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October 20, 2006

Paul Krueger
Environmental Manager
SR 520 Project Office
414 Olive Way, Suite 400
Seattle, WA 98124-4025

RE: SR 520, Pacific Street Interchange
Comment on the draft environmental impact statement

Dear Manager Krueger:

I-1004-001

The Pacific Street Interchange is an abomination. If built, it will be a monument of shame to all those who helped built it.

The Draft Environmental Impact Statement ("DEIS") needs a better evaluation of the Pacific Street Interchange option than that set out at page 3-29. Its descriptions are scattered, usually as addenda in the appendices. The evaluation should set out in simple, stark terms what the Pacific Street Interchange option does. The following paragraphs are an example of the type of summary statement needed (pages in parenthesis are more detailed explanations in this letter).

Evaluating the Pacific Street Alternative

The Pacific Street Interchange ....

1) ..violates 23 United States Code ¶ 138 by taking park land and wildlife refuges when there is a feasible alternative. Its impact on the Arboretum is devastating and irreparable (pp. 2-5).

2) ... violates state laws that call for minimizing impacts on the Arboretum and the University Campus as well as the impacted neighborhoods south of the Lake Washington Ship Canal, and even there, it damages the communities to the east and south that more than offset the benefits it confers on the west Shelby-Hamlin area (pp. 5-8).

3) ... takes almost 15 acres from the University of Washington Campus dedicated by law for educational purposes, imposing an interchange up to the very edge of Husky stadium on acreage with higher and better uses for education, trisecting the U of W campus with new Aurora-style arterials

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that go to the very edge of the landscaping of the Bank of America Arena (Hec Edmundson Pavilion), taking the Triangle Parking Garage, damaging the nearby hospitals, displacing utilities, impairing and overshadowing the historic Canoe House and the water shops activity center, displacing the docks, risking structural damages to University buildings through vibrations from pile driving, dewatering, and massive earth movement, slowing emergency vehicle access from the south, and imposing six years of construction that strangles existing traffic by the Montlake Bridge area, among other evils (pp. 8-11).

4) ... builds a viaduct like bridge over Union Bay Bridge that will obstruct navigation and impair salmon recovery plans (pp. 11-13).

5) ... blights the communities on the north and east with major arterials to connect to and make full use of the arterial capacity created on N.E. Pacific Street and Montlake Boulevard N.E. by the street widening. It reverts to 1950's ideas of building more and bigger highways to relieve traffic congestion, rather than commit to transit for peak hour travel (pp. 13-19),

6) .. causes environmental and social injustice. It shifts traffic from Montlake Boulevard East in the wealthy Shelby-Hamlin area to the integrated communities of Madison Valley and to University housing and the University District, where minorities exceed citywide averages (pp. 19-20).

7) ... messes up local travel along Montlake Boulevard . N.E. by forcing north-south travel into a ditch at the intersection of N.E. Pacific Street and Montlake Boulevard N.E.; creates an uphill-downhill roller coaster to cross the Union Bay Bridge between North East Seattle and downtown by way of I-5; and causes failure levels at intersections at 15th Avenue N.E. and N.E. Pacific St. and ultimately at "five corners." the intersection of (Sand Point Way N.E., Union Bay Place N.E., Mary Gates Way N.E., N.E. 35th Place, and N.E. 45th St.). By 2030, the traffic delays will return -- only at a higher vehicle volumes generated by diverting traffic from I-5 through the added arterial capacity it builds (pp. 20-23),

8) ... costs the most of all the alternatives, invites the longest delays in getting federal permits, and will surely summon lawsuits (pp. 22-23). Moreover, it builds up a strong grass roots opposition to any regional transportation levy that must be approved by the voters.

The rest of this comment explains these propositions, and points out errors and omissions in the DEIS (p. 19-26).

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I Parklands and wildlife refuges

The SR 520 Bridge Replacement project requires federal funds, and in order to get those funds, it must satisfy 23 United States Code ¶ 138 (Copy enclosed as Attachment "A').

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¶ 138 declares a policy of protecting parklands, wildlife and waterfowl refuges, and historic sites:

> "It is declared to be the national policy that special effort should be made to preserve the natural beauty of the country and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project ... which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance as so determined by such officials unless: **(1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park recreational area, wildlife and waterfowl refuge or historic site resulting from such use...."**

Three areas qualify for protection under 23 USC ¶ 138: the Arboretum; the wildlife refuge at University Slough, and the Canoe House on the U of W Campus.

The base plan protects all three areas, and is a "feasible and prudent alternative" for crossing Lake Washington and connecting to I-5. In contrast, the Pacific Street Interchange ....

... rips the heart out of the Arboretum with the massive interchange at Marsh Island, roughly one hundred feet high and one hundred feet wide, Appendix Q, p. 19, Appendix P, p. 22. Appendix V, Exhibit 4, shows its width at the West Shoreline as 352' vis-a-vis 224' for the base plan. It takes up more acreage than any other plan, and it casts shade and rain shadows over large areas that will adversely affect the Arboretum. It encloses the waterfront trail in a balustrade of huge support columns topped by the concrete underbelly of a viaduct. Appendix V, p. 29;

... converts Lake Washington Boulevard through the Arboretum into one of two access routes from and to the south to SR 520. Trucks barred from I-5 on account of hazardous materials, half the traffic on 23rd Avenue E. will shift to Lake Washington Boulevard, and increased volumes from the East side of Lake Washington seeking to by-pass I-5 congestion will now clog Lake Washington Boulevard in the Arboretum. The higher volumes will go to the very edge of the Japanese Tea Garden, which needs an ambiance of tranquillity to achieve its sublime psychic uplift.

