SNR DENTON

SNR Denton US LLP
525 Market Street
26th Floor
San Francisco, CA 94105-2708
USA

Nicholas C. Yost
Partner
nicholas.yost@snrdenton.com
D +1 415 882 2440
T +1 415 882 5000

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By E-mail and U.S. Mail

Peter Whitfield
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 663
Washington, DC 20044-0663

Harry Yee
Office of the United States Attorney
Prince Kuhio Federal Building
300 Ala Moana Blvd., Suite 6100
Honolulu, HI 96850

Robert Thornton
Nossman LLP
1801 Von Karman Avenue
Suite 1800
Irvine, CA 92612

Re: *HonoluluTraffic.com, et al. v. Federal Transit Administration, et al.*

Gentlemen:

I write to follow-up on the exchanges that took place in Judge Tashima's courtroom on November 30, specifically with respect to the references to the letter of October 26 (Thornton to Yost) in which the City expressed its view as to the construction schedule. As you will recall, Judge Tashima made clear that he hoped not to have to hear the case twice – once on a motion for preliminary injunction and a second time on the merits (cross-motions for summary judgment). At the same time I expressed the view of our clients that a motion for preliminary injunction would become necessary if substantial construction-related, ground-disturbing, were proposed to take place before Judge Tashima had the opportunity to reach a decision on the merits. I suggested 40 CRF § 1506.1 as guidance – that if either set of defendants proposed to take actions which (1) could have an adverse environmental impact, or (2) limit the choice of reasonable alternatives, then our clients would find it necessary to seek preliminary injunctive relief.

All we have to go on now is Mr. Thornton's letter for the City in which he, somewhat elliptically and certainly tersely, says the following activities are projected by the City to take place in February, 2012:

"West Oaho/Farrington Highway (WOFH) Guideway Foundations"

"Maintenance and Storage Facility (MSF) Utlilites/Grading/Drainage/Roads."

May I request (1) that you elaborate on what is meant by these two terse entries (bearing in mind the factors set out in 1506.1) and (2) that you indicate when in February these activities are planned to take place.

Quite separately from the above request, let me urge that you consider further means to expedite the case, a goal which all of us (as well as Judge Tashima) have stated we share. Mr. Thornton has left open the possibility of going off on what appear to us to be time-consuming tangents related to standing, which in our view have no bearing on the ultimate outcome of the case. Before doing so, let me ask that you consider:

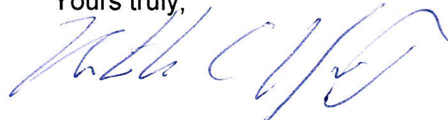
- Judge Tashima's accurate assessment that however he rules on the pending motions, the case will go forward, that if some plaintiffs have exhausted administrative remedies or have standing, that is enough for the case to go forward. In other words, time-consumptive forays into standing of some plaintiffs will have no bearing on the outcome of the case.

- That even if the City were able to challenge the standing of one or more plaintiffs as to 4(f) allegations (which, for the reasons the judge expressed, we think irrelevant), quite frankly the City cannot challenge the same plaintiffs' NEPA standing under case law going back decades. (We note Mr. Yee's appropriate concern for judicial economy.) Such a sideshow on standing cannot alter the case going to the merits and cannot, indeed, even get rid of certain plaintiffs. It would be an exercise in futility which only ends up further delaying resolution of this case – a goal all of us claim to want to expedite.

In short, Mr. Thornton's suggested actions with respect to standing cannot alter the outcome of this case – they can only cause still further delay in a decision on the merits.

We look forward to your prompt response.

Yours truly,



Nicholas C. Yost

cc: Michael Jay Green
Edward V.A. Kussy
Lindsay N. McAneeley
John Manaut
Don S. Kitaoka
Gary Y. Takeuchi