

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

| | | |
|-------------------------------------|---|----------------------------|
| SENSIBLE TRAFFIC ALTERNATIVES |) | CIVIL NO. 03-00628 SOM-LEK |
| AND RESOURCES, LTD., dba The |) | |
| Alliance For Traffic Improvement, a |) | DECLARATION OF JAMES |
| Hawaii non-profit corporation, |) | KENNA |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| FEDERAL TRANSIT |) | |
| ADMINSTRATION OF THE U.S. |) | |
| DEPARTMENT OF |) | |
| TRANSPORTATION; |) | |
| ADMINISTRATOR OF THE FEDERAL |) | |
| TRANSIT ADMINISTRATION OF |) | |
| THE U.S. DEPARTMENT OF |) | |
| TRANSPORTATION; DEPARTMENT |) | |
| OF TRANSPORTATION SERVICES |) | |
| OF THE CITY & COUNTY OF |) | |
| HONOLULU; DIRECTOR OF THE |) | |
| DEPARTMENT OF |) | |
| TRANSPORTATION SERVICES OF |) | |
| THE CITY & COUNTY OF |) | |
| HONOLULU; JOHN DOES 1-10; |) | |
| JANE DOES 1-10; DOE |) | |
| PARTNERSHIPS 1-10; DOE ENTITIES |) | |
| 1-10; AND DOE GOVERNMENT |) | |
| ENTITIES 1-10, |) | |
| |) | |
| Defendants. |) | |

DECLARATION OF JAMES KENNA

I, James Kenna, declare:

1. I am the Deputy Regional Administrator for Region IX of the Federal Transit Administration (FTA), an agency of the United States Department of Transportation (USDOT), with offices at 201 Mission Street, Suite 2210, San Francisco, California 94105. I have served in this capacity since _____. In

this capacity, I am familiar with the project located in Honolulu, Hawaii known as the “Honolulu, Hawaii Bus Rapid Transit Project.”

2. In the absence of the Regional Administrator, I am the acting Regional Administrator and in this capacity make this declaration.
3. The Regional Administrator and I are responsible for the administration of grants of Federal financial assistance to states and local agencies to finance the planning, development and improvement of mass transportation systems as provided in the Federal Transit laws, 49 U.S.C. Section 5301, et seq., as amended.
4. I have personal knowledge of the matters set forth below and make this declaration in support of the Federal defendants opposition to the Motion for Temporary Restraining Order.
5. Pursuant to Congressional direction, certain sums are allocated to the City and County of Honolulu, Department of Transportation Services (Honolulu) for the implementation of the Honolulu, Hawaii Bus Rapid Transit Project (BRT project) under FTA’s “New Starts” program, 49 U.S. C. 5309. However, before FTA approves any such financial assistance, an applicant such as Honolulu must meet various FTA’s program requirements. For the purposes of this declaration, those requirements, as provided in current FTA policy and statutory authorization, can be summarized as follows:
 - a. Entry into Preliminary Engineering (PE): Completion of alternatives analysis; project’s inclusion in a statewide financially constrained program (STIP); and FTA concurrence.
 - b. Entry into Final Design (FD): Completion of PE and the National Environmental Policy Act (NEPA) process; the project’s inclusion in the STIP; favorable FTA evaluation of the applicant’s technical capacity and capability; favorable FTA evaluation of the project under FTA’s New Starts Criteria; and FTA concurrence.
 - c. Proceed with construction: Completion of the NEPA process; project’s inclusion in the STIP; favorable FTA evaluation of the applicant’s technical capacity; favorable FTA evaluation of the project under FTA’s New Starts Criteria; FTA concurrence either by a grant award for construction or the issuance of a Letter of No Prejudice (LONP). An LONP is a letter from FTA to the applicant allowing the applicant to spend its own funds on the project prior to a grant award, acknowledging that those spent local funds may be eligible for either Federal reimbursement or to count as local share to the grant, and notifying the applicant that this concurrence by FTA is not a legal or moral commitment that the applicant will eventually be awarded a grant.

- d. Obtain an LONP. Completion of the NEPA process; project's inclusion in the STIP; favorable FTA evaluation of the grantee's technical capacity; favorable FTA evaluation of the project under FTA's New Starts Criteria; FTA concurrence.

These requirements can be found, among other places, at 49 U.S.C. Section 5309; Federal Register, March 12, 2003, pages 11913, 11914, "FTA Fiscal Year 2003 Apportionments, Allocations and Program Information; Notice"; Federal Register, December 7, 2000, pages 76863-76884, "Major Capital Investment Projects; Final Rule".

6. In the case of the Honolulu BRT project's Initial Operating Segment (IOS), as that term is defined in the NEPA documents, Honolulu has completed preliminary engineering. Honolulu has also completed the NEPA process with a Record of Decision dated October 23, 2003. FTA has neither received applications from Honolulu nor awarded approval to Honolulu for: (a) entry into final design; (b) grant funding or other Federal financial assistance for final design and construction of the BRT project; or (c) an LONP for final design or construction. As noted above, under current FTA policy, neither the grant nor the LONP can be awarded to Honolulu until, among other things, the Honolulu BRT project is included in the STIP. The Honolulu BRT project is not included in the STIP.

I declare under penalty of perjury that the foregoing is a true and correct statement to the best of my knowledge and belief.

Executed this 26th day of November 2003, in San Francisco, California.

James Kenna
Deputy Regional Administrator, Region IX
Federal Transit Administration
United States Department of Transportation