... takes land for two lanes of traffic on N.E. 45th St. by University Slough, an natural bird refuge. [Look at the materials collected for the Ravenna Creek daylighting project and in connection with the proposed high fence for the University of Washington Golf Driving Range to see how important this refuge is for migratory wildfowl, or take a

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gander at photos collected by the Ravenna Creek Alliance.]
... builds a massive ramp on the University Campus that over shadows the historic canoe house and the water sports activity center. Moreover, to build the massive bridge-like viaduct, WSDOT will dewater the soil and pound in massive pillars --- all likely to destabilize the soil; and
... dislocates the docks in the University's Waterfront Activity Center --- an oasis of nature in the midst of our crowded city.

Appendix P contains the 4(f) statement for the entire project. The 4(f) statement is supposed to contain a description of the impacts on parks affected by a project, alternatives, and measures to minimize adverse impacts. Appendix P contains a letter from the Superintendent of Parks and Recreation on the four-lane and base six lane alternative. It has none whatever on the Pacific Street Interchange. Instead, WSDOT has an addendum with its own conclusions. It opinion tries to finesse that absence --- a fatal error.

Our Arboretum is one of the finest in the United States, better in my opinion than the famous Arnold Arboretum in Boston. In the early 1960's, Mayor Dorm Braman and City Engineer Roy Morse proposed that the R.H. Thomson Expressway run outside and along the western edge of the Arboretum, Montlake residents hired Alfred Schweppe, Esq., an eminent lawyer, to present an alternate plan. The Schweppe plan would locate the Expressway on the existing Lake Washington Boulevard right of way, State of Washington ex rel Robert H. Duvall et al v. The City Council of the City of Seattle, et al., 71 Wn. 2d 462 (1967). The two plans came before the City Council for a hearing; the record of proceedings is available from the City Attorney. An extract from the City's brief on appeal is enclosed as Attachment "B." It summarizes the testimony. The evidence showed that the Arboretum has a world-wide reputation for excellence, that it is an outdoor classroom and laboratory for research, that it is a beauty spot especially loved in the springtime and so lovely that it is selected by brides for weddings; that it is home to a collection of plant species found nowhere else in Washington and for many others, the prime examples of that type of plant life; and that it has its own micro-environment that could be upset. The DEIS should have cited that record as a resource, and an appendix noted that the Superior Court made Findings of Fact in that lawsuit, and those Findings still apply to the City under the doctrine of collateral estoppel. The Pacific Street Interchange resurrects the rejected Schweppe Plan in the worst way.

The DEIS should have discussed the impact of slicing through an arboretum with a major highway. A major highway runs through the Wisconsin Arboretum, separating it like Aurora does to Woodland Park; the two halves lack a unity and

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the synergy that used to exist. The Pacific Street Interchange would do worse to our Arboretum, which is much smaller by comparison, and really a jewel box. It would not only split the Arboretum east-west by its impact on Lake Washington Boulevard; it would split the Arboretum north-south, and its high profile dominate the area.

The DEIS should have discussed the industry practice with toll bridges. Faced with a high debt and "bridge loans" to cover construction overruns, toll administrators seek to maximize revenues through increased traffic and "improve" the connecting roadways to accommodate the increased traffic that they seek to attract. Despite all the promises WSDOT now makes about traffic calming in the Arboretum, once the volumes build, as they will, WSDOT will be pushing to straighten the curves, widen the lanes, eliminate the low brick aqueduct pedestrian overpass (a Seattle landmark) as a hazard, etc. Meanwhile, the heavy traffic will have the blighting effect it commonly brings, and the Arboretum risks falling back to the situation that prevailed in the early 1960's when thugs would assault park users; a stabbing that paralyzed and ultimately killed Pat Hemanway brought a public outcry which restored security. The DEIS and its appendices are deficient in basing their analysis on the supposition that the Marsh Island Interchange won't lead to changes in Seattle's street grid and traffic control.

The DEIS and its appendices grossly understate the impact on the Arboretum. For example, a book published last year identifies the outstanding trees of various species in Seattle; many are in the Arboretum. Appendix P did not identify those trees or consider any impacts on them. Another book, published earlier this year, on bird life in Seattle discusses the importance of the Arboretum to various bird species. Some are rare. Interestingly, crows from throughout Seattle migrate to Foster and Marsh Island in the evening and roost together by the thousands. According to the author crows play an important role in keeping down the insect population Neither the DEIS or Appendix W (wildlife) recognize this.

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II State Laws

Statutes specific to SR 520 ---

Chapter 311, Laws of Washington 2006 in Section 26 requires the Washington State Department of Transportation ("WSDOT") to provide "... a reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practical to protect against further adverse impacts on neighborhood environmental quality..." and that any impacts will be addressed through "engineering design choices, mitigation measures, or a combination of both." Chapter 370, Laws of 2006, Section 304 contained a Subsection 16, which

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was vetoed. While not law, the vetoed subsection helps to give meaning to "neighborhood environmental quality." It is part of a companion statute to Chapter 311 enacted by the same legislature specifically addressed SR 520. Subsection 16 would have appropriated $ 250,000 solely for the City of Seattle to prepare a plan for addressing the impact of the replacement SR 520 on Seattle neighborhoods, parks and institutions of higher learning." It went on to require the City to designate a committee with representation from each community councils of each neighborhood impacted, the Arboretum, and the University of Washington. "Neighborhood environmental quality" therefore encompasses the Arboretum, the University of Washington Campus, and neighborhoods north and south of the Lake Washington Ship Canal.

