

January 27, 2012

**BY E-MAIL
URGENT**

Peter Whitfield
United States Department of Justice
P.O. Box 663
Washington, DC 20044

Robert Thornton
Nossaman LLP
18101 Von Karman Ave., Suite 1800
Irvine, CA 92612

Re: *Honolulutraffic.com v. Federal Transit Administration*,
United States District Court for the District of Hawaii Case No. 11-00307 AWT

Counsel:

I am writing to express disappointment and concern regarding the "Administrative Record Index" document you provided on January 20.

For more than seven months, Nick Yost and I have respectfully requested information on the administrative record and the status of its preparation. In response, you told us that preparation of the record had been delayed because "the universe of record documents" was "roughly 500,000."

You have now presented us with a draft "Administrative Record Index" identifying just 377 documents. And even that pitifully small number appears to have been artificially inflated by your practice of identifying component parts of a single Environmental Impact Statement as separate documents.

Moreover, your draft "Administrative Record Index" states that four broad categories of documents will not be identified until the final Administrative Record is lodged with the Court on February 24. At least two of those categories ("Other Correspondence and Attachments" and "Miscellaneous Documents") appear likely to contain documents of significant relevance to this case.

To borrow a phrase from the NEPA regulations, your January 20 draft document is "so inadequate as to preclude meaningful analysis." In the absence of any information about (1) the "Other Correspondence and Attachments" and "Miscellaneous Documents" to which the January 20 draft refers and (2) the remaining 499,620 (plus or minus) documents in the "universe of record documents," Plaintiffs simply cannot provide detailed suggestions about whether the proposed administrative record is complete and accurate.

Unless you are able to provide this information in the next few days (*i.e.*, next week), you will have effectively prevented Plaintiffs from providing meaningful input on the administrative record and precluded the parties from making an effort to “resolve any differences of opinion regarding the contents of the record prior to the production of the final version...[on] February 24,” as Judge Tashima directed in his January 10 Scheduling Order. I hope and trust that was not your intent.

Nick Yost and I would like to work with you to resolve this issue, and we are available to discuss it at your earliest convenience. We look forward to your prompt response.

Sincerely,



Matthew Adams