memorandum dated December 13, 2005, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the memorandum.

51. Plaintiffs' allegations in paragraph 51 purport to characterize the National Historic Preservation Act ("NHPA"), which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the NHPA.

52. Plaintiffs' allegations in paragraph 52 purport to characterize the NHPA, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the NHPA.

53. Plaintiffs' allegations in paragraph 53 purport to characterize the NHPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the NHPA and its implementing regulations.

54. Plaintiffs' allegations in paragraph 54 purport to characterize the NHPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the NHPA and its implementing regulations.

PLAINTIFFS' FACTUAL BACKGROUND SECTION

55. Plaintiffs' allegations in the first sentence of paragraph 55 are overly vague and Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis deny the allegations. As to the allegations in the second, third, and fourth sentences of this paragraph, Intervenor Defendants admit that in or about July 2003, FTA and the City jointly issued an FEIS ("2003 FEIS"). Plaintiffs' remaining allegations in this paragraph purport to characterize information described in the 2003 FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2003 FEIS.

56. Plaintiffs' allegations in the first sentence of paragraph 56 purport to characterize information described in the 2003 FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2003 FEIS. As to the allegations in sentences two and three, Intervenor Defendants admit that on or about December 7, 2005, FTA published a Notice of Intent ("NOI") to prepare an

EIS in the *Federal Register*. The allegations of the third sentence of this paragraph purport to characterize the NOI, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning and context of the NOI. 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.”

57. With respect to the allegations in the first, second, third, fourth, and sixth sentences of paragraph 57, Intervenor Defendants admit that the City engaged in an “alternatives analysis” process and that the results of this process were incorporated by FTA into the process for complying with NEPA, Section 4(f), and NHPA. The allegations in the first half of the fifth sentence of this paragraph purport to characterize the 2006 Alternatives Screening Memo, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2006 Alternatives Screening Memo. The remaining allegations in this paragraph are overly vague and Intervenor Defendants therefore lack the knowledge or information sufficient to form a belief as to their truth and on that basis deny the allegations.

58. Plaintiffs’ allegations in paragraph 58 purport to characterize the 2006 Alternatives Screening Memo, which speaks for itself and is the best evidence of

its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2006 Alternatives Screening Memo.

59. With respect to the first sentence in paragraph 59, Intervenor Defendants admit that the City engaged in an “alternatives analysis” process. The allegations in the second sentence of this paragraph are overly vague and Intervenor Defendants therefore lack the knowledge or information sufficient to form a belief as to their truth and on that basis deny the allegations. The allegations in the first half of the third sentence in this paragraph purport to characterize the 2006 Alternatives Report, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2006 Alternatives Report. The remaining allegations in this paragraph are overly vague and Intervenor Defendants therefore lack the knowledge or information sufficient to form a belief as to their truth and on that basis deny the allegations.

60. Plaintiffs’ allegations in paragraph 60 purport to characterize the 2006 Alternatives Analysis documents, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the 2006 Alternatives Analysis documents.

61. Plaintiffs’ allegations in paragraph 61 appear to characterize the Project history set forth in the Project FEIS, which speaks for itself and is the best

evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

62. Intervenor Defendants admit that on or about March 15, 2007, FTA published a NOI to prepare an EIS in the *Federal Register*. The remaining allegations in paragraph 62 are overly vague, and on that basis Intervenor Defendants deny the allegations.

63. Plaintiffs' allegations in paragraph 63 purport to characterize comments in response to the NOI, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the comments.

64. The allegations in the first and second sentences of paragraph 64 seek to characterize a request made by the City, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the request. As to the remaining allegations in the third and fourth sentences of this paragraph, Intervenor Defendants admit that the City engaged in a process to identify a preferred technology for the Project.

65. Plaintiffs' allegations in the first sentence of paragraph 65 are overly vague and Intervenor Defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and on that basis deny the allegations. Plaintiffs' allegations in the second sentence seek to characterize the City's

technical review process for proposed transit technologies and report, and such report speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the report.

66. Intervenor Defendants admit that the Draft Environmental Impact Statement (“DEIS”) for the Project was issued on or about November 2008. The remaining allegations in paragraph 66 purport to characterize the Project’s DEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the DEIS.

67. Intervenor Defendants deny the allegations contained in the first sentence of paragraph 67. The remaining allegations in this paragraph purport to characterize the comments on the Project DEIS, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the comments.

68. Plaintiffs’ allegations in paragraph 68 purport to characterize the comments on the Project DEIS, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, or context of the comments.

69. Plaintiffs’ allegations in paragraph 69 purport to characterize the Federal Defendants’ response to Plaintiffs’ comments on the DEIS, which speaks

for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the response to Plaintiffs' comments.

70. Intervenor Defendants admit the FEIS for the Project was issued in or about June 2010. The remaining allegations in paragraph 70 purport to characterize the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

71. Plaintiffs' allegations in paragraph 71 purport to characterize the comments on the Project FEIS, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the comments.