Of the three, the Pacific Street Interchange maximizes the adverse impacts of SR 520 and connecting roadways on the Arboretum (explained on pages 2-5 above) and the University of Washington (see p. 8-11 below). It does badly on the third (see pages 13-20 below). It boosts the westerly Shelby-Hamlin area of Montlake by shifting traffic eastward from 23rd Avenue E. to neighborhood streets that now have traffic circles and to the Madison Valley. The DEIS shows the easterly fringe of the Shelby-Hamlin area receiving increased noise levels from the Union Bay Bridge; it offsets the noise dampening of the proposed lids. Appendix X, Land Use, p. 9. It's likely that the dominating effect of the Union Bay Bridge will change the character of the area, converting it to multi-family structures; most of the residential areas of Seattle lying within one-quarter mile of I-5 between Northgate and Beacon Hill are zoned multi-family and develop accordingly. This same pattern of usage appears along major arterials and at those landings of University Bridge, the Fremont Bridge, and the Ballard Bridge, unless commercial or manufacturing zoning applies

The DEIS shows the south foot of the access roadways to the Union Bay Bridge to be a claw-like connection to Lake Washington Boulevard East at East Prospect Street, from Interlaken Boulevard near East Garfield Street, and at the conjunction of Lake Washington Boulevard and East Madison Street. That conjunction in turn is connected with Martin Luther King, Jr. Way. Since the Marsh Island interchange is the only southside access besides I-5, the southern connections to Lake Washington Boulevard will displace 23rd Avenue E. as the primary routes between SR 520 and First Hill. The DEIS needs to provide more detail so that the residents are informed and can express their protest.

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Appendix J, Indirect and Cumulative Effects, to the DEIS admits that traffic volumes will increase substantially. The DEIS and especially the appendices withhold details by often stating that there will be no expansion of roadway and freeway facilities to accommodate general traffic and the

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existing Seattle grid will remain the same, e.g. Appendix K, Land Use, p.35. The DEIS bases its entire traffic analysis on that assumption and on a theory that tolls in place forever will reduce traffic volumes, and the noise and air quality analysis in turn rely on the traffic projections. However, both basic assumptions are fanciful. Toll bridges require traffic to get the revenues to repay their operating expenses and debt, and invariably the administrators look for ways to bring in more traffic volumes. Even without their efforts, the volumes from SR 520 will soon cause no parking signs to be posted and the traffic circles to go. The result will be harmful to those areas and to the Madison Valley. (Part VIII D at page below gives A brief historical review of local street improvements in Seattle following major transportation projects.)

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B. Growth Management laws and local planning ---

The Growth Management Act requires that transportation projects be consistent with local land use plans. Appendix K, Land Use, p. 21 claims that the Pacific Street Interchange does so, except for two: (1) The University Community Urban Center Plan forbids increasing traffic on Montlake Boulevard, N.E. Pacific Street, and 15th Avenue N.E.; and (2) the amendments to the City-University agreement, adopted just two years ago, specifically calls for joint action toward reducing traffic at the intersection of N.E. Pacific Street and Montlake Boulevard N.E. Appendix K, p. 19. Those paragraphs should have been set out in an appendix.

The list of adopted plans violated is much greater than those two identified in Land Use Appendix K:

(3) The Pacific Street Interchange is a clear violation of the approved Arboretum Master Plan. The Arboretum Plan has a map and text. Overlay the two and the conflict is clear.

(4) The University of Washington has an approved master plan. It too has a map and text. The plan shows the entire campus intact. Yet, the Pacific Street Interchange takes over about 15 acres, it trisects campus with Aurora-like arterials, it condemns the Triangle Parking Garage and the south parking lot of Husky Stadium up to the stadium's south wall, it displaces University utilities, etc.

(5) The Pacific Street Interchange disrupts Seattle's shoreline master plan. That plan too contains text and maps. Neither envision a Union Bay Bridge.

(6) The Eastlake has an approved neighborhood plan. The Eastlake Community Council supports the four lane alternative with transit only lanes included as the only option consistent with its approved plan; it specifically opposes the Pacific Street Interchange citing particular passages in its approved plan. Appendix K, p. 21, claims that the Pacific Street Interchange would be "... as consistent as the original 6-Lane alternative." That quote does not say that

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the Pacific Street Interchange is compatible with the Eastlake plan. It's double talk; an honest evaluation would admit both 6-Lane alternatives violate the plan.

(7) The Pacific Street Interchange overrides Seattle's own comprehensive plan. WSDOT cites general phrases in the text about assisting traffic circulation, e.g. Appendix K, p. 30. In contrast, the City's Comprehensive Plan opposes new highway building --- the very essence of the Pacific Street Interchange, which builds over five lane miles of highway.

Appendix K, p. 32, asserts that the Pacific Street Interchange supports and protects neighborhoods. It errs. The section of this letter at page 11-15 discusses the effect on northerly and easterly communities and shows how it in fact damages them.

III Impact on the University Campus and Hospitals

State law dedicated the University of Washington campus for educational purposes almost a century ago. The Pacific Street Interchange ("PSI") would convert that acreage to highway purposes.

The PSI would have these adverse impacts on the University, among others:

- The PSI puts a massive ramp on campus south of Husky Stadium; the limited access line runs to the very edge of Husky Stadium and takes up the triangle parking garage. It may displace docks in the water sports activity center. Appendix V, 6-Lane Report, p. 25. It overshadows the Canoe House and the climbing rock. The water sports activity center, now in the open air with spectacular views, would be covered by a concrete lid 50' to 55' overhead braced by a 20' x 20' support column, Appendix P ,4 f statement, and undercut with a wet vault, Appendix T, water resources, Exhibit 5. The PSI dislocates convenient access from the west by Montlake Boulevard N.E. as presently to a circuitous route easterly of the Husky Stadium.
- The PSI widens Montlake Boulevard with two lanes all the way to N.E. 45th St. and to "five corners" and plans seven lanes. ("Five corners" is the intersection of N.E. 45th St., Sand Point Way N.E., Mary Gates Way N.E., Union Bay Place N.E., and 35th Place N.E.) Two of those lanes will be left turn lanes. Seven lanes is wider than Lake City Way N.E. in Seattle, but less than Bothell Way N.E. in King County. While tolls are on, it'll add another 800-1000 cars during peak hour and at higher speeds --- many more later. It'll be another Aurora. The take line for the new right of way goes up to the existing shrubbery of the Bank of America Arena (Hec Edmundson Pavilion) making the sidewalk narrower than those downtown.
- The PSI adds two lanes to N.E. Pacific Street in front of the Medical School/Hospital complex, and it widens Pacific

I-1004-005 Place connecting Montlake Boulevard and N.E. Pacific Street to north of the Triangle Parking Garage. N.E. Pacific Street at its intersection with Montlake Boulevard N.E. becomes eight lanes, Appendix V, p. 31, a width matched in Seattle only by I-5 and U.S. 99 in the industrial areas of Seattle. This will take up land that the University had envisioned for hospital usage. As long as tolls last, it'll add another 600 to 1000 cars there during peak hour too. Volumes will go up later. It'll pile up the mass at 15th Ave. N.E., making that intersection a failure. That'll put pressure on the University to widen it westward.

