

SEAN KIM (HI 1787)
sklawhi@yahoo.com
Law Offices of Sean Kim
1188 Bishop Street, Suite 1210
Honolulu, HI 96813
Telephone No. 808.538.1812

WILLIAM MEHEULA (HI 2277)
meheula@pacificlaw.com
Meheula & Devens
Ocean View Center
707 Richards Street, PH1
Honolulu, HI 96813
Telephone No. 808.528.5003
Facsimile No. 808.254.6872

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; 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

CIVIL NO. 11-00307 AWT

**REQUEST FOR JUDICIAL
NOTICE; DECLARATION OF SEAN
KIM; EXHIBIT "A"; CERTIFICATE
OF SERVICE**

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

Date Action Filed: May 12, 2011

Trial Date: None Set

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.

REQUEST FOR JUDICIAL NOTICE

In connection with the accompanying Motion to Intervene (“Motion”) filed by Faith Action for Community Equity (“FACE”), Hawai‘i Carpenters Market Recovery Program, dba The Pacific Resource Partnership (“PRP”), and Mr. Melvin Uesato (collectively, “Intervenors”), and pursuant to Rule 201 of the Federal Rules of Evidence, Intervenors hereby request that the Court take judicial notice of the report entitled *Environmental Justice in the OMPO Planning Process: Defining Environmental Justice Populations* (“March 2004 Report”), which was published by the O‘ahu Metropolitan Planning Organization in or about March 2004, and which is attested to and authenticated by the accompanying Declaration of Sean Kim. A true and correct copy of the March 2004 Report is attached hereto as **Exhibit “A”**.

MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Evidence 201 provides that courts “shall take judicial notice if requested by a party and supplied with the necessary information” indicating that facts are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b), (d).

I. PUBLIC RECORDS THAT CAN BE ACCESSED AT AN AGENCY’S OFFICIAL WEBSITE ARE THE PROPER SUBJECT OF JUDICIAL NOTICE UNDER FED. R. EVID. 201.

Under Fed. R. Evid. 201, a court may take notice of public records available at an official agency website. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm’ty v. California*, 547 F.3d 962, 968-69 n.4 (9th Cir. 2008) (taking judicial notice of gaming compacts located on official California Gambling Control Commission website); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (taking judicial notice of “public records” that “can be accessed at Santa Monica’s official website found at www.santa-monica.org/ccs/events”).

Exhibit A, the March 2004 Report, is authored by the O’ahu Metropolitan Planning Organization (“MPO”), which was created by the State Legislature and is responsible for coordinating transportation planning on O’ahu. The March 2004 Report is available at the official O’ahu MPO website. Thus, **Exhibit A** is a public record, the accuracy of which is readily capable of verification, and the

authenticity of which is not reasonably subject to dispute. Fed. R. Evid. 201(b); e.g., *Cachil Dehe Band of Wintun Indians of the Colusa Indian Comm'ty v. California*, 547 F.3d at 968-69 n.4; *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d at 1025 n.2.

II. CONCLUSION

Exhibit A is an official public record. The accuracy of the exhibit is readily capable of verification and its authenticity is not reasonably subject to dispute.

Accordingly, this Court can and should take judicial notice of **Exhibit A** and consider it in support of Intervenors' Motion to Intervene.

Dated: January 3, 2012

/s/ William Meheula

SEAN KIM

WILLIAM MEHEULA

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