72. As to the allegations contained in the first, second, and third sentences of paragraph 72, Intervenor Defendants admit that a Programmatic Agreement ("PA") for the Project was executed in or about January 2011. The remaining allegations in the first, second, and third sentences of this paragraph purport to characterize the PA, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the PA. Intervenor Defendants deny the allegations in the fourth sentence.

73. As to the allegations in the first sentence of paragraph 73, Intervenor

Defendants admit that FTA issued a Record of Decision (“ROD”) on the Project on or about January 18, 2011. The allegations in the second and third sentences of paragraph 73 purport to characterize the ROD, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the ROD. The allegations contained in the fourth sentence of this paragraph constitute conclusions of law to which no response is required. Intervenor Defendants deny the allegations of the fifth sentence of this paragraph.

PLAINTIFFS’ COUNT 1

74. Intervenor Defendants incorporate their responses to paragraphs 1 through 73 and 78 through 123 as if set forth fully herein.

75. The allegations in paragraph 75 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

76. Plaintiffs’ allegations in paragraph 76 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the statute and regulations.

77. Intervenor Defendants deny the allegations in paragraph 77.

PLAINTIFFS' COUNT 2

78. Intervenor Defendants incorporate their responses to paragraphs 1 through 77 and 86 through 123 as if set forth fully herein.

79. Intervenor Defendants deny the allegations of paragraph 79.

80. Intervenor Defendants deny the allegations of paragraph 80.

81. Intervenor Defendants deny the allegations of paragraph 81.

82. Intervenor Defendants deny the allegations of paragraph 82.

83. Intervenor Defendants deny the allegations of paragraph 83.

84. Intervenor Defendants deny the allegations of paragraph 84.

85. Intervenor Defendants deny the allegations of paragraph 85.

PLAINTIFFS' COUNT 3

86. Intervenor Defendants incorporate their responses to paragraphs 1 through 85 and 94 through 123 as if set forth fully herein.

87. Plaintiffs' allegations in paragraph 87 purport to characterize NEPA and CEQ's regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the statute and regulations.

88. Intervenor Defendants deny the allegations in the first sentence of paragraph 88. The allegations in the second sentence of this paragraph are overly vague, and on that basis Intervenor Defendants deny the allegations.

89. Intervenor Defendants deny the allegations of paragraph 89.

90. Intervenor Defendants deny the allegations of paragraph 90.

91. Intervenor Defendants deny the allegations of paragraph 91.

92. Intervenor Defendants deny the allegations in the first and third sentences of paragraph 92. The allegations in the second sentence of this paragraph purport to characterize the FEIS, which is the best evidence of its contents. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the FEIS.

93. Intervenor Defendants deny the allegations in the first and fourth sentences of paragraph 93. The allegations in the second and third sentences of this paragraph purport to characterize the FEIS, which is the best evidence of its contents. Intervenor Defendants deny any allegations contrary to the plain language, meaning, and context of the FEIS.

PLAINTIFFS' COUNT 4

94. Intervenor Defendants incorporate their responses to paragraphs 1 through 93 and 97 through 123 as if set forth fully herein.

95. The allegations in paragraph 95 purport to characterize NEPA and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the statute and regulations.

96. Intervenor Defendants deny the allegations in the first and ninth sentences of paragraph 96. The allegations in the second and eighth sentences

purport to characterize the FEIS, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS. The allegations in the third and fourth sentences are overly vague, and on that basis Intervenor Defendants deny the allegations. The allegations in the fifth sentence purports to characterize the 2006 Alternatives Report and 2006 Alternatives Screening Memo, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of these documents. The allegations in the sixth sentence constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor Defendants deny the allegations.

PLAINTIFFS' COUNT 5

97. Intervenor Defendants incorporate their responses to paragraphs 1 through 96 and 105 through 123 as if set forth fully herein.

98. Plaintiffs' allegations in paragraph 98 purport to characterize the Department of Transportation Act and its implementing regulations, which speak for themselves and are the best evidence of their content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Act and the regulations.

99. The allegations in paragraph 99 constitute conclusions of law to which no response is required.

100. The allegations in the first sentence of paragraph 100 constitute conclusions of law to which no response is required. The remaining allegations in paragraph 100 purport to characterize the FEIS, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

101. The allegations in paragraph 101 purport to characterize the FEIS, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS.

102. The allegations in the first sentence of paragraph 102 purport to characterize the FEIS or comments of Hawai'i's State Historic Preservation Officer contained therein, each of which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS or comments. The allegations in the second sentence of paragraph 102 purport to characterize the ROD, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the ROD. Intervenor Defendants deny the allegations in the third sentence of this paragraph. Intervenor Defendants deny the allegations in the fourth sentence of this paragraph, but admit that extensive archaeological survey methods have been used at locations throughout the Project alignment.