- The PSI will put both Montlake Boulevard N.E. and N.E. Pacific Street in a depressed roadway at the intersection. Motorists will go down a dip and then up again between the Montlake Bridge and the Pavilion. To get light down to the intersection, WSDOT plans a doughnut hole with walls. The grade separation messes up the connection of surface buses with the RTA station; and the mounding makes pedestrians going between east and west climb at least an eight foot hill.

- The new Union Bay Bridge will be bigger than the King Dome. Imagine the I-5 Bridge moved eastward. It will dominate that area of the campus. Appendix V, p. 39. Appendix S, Visual Quality, p. 2, attempts to downplay the visual blight as "moderate." The DEIS and appendix should let the reader decide: print photos of the current view with Mount Rainier in the distance, and with a 110' bridge and 10' sound wall/barricades in the foreground.

I-1004-006 - Construction will take up to six years. (Appendix A, Construction Techniques, p. 19 anticipates 5 years.) It will move two-and-a-half times more soil than the other alternatives and over a much wider area. Appendix K, Land Use, p. 43. The construction involves pile driving and dewatering the soil through continuous pumping. That will have a major impact on the Canoe House and may affect the foundations of other buildings. Appendix V, p. 22, notes that the soils are alluvial and peaty there and highly compressible; and that the groundwater is within a few feet of the existing ground surface. Appendix V, p. 20, states that the impact of the construction activities on University buildings is unknown. That is an unsatisfactory. Proponents of an action are obliged to research and disclose the consequences of their proposed actions. During these six years, traffic will be routed through a construction zone with all the limitations that occur, usually closed lanes, slow speeds, and stoppages for equipment movement.

I-1004-007 - Appendix V, p. 28 and 31, states "... public service vehicles that use the Montlake on and off-ramps could take a longer route to access the neighborhoods south of the existing Montlake Bridge which might increase response and travel times." When seconds count, emergency vehicles may be slowed with adverse health consequences to the patients. At an SR 520, Seattle Stakeholders Advisory Committee meeting, a citizen noted that N.E. Pacific Street would be

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I-1004-007 depressed alongside the current emergency ramps to University Hospital, which are built for at grade access.

I-1004-008 - Appendix V, page 28, notes that the University has utility tunnels under N.E. Pacific Street and Montlake Boulevard N.E., and this network is integral to serving those areas of campus. The PSI would displace them. To where? The PSI anticipates building storm water retention basins in the right-of-way (Appendix A, Construction Techniques, p. 12) so that those facilities will be dislocated to fee land intended for other uses.

- Appendix V , page 36, admits that the Union Bay Bridge would dominate views from Rainier Vista south of Frosh Pond/Drumheller Fountain. WSDOT's sketches assume the United States will grant a reduction of the height from 110' to 70'. If denied, the Union Bay Bridge will be almost 60% bigger. The magnificent view of Mount Rainier on campus will be foreshortened to resemble those looking southeast in Wallingford where I-5 looms in the foreground.

I-1004-009 The DEIS ought to have projected noise levels for the University Campus, such as the water sports activity center, University Hospital, and other buildings near the interchange and expanded arterials; and the noise projections should be based on both direct SR 520 noise and traffic on the widened arterials; and the noise study should report the noise volumes at all floor levels, not just the ground floor. Topography can cause noise shadows, and the shape of the buildings can cause reverberation. Both factors may affect received noise.

I-1004-010 The DEIS should have put out a ballpark figure on the compensation due to the University so that decision makers can see in dollars and cents figures how truly damaging the Pacific Street Interchange will be to the U of W Campus. The University will be entitled to "just compensation" (Article I, Section 16, Amendment 9 of the Washington Constitution.) Just compensation will be measured by the cost to the University of acquiring comparable property to substitute for the area taken plus severance damages. The City argued for applying this approach in the R.H. Thomson Expressway case, State of Washington ex rel Duvall vs. The City Council of the City of Seattle, and with the takings for I-90. The area by Husky Stadium is prime waterfront and will be valued by the running foot; the lanes along N.E. 45th St. have the same value per square foot as the University Village Shopping center to its immediate north; the taking along Montlake Boulevard N.E. is worth at least as much as University Village or University Plaza property further north; land usable for hospital or other building purposes will draw values associated with property for high rise development. The Triangle Parking Garage has to be replaced and therefore can be valued by reconstruction cost. Severance damages include relocating utilities and tunnels; deprivation of subsurface usage to the new locales where the utility are

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relocated; readjustment of buildings whose foundations may be affected by vibrations or dewatering during construction of the interchange; readjusting the hospitals to offset noise by moving the arterials closer to the hospitals etc. [Deaconness Hospital in Spokane had to put in noise insulation on hospital windows after I-90 was built; and Seward School underwent major reconstruction to alleviate I-5 noise. State law denied them compensation because a street intervened between the highway construction and the buildings. That won't apply here.] I anticipate that the damages would be about one-quarter of a billion dollars --- much more than the gross value of all the Shelby-Hamlin area.

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IV Navigation/Fisheries

The Pacific Street Interchange would obstruct navigation through the Lake Washington Ship Canal and impair salmon recovery programs.

A. Navigation ---

The Lake Washington Ship Canal by the Montlake Cut carries more boat traffic -- albeit recreational -- that most American waterways. It is one of the busiest in the Northwest. As our regional density increases, boating traffic will also rise. Moreover, the area by between the Campus Water Sports Activity Center and the Arboretum marshes has very active recreational boating: canoes and sailboats are for hire there; students bring their own kayaks and watercraft for launching; crew racing skulls can be seen most mornings there; and once in a while there are sailboards and water skiing in Union Bay. The DEIS should lay out that setting.

