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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

HONOLULUTRAFFIC.COM;
CLIFF SLATER; BENJAMIN J.
CAYETANO; WALTER HEEN;
HAWAII'S THOUSAND
FRIENDS; THE SMALL
BUSINESS HAWAII
ENTREPRENEURIAL
EDUCATION FOUNDATION;
RANDALL W. ROTH; DR.
MICHAEL UECHI; and THE
OUTDOOR CIRCLE,

Plaintiffs,

v.

FEDERAL TRANSIT
ADMINISTRATION; LESLIE
ROGERS, in his official capacity
as Federal Transit Administration
Regional Administrator; PETER

Case No. 11-00307 AWT

**DECLARATION OF
WALTER MEHEULA
HEEN IN SUPPORT OF
PLAINTIFFS' REQUEST
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Hon. A. Wallace Tashima

Action Filed: May 12, 2011

Trial Date: None Set

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.

Defendants.

and

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

Intervenor Defendants.

I, Walter Meheula Heen, declare as follows:

1. I was born in Honolulu and am a lifelong resident of the city. I have served in Hawaii government as a Territorial Representative, a State Representative, and a State Senator. During my last service as a legislator, I actively participated in the enactment of Hawaii's land use law. I have also served as the Chairman of the Honolulu City and County Council, as a United States Attorney, and as a Hawaii State Judge. Most recently, I served a term as Trustee of the Office of Hawaiian Affairs ("OHA"), a state agency charged with the protection of Native Hawaiian people, resources, culture, and

programs. I have personal knowledge of the matters stated herein and, if called as a witness, I could and would competently testify thereto.

2. I am 62.5% Native Hawaiian and have spent significant portions of my personal and professional life working to support the protection of Native Hawaiian resources. I attach great value to my Native Hawaiian heritage and to places of importance to my culture, including burial sites and other cultural resources. I believe it is extremely important to protect these places, sites, and resources from disturbance and destruction, and I am deeply troubled by the fact that the Honolulu High-Capacity Transit Corridor Project (the "Project") will disturb and destroy many of them. This disturbance and destruction will be very painful to me, and I will be reminded of it each time I look at the Project.

3. I was a member of the OHA board when it submitted comments on the Environmental Impact Statement and Section 4(f) Evaluation prepared for the Project. As noted above, I am deeply troubled by the fact that the Project would unnecessarily disturb and destroy many such places. Moreover, the Project was approved before all of the studies needed to identify burials and other cultural properties were completed. As a result, the City and County of Honolulu and the federal Transit Administration did not know how many places of importance to Native Hawaiians would be affected by the Project and whether any such places (and effects) can be avoided. As a result, my (and others') ability to advocate for alternatives and mitigation measures that could

reduce the impacts of the Project was cut off.

4. Based on decades of professional experience advocating for the protection of sites and resources of importance to Native Hawaiians, as well as my own personal knowledge and Native Hawaiian heritage, I know that Kahili, Palama, and Iwilei are old historic names for neighborhoods through which segment 4 of the Project will run. Those neighborhoods are known as areas on O'ahu that historically housed a large Native Hawaiian population, and, consequently, contain large numbers of sites and resources with which the population had strong cultural ties. Modern day development in those neighborhoods has made it more difficult to recognize the original locations of those sites and resources. That, in turn, means that research and analysis by qualified experts (such as, for example, Kumu Pono LLC, which authored a Traditional Cultural Property Study Technical Report for the western portion of the Project) is necessary in order to accurately identify traditional cultural properties ("TCPs") and to determine whether and how the Project will affect those TCPs.

5. I am extremely troubled by the fact that the City and County of Honolulu (the "City") and the Federal Transit Administration ("FTA") did not complete their evaluation of Native Hawaiian burials and other TCPs before they approved the Project. I am even more disturbed by the fact that the City and the FTA have started construction of the Project, purchased supplies for the Project, and acquired land for the Project despite the fact that they still

have not completed those studies. As someone who places great value on his Native Hawaiian heritage, these things are very hurtful to me.

6. I believe that the City and the FTA should be required to properly identify all TCPs along the Project route and to determine whether and how the Project will affect those TCPs. I also believe that these things must be done before the City and the FTA undertake further construction or commit to the Project in such a way that avoidance of TCPs becomes impractical.

7. I also value the quality of the aesthetic environment of Oahu. I believe the open, airy feel of the visual environment is one of the most distinctive and important aspects of the sense of place in and around Honolulu, and, as a lifelong resident, I always derive significant enjoyment from that environment. In particular, I regularly experience and enjoy the historic buildings and districts of downtown Honolulu and the historic Honolulu waterfront area. The Project will insert a massive concrete viaduct into this visual environment, irreparably damaging the views and historic feel I currently enjoy. In particular, it will destroy my enjoyment of the historic value and feel of Chinatown and of the Dillingham Transportation Building, both of which I regularly enjoy.

8. I place great value on the uninterrupted open views of the historic waterfront to the sky and the experience of the historic connection between the historic buildings and districts and the waterfront that has remained intact for generations. The Project would destroy those views and historic connections.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed November 22, 2012
at Honolulu, Hawaii


Walter Meheula Heen