103. The allegations in the first and second sentences of paragraph 103 purport to characterize the FEIS or comments of Hawai‘i’s State Historic Preservation Officer contained therein, each of which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS or comments. Intervenor Defendants deny the allegations in the third sentence of paragraph 103, but admit that a study has been initiated to identify traditional cultural properties (“TCPs”) along the alignment, and that one TCP was positively identified in the programmatic agreement attached to the ROD. The remaining allegations are overly vague and Intervenor Defendants therefore lack sufficient knowledge or information to form a belief as to their truth and on that basis deny the allegations.

104. Intervenor Defendants deny the allegations in paragraph 104.

PLAINTIFFS’ COUNT 6

105. Intervenor Defendants incorporate their responses to paragraphs 1 through 104 and 109 through 123 as if set forth fully herein.

106. Plaintiffs’ allegations in paragraph 106 purport to characterize the Department of Transportation Act, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Act.

107. The allegations in the first sentence of paragraph 107 purport to characterize the FEIS, which speaks for itself and is the best evidence of its

contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the FEIS. Intervenor Defendants deny all remaining allegations in paragraph 107.

108. Intervenor Defendants deny the allegations in paragraph 108.

PLAINTIFFS' COUNT 7

109. Intervenor Defendants incorporate their responses to paragraphs 1 through 108 and 119 through 123 as if set forth fully herein.

110. Plaintiffs' allegations in paragraph 110 purport to characterize the Department of Transportation Act, which speaks for itself and is the best evidence of its content. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Act.

111. The allegations in paragraph 111 purport to characterize the DEIS, the 2006 Alternatives Report, the 2006 Alternatives Screening Memo, the FEIS, and various other public documents (including public comments), which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of these documents. The allegations in the second sentence of paragraph 111 constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor Defendants deny the allegations.

112. Plaintiffs' allegations in paragraph 112 constitute conclusions of law to which no response is required. To the extent a response is required, Intervenor

Defendants lack sufficient knowledge or information to form a belief as to the truth of allegations in this paragraph and on that basis deny the allegation.

113. The allegations in paragraph 113 purport to characterize the 2006 Alternatives Analysis documents, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the Alternatives Analysis documents.

114. Intervenor Defendants deny the allegations in paragraph 114.

115. The allegations in paragraph 115 purport to characterize the DEIS, the 2006 Alternatives Report, the 2006 Alternatives Screening Memo, the FEIS, and various other public documents (including public comments), which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of these documents.

116. The allegations in paragraph 116 purport to characterize the FEIS and an October 22, 2009 letter from the National Trust for Historic Preservation, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of these documents.

117. Intervenor Defendants deny the allegations in paragraph 117.

118. Intervenor Defendants deny the allegations in paragraph 118.

PLAINTIFFS' COUNT 8

119. Intervenor Defendants incorporate their responses to paragraphs 1 through 118 as if set forth fully herein.

120. The allegations in paragraph 120 purport to characterize the NHPA and its implementing regulations, which speak for themselves and are the best evidence of their contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the NHPA and its implementing regulations.

121. The allegations in paragraph 121 constitute conclusions of law to which no response is required.

122. The allegations in paragraph 122 purport to characterize the PA, which speaks for itself and is the best evidence of its contents. Intervenor Defendants deny any allegation contrary to the plain language, meaning, and context of the PA.

123. Intervenor Defendants deny the allegations in paragraph 123.

PLAINTIFFS' CLAIM FOR RELIEF

The remainder of the Complaint consists of Plaintiffs' request for relief, to which no answer is required. Intervenor Defendants deny that Plaintiffs are entitled to any relief whatsoever.

GENERAL DENIAL

Intervenor Defendants deny each and every allegation of the Complaint not otherwise expressly admitted, qualified, or denied herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim for which relief can be granted on some or all of their claims.
2. Plaintiffs lack standing to assert some or all of their claims.
3. Some or all of Plaintiffs failed to exhaust their administrative remedies and/or waived the right to assert some or all of their claims in the Complaint.
4. Some or all of Plaintiffs' claims are barred or precluded from review as they were previously resolved by a prior Hawai'i state court action on the same or related issues under State law.
5. Some or all of Plaintiffs' claims are moot or not ripe for adjudication.
6. Some or all of Plaintiffs' claims have been waived.
7. Plaintiffs have failed to exhaust their administrative remedies.
8. The Court lacks jurisdiction over some or all of Plaintiffs' claims.
9. 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.

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

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

WHEREFORE, Intervenor Defendants request the Court to enter a judgment dismissing Plaintiffs' Complaint against the Defendants with prejudice, and award such additional and further relief as the Court deems just, equitable and proper.

DATED: January 3, 2012

/s/ William K. Meheula III
WILLIAM K. MEHEULA III
SEAN KIM

Attorney for Intervenor
FACE ACTION FOR COMMUNITY
EQUITY, THE PACIFIC RESOURCE
PARTNERSHIP, and MELVIN UESATO