The Pacific Street Interchange would build massive support columns for its Union Bay Bridge in the very midst of this busy waterway. Each support column would be at least 25' by 25' with protective fenders all around, adding another 10'. The DEIS states that the columns would be at the edge of the main channel. It effectively extends the Montlake Cut eastward, but the Montlake Cut lacks the extensive small boating that characterizes the water sports activity center. It'll just be a question of time until some larger vessel smashes one of those little pleasure craft against a bridge column. Moreover commercial vessels from time to time collide with our bridges: the Chavez took out the West Seattle Bridge by hitting the support on Harbor Island; an errant captain let his barge drift into the columns of the existing Evergreen-Montlake Bridge. Every few years, the Ballard Locks are closed to repair or rebuild sidewalls damaged by boats going through. Finally, the bridge columns could be targets for terrorists, who could cause a double whammy: closing both the bridge and the channel below. The DEIS should have layed out that history and the risks.

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f The Lake Washington Ship Canal provides the only water access for vessels to enter Lake Washington; any height limits effectively locks out larger vessels from the Lake. The SR 520 Seattle Stakeholders Advisory Committee voted 8 to 2 for keeping the 110' height minimum for a new Union Bay Bridge. Citizens pointed out that ships are getting bigger and taller. Just compare the current Seattle fireboats with those of a decade or two ago. Look at the cruise ships coming to the Port and the tugs in use; all are bigger and more powerful. The literature reports that ships now have taller antennae and more sophisticated overhead equipment. Bridges linking elevations at a lower grounds level (as distinct from those crossing a canyon) generally arc upward and downward and reach the height limits only near the peak of the arch. A 110' bridge allows vessels that are not quite as tall some latitude to maneuver if needed. The 70' height would lock out larger vessels from the Lake forever, but also limit the room for smaller vessels to maneuver.

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B. Fisheries ---

In "Chinook in the City", a blueprint to restore and protect Chinook Salmon Habitat in Seattle, Mayor Paul Schell committed Seattle to improve the urban shoreline for people, to restoring habitat for healthy salmon runs, and adopting the best management practices toward that end. The text called for restoring shallow habitat along Lake Washington, Lake Union and the Ship Canal, with shelters for juvenile salmon with shallow shoreline areas, free of bulkheads and other structures, where they can feed and escape predators. Appendix E, Ecosystems, page 41 states that the Union Bay Bridge would replace benthic soft bottom habitat with 2500 square feet of columns. The bottom habitat provides the nutrients for the invertebrates on which the resident and migratory fish feed. It would thereby change the micro-environment at the bottom of the waterway. The bridge structure would over shadow the waterway to a 100' width on the north side and 90' wide on the south side. Appendix E, p. 21. That too would disturb the micro-environment in the area. Add to this the greatly increased impervious surface added in the Arboretum wetlands and Old Canal right-of-way.

To properly assess the damage, the DEIS or an appendix should have included perspectives from the U of W Department of Fisheries and the tribal governments with fishing rights rather than set out the opinions of its hired consultant alone. Appendix V, p. 4, states that the Pacific Street Interchange may affect tribal fishing, but gives no details; Appendix E has a similar note. Neither appendix gives any indication of the views of the Department of Fisheries or the tribal governments.

Years ago, the U of W Department of Fisheries held an open house with students and professors giving talks about

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the Union Bay ecosystem. It was very informative, and revealed that Union Bay is not only the throat between the entire Lake Washington watershed, but also a complex estuary in itself. In a way, it is like the grand lobby of the motion picture palaces built in the 20's and 19th Century European Opera houses: it is more than entryway and holding area; it sets the mood for the experience to follow and during an intermission, a place for the patron to relax and to recharge the better to enjoy the remainder of the event. The DEIS and appendices do not plumb even to the depth of the Open House presentations.

V Effect on northerly and easterly communities

The Pacific Street Interchange revives the R.H. Thomson Expressway north of the Lake Washington Ship Canal. It adds two lanes to Montlake Boulevard N.E. to N.E. 45th St. and along N.E. 45th St. to "five corners," and more lanes to N.E. Pacific Street to 15th Avenue N.E. It amounts to about five miles of lane paving. It makes both arterials about 40% larger. The following paragraphs in this subsection raise concerns, which in most cases neither the DEIS nor its appendices consider at all, and in most of the others, inadequately. Appendix Q, Social Discipline, confines its analysis of negative effects of the project to Montlake and there finds offsetting benefits, Id p. 30. Many of these paragraphs reflect a major omission in the DEIS and Appendix R, Transportation: it needs a thorough going pedestrian safety analysis wherever the project adds to traffic volumes.

I-1004-013

A. Northerly communities ---

The R.H. Thomson Expressway planned to connect Lake City Way and SR 520 through a tube under Union Bay with an entrance at "five corners" to the current Arboretum interchange. City planners wanted to supplement I-5 with another north-south roadway. The main arterial would be 25th Avenue N.E. from Lake City Way South N.E., and it would be widened to accommodate the increased volumes; 35th Avenue N.E. would also be improved as a supplemental connector. Thus, when I-5 was congested, traffic would have a ready alternate route around the congestion.

With the Pacific Street Interchange, Montlake Boulevard N.E. through campus will have seven lanes; Lake City Way N.E. now has six. Connect the two arterials. Radio and television will announce congestion. Moreover, taxis and trucks --- and many private cars --- now have telestar ® and other sophisticated devices that show on a screen the quickest route. It's standard equipment on many models.

The DEIS, p. 5-11, projects a rise in traffic on Montlake Boulevard N.E. north of the Bank of America Arena/Hec Edmundson Pavilion during A.M. peaks from 3,870 to 4,540, and

I-1004-013

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-013

P.M. peak hour from 4940 to 5930. These figures are less than the projected growth in jobs in the region, Appendix K, land use, p. 20. (At least 3% of the traffic will be heavy trucks, Appendix R, Transportation, p. 3-46). Appendix R, p. 4-46, anticipates diversion when I-5 becomes saturated; Accord Addendum, p. 2-4 and 5-10, Appendix Q, Social, p. 13 and 21; Appendix J, Indirect and Cumulative Effects, p. 13; Appendix K, Land Use. p. 19. These figures assume that tolling will reduce traffic volumes by 24%, Appendix R, p.3-31, and that tolls would continue indefinitely. Although the DEIS acknowledges that adding arterial capacity through the U of W campus pushes congestion northward and to "five corners," the DEIS here also assumes that there would be no change to the City grid pattern to accommodate the increased traffic, e.g. Appendix K, pl. 35. That assumption is unreal: as explained earlier at page 5 and below on page 26, toll administrators will insist on changes to speed traffic so that the project tolls can meet expenses, and the proponents of the Pacific Street Interchange will demand those improvements so that Union Bay Bridge can deliver its full potential.

I-1004-014

During the SR 520 Seattle Stakeholders Advisory Committee process, a WSDOT engineer guessed that the City would have to forbid parking on 25th Avenue N.E. all day, traffic signals would be reset to favor north-south traffic at key intersections, and very probably, wherever a bottleneck appeared, 25th Avenue N.E. would be widened within its right-of-way. (Think of Ravenna Avenue N.E. between Lake City Way and N.E. 85th St.) These changes will make 25th Avenue N.E. north of the Lake Washington Ship Canal like 23rd Avenue E. on Capitol Hill.

- The traffic will have a blighting effect on the abutting properties, leading to homes now owner occupied becoming rentals for students;
- The cars displaced from 25th Avenue N.E. will park on the neighborhood streets, especially 24th Avenue N.E. and 26th Avenue N.E. These streets already are beset with parking congestion.
- Displaced parking from 25th Avenue N.E. will make 26th Avenue N.E. and, to a lesser extent, 27th Avenue N.E. into single file streets. Both streets have traffic circles at N.E. 60th St. to reduce "cut through" traffic. When traffic northbound backs up from the signal at N.E. 65th St., vehicles going north to east take a right at N.E. 60th St., turn left at 26th Ave. N.E. (sometimes at 27th Avenue N.E.) and then turn right at N.E. 65th St. To a lesser extent, when traffic backs up at the 25th Avenue N.E. traffic signal, eastbound cars on N.E. 65th intending to go south, e.g. to University Village, will turn left (south) on 26th Avenue N.E. and go to N.E. 60th St. or N.E. 55th St. and then to 25th Avenue N.E. The opposing traffic flows can now get around each other because of gaps in the parking. More parking will leave no turn outs and blockages as each driver

I-1004-014

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-014

waits for the other to back up or make room.
- The neighborhood alcove of homes on 24th Avenue N.E. to 21st Ave. N.E. north of Ravenna Park and south of the Ida Culver House will be even more isolated.
- The change in the signalization to help north-south traffic in turn will lead to more cut-through traffic on other neighborhood streets, a phenomenon the Ravenna neighborhood now experiences on Husky football game days.

I-1004-015

The University Neighborhood Plan, Ravenna Urban Village, adopted a "neighborhood main street" concept for a pedestrian-oriented commercial district along 25th Avenue N.E., especially between N.E. Blakeley St. and N.E. 55th St. Policy A-2.2, University Community Urban Center Plan, p. IV-2C and III-41. The concept anticipates store fronts up to the sidewalk, tree planting, crossing at every intersection, and on-street parking to support small businesses. The Pacific Street Interchange will thwart that vision. To reduce collisions with pedestrians, the Seattle Department of Transportation proposed ending crosswalks on Stone Way No. -- a course of action it adopted on sections of Holman Road N.W. Pedestrians have to walk several blocks out of their way to a traffic signal at an arterial in order to cross the street. Instead of a consolidated business district of facing shops, those sections have become for pedestrians the equivalent of a highway strip mall that happens to fold into a "U."

Adding traffic to 25th Avenue N.E. will greatly compound traffic flows and pedestrian crossing south of N.E. Blakeley Street. The University Community Urban Center Plan, Ravenna Urban Village, Narrative section, Page II-34 states "congestion and near-collisons are the standard along 25th NE..." Page III-39 identifies "conflicting left turns from the center lane..." as a problem now. Figure IV-3, p. IV-7, directed attention to the double parallel driveways on the east side from Office Depot and University Village, and the mid-lane in which motorists going northbound and southbound come at each other head-on. It's a dangerous situation, and it will become worse when the increasing traffic volumes reduce the breaks in north-south traffic on 25th Avenue N.E. for vehicles to dart in and out. Moreover, pedestrians hustle across 15th Avenue N.E. between Nordheim Court, the student housing on the east, and University Plaza on the west. A development under construction, North Cut Landing, will intensify the situation. I have seen some cars come close to hitting pedestrians.

I-1004-016

Adding lanes to Montlake Boulevard N.E., N.E. 45th Street, and Sand Point Way N.E. to "five corners" creates all sorts of traffic hazards. Currently, northbound cars speed along that stretch until they come to the exit traffic light on the north of the Husky parking lot. That light has the only protected crossing from the south to the north for pedestrians. Eastbound buses stop there to let pedestrians

I-1004-015

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-016

Comment Summary:

Bicycle/Pedestrian Path

Response:

See Section 2.3 of the 2006 Draft EIS Comment Response Report.

I-1004-016

off and take on pedestrians going to North East Seattle. Motorists, especially at night and in inclement weather, commonly hustle along, not at all expecting to stop. Many race to beat the yellow and some go through the red light. The Pacific Street Interchange makes that the only access to Husky parking, and that increases the exiting and entrance flows that pedestrians will have to dodge. At the SR 520 Seattle Stakeholders Advisory Committee, the representative of Laurelhurst asked WSDOT whether N.E. 45th Street would become like one of arterials in the industrial section of Seattle, where motorists assume that they have the right-of-way and put pedestrians at their own risk in crossing, with or without a signal light. Motorists develop that psychological outlook along long stretches of coordinated signals. Had WSDOT done any studies? The reply was a flat "No." It should do one now.

Adding lanes will make crossing at that signal much more dangerous for pedestrians in other ways. Pedestrians will have a longer distance to travel. Six cars east-west may come at them, rather than four. Cars leaving the Husky parking will be making left or right turns over the crosswalk while the steady "walk" and flashing "walk" signals are on. A member of the SR 520 Seattle Stakeholders Advisory Committee asked WSDOT's engineer whether it had considered building a pedestrian overpass across N.E. 45th St. much as the University has already done over Montlake Boulevard N.E. to its East Campus. The answer was "No." The DEIS should consider it.

The North East District Council, an association of community councils in North East Seattle between I-5 and Lake Washington and south of Lake City, has long complained about the hazard to pedestrian along the north side of N.E. 45th St. (the south side of University Village.) Pedestrians, who walk between the bus stop at the base of the N.E. 45th St. Viaduct and the Safeway store at 3020 N.E. 45th St. (commonly called the University Village Safeway) find motorists perpetually looking eastward for a break in the traffic on N.E. 45th St. The motorists seem oblivious to pedestrians coming from the west. To be safe, a pedestrian needs to make eye contact with the motorist. However, some motorists go to the very edge of the crosswalk and, if there is a chance to move, accelerate without looking west. I've had to jump back twice over the years to avoid being hit. More traffic will make it worse.

I-1004-017

B. N.E. Pacific Street and the University District ---

The DEIS, p. 5-11, anticipates that the Pacific Street Interchange will increase morning peak hour traffic from 1,075 to 1,280 and evening peak hour traffic from 1,150 to 1,530 at 15th Avenue N.E. and N.E. Pacific St. It amounts to

I-1004-017

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-017

a 19% increase in A.M. traffic and 33% P.M. --- a refrain repeated in Appendix J, Indirect and Cumulative Effects, pages 13 - 14; Appendix K, Land Use, p. 19. At p. 5-13, the DEIS projects a congested condition there. Accord, p. 5-14; Land Use Appendix K, p. 4; Appendix R, Transportation, Addendum, p. 12. That is a vital intersection for emergency vehicles to and from the west to University Hospital. Health and safety of patients may be affected.

I-1004-018

For the last two decades, the City, the University of Washington, and the University District Community have committed the area to travel through buses and rapid transit. All have sought to restrict vehicular traffic to the minimum, through such programs as U-Pass for University students, staff and faculty; restricting the building of new multi-story commercial parking facilities; lowering parking requirements for new multi-family structures; traffic counts and cordons to monitor flows; expanding pay parking zones for on-street parking; more bus stops on 15th Avenue N.E. and fewer, more distanced stops on the 'Ave; reducing the number of through traffic lanes on N.E. 50th St. west of I-5 etc. The University Community Urban Center Plan for the University District envisions more foot traffic, a community where people meet and interact on the street, much like the University towns back east where cars are few and slow. University Community Urban Center Plan, pp II-5 & 6, II-15 through III-31. The Planning Committee and then Mayor Paul Schell agreed that the University District was saturated with traffic, especially on N.E. 45th St. and 15th Avenue N.E. The planners had three prime goals: the 'Ave project to widen sidewalks and make them pleasing to pedestrians; to link the University campus and the University District with more crosswalks and greenery, reducing the bulkhead along the east side of 15th Ave. etc.; and reconnecting the University District with the waterfront along the Lake Washington Ship Canal by developing parks and changing the streetscape to a more campus like atmosphere. University Community Urban Center Plan, pp. II-5 and 6,8-10, 14, 17, III-3-7, 25-31, IV 7-8. The 'Ave project cost at least $ 6,000,000 and was intended to launch the rest of the program --- sort of a down payment in carrying out the long range vision.

The Pacific Street Interchange clashes with that vision. It has a Los Angeles 1950's mentality. Appendix X, Pacific Street Interchange, identifies its goal as ".. the greatest possible transportation benefit..." Appendix Q, Social, p. 13, praises the Pacific Street Interchange for "... improved access to and from the University District.." by motor vehicles and pages 17, 23, and 24 it writes that it would ".. improve reliability between SR 520 and the University District.." Accord: Appendix J, Indirect and Cumulative

I-1004-018

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-018

Effects, p. 12. WSDOT has it wrong: the City, the University, the University District don't want more vehicles through the area: they want people to leave their cars home and through traffic reduced to a minimum, e.g. Goal B-4 of the University Community Urban Center Plan, p. IV-6, states, in part, "provide improved mobility and access by **public transportation** to service, jobs, businesses, residences, educational opportunities, and other destinations both within and outside of the UCUC, including local shuttle." (emphasis supplied) ("UCUC" abbreviates University Community Urban Center.) The Pacific Street Interchange will obstruct achieving the second and third aims of the University Community Urban Center Plan by intensifying 15th Avenue N.E. as an arterial, separating the campus from the 'Ave, and by interposing increasing traffic flow on N.E. Pacific Street west of 15th Avenue N.E. That would disrupt the reconnection of the University District and University Housing from the Ship Canal. Moreover, those flows will tend to isolate the boating community, maritime supply houses, waterfront restaurants and Sakuma Viewpoint along N.E. Boat St. Access to them will become difficult, especially for pedestrians. Finally, as the DEIS admits, when I-5 is severely congested at the Lake Washington Ship Canal, through traffic may divert to the new expressway by way of N.E. 50th St., N.E. 45th St., and 5th Avenue N.E. to N.E. 40th St., and then to N.E. Pacific St. The DEIS does not disclose the likely volumes, but none of these movements are consistent with the planning for the University District or its best interests.

I-1004-019

The new SR 520 bridge would connect to both the regular and the express lanes of I-5. Motorists going between the Eastside of Lake Washington and the University District would have the option of using the express lanes with its ramp at N.E. 42nd St. The express lanes currently access downtown. The SR 520 Replacement Project would thereby introduce a new traffic flow into the University District. How will the flow be handled? Neither the DEIS nor any of its appendices have any analysis of the intersection of N.E. 42nd St. and 7th Avenue N.E. 7th Avenue N.E. is one-way northbound; N.E. 42nd St. is two way east and west. N.E. 42nd extends to Roosevelt Way N.E. Roosevelt Way N.E. is one-way southbound; it leads to the University Bridge and Eastlake; traffic to the University District has to make a left turn at N.E. 41st St. The new flow complicates traffic flows: 7th Avenue N.E. north of N.E. 42nd St. already has back-ups that extend almost the entire length; the holding bay on Roosevelt Way N.E. for the left turn is very short so that more left-turning traffic will spill back and clog the adjacent southbound lanes; and 7th Avenue N.E. from N.E. 41st to N.E. 42nd is one lane. None are designed to accommodate the added flow.

I-1004-020

Neither the DEIS or its Appendix M, Noise, has any analysis of incremental noise on I-5 by adding traffic to the

I-1004-019

Comment Summary:

Freeway Operations (I-5 Area)

Response:

See Section 5.2 of the 2006 Draft EIS Comment Response Report.

I-1004-020

Comment Summary:

Noise (Methodology)

Response:

See Section 12.1 of the 2006 Draft EIS Comment Response Report.

I-1004-020

express lanes. Residents along 5th Avenue N.E. and 7th Avenue N.E. between N.E. Pacific Street and N.E. 44th St. complain that the worst noise comes from the express lanes. The noise on the express lanes is closer to them, and it rises to a concrete roof (the underside of the main lanes of I-5) and redounds back on them. Adding traffic may acerbate the noise. The DEIS should quantity it.

I-1004-021

C. Wallingford ---

Much of the increased traffic on N.E. Pacific Street will continue to or come from the west. The DEIS is silent on where or how it will go. Most of it will go through the Wallingford neighborhood. Latona School is already affected by traffic short cutting from I-5. That will get worse. Wallingford residents anticipate it would make the Burke-Gilman trail less accessible and making walking along it less pleasant in those areas where the trail is on the sidewalk or immediately adjacent to it. The Burke-Gilman Trail is the prime route for foot and bike traffic between South Wallingford and the University Campus.

I-1004-022

VI Social and Environmental Justice

Back in the late 1960's, the *Urban Lawyer*, a publication of an American Bar Association section, contained a seminal article, entitled "Freeways through the Model Cities." It showed that highway planners invariably routed freeways and expressways through the poorer sections of cities to avoid the wealthy, influential neighborhoods. Later literature affirmed the existence of the practice and showed that it displaces many more people, who can afford it least, and leaves those, who are in the immediate vicinity and not displaced, in a worse environment than existed before the project. In our society, the wealth of neighborhoods correlates with race and ethnicity since minorities as a whole are lower on the income scale.

Appendix Q, Social Discipline, and Appendix G, Environmental Justice, foresee a shift in traffic patterns away from the Shelby-Hamlin area of Montlake toward the east and south in Madison Valley. The receiving areas are racially integrated and minorities are a very significant part of the community. The protected Shelby-Hamlin area has a very low percentage of minorities. Toward the north, the added traffic flows by University Hospital, a well-integrated facility; Nordhein Court, the University housing on 25th Avenue N.E. and Union Bay Housing on Mary Gates Way N.E. abutting "five corners;" and alongside University housing on 15th Avenue N.E. and Campus Parkway/N.E. Pacific Street. University housing is fully integrated with a minority population above the Seattle average --- something neither appendix mentions. The Pacific Street Interchange is

I-1004-021

Comment Summary:

Local Street Network

Response:

See Section 5.3 of the 2006 Draft EIS Comment Response Report.

I-1004-022

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-022 inconsistent with both environmental and social justice.

I-1004-023

Transportation Failures

A. Defects in Design ---

The Pacific Street Interchange has major transportation drawbacks. Here are some that the DEIS either overlooks or downplays:

The Pacific Street will put both Montlake Boulevard N.E. and N.E. Pacific Street into an 8-10' ditch at their intersection. Motorists will go down a dip and then up again between the Montlake Bridge and the Bank of America Arena/Hec Edmundson Pavilion. The restricted visibility will slow traffic much as the hump on I'5 Ship Canal Bridge does because cautious motorists will adjust to the restricted sight distance. If it's icy, the slickness will lead to collisions. With Seattle rains, it'll puddle just as the Broad and Mercer Street underpasses sometimes do. If there's a right angle collision of cars, the momentum may cause a vehicle to smash against the walls, leading to a second collision of the passengers within the vehicle. In an open area, the force would send the vehicles on to the shoulders and perhaps off the right-of-way, dissipating much of the force.

The grade separation precludes a convenient connection between the RTA station at Husky Stadium and surface bus routes -- a fact that the DEIS p. 5-16 ignores. The DEIS, p. 2-21, projects a transit transfer station to westbound transit buses about one thousand feet (1000') west at the junction of Pacific Place N.E. and N.E. Pacific Street. It is on the north side of the street only -- nothing is on the south side for pedestrians from the hospital to catch eastbound or southbound buses. To get the sole transfer station, people transferring from the RTA station will have to go south to the mounded overpass at the intersection of N.E. Pacific Street and Montlake Boulevard N.E., climb an 8' grade, and then go west ---adding another 50% to the distance. The lower grade of the Pacific Street Interchange precludes any transfer station to north-south Metro buses on Montlake Boulevard N.E. and the DEIS shows none. Transferring from METRO buses to the RTA reverses the movement. It's equally bad. Back East, RTA stations commonly have pull-outs for vehicles to drop off and pick up passengers --- they are sometimes called "kiss and ride." The depressed roadway prevents that. It's probably just as well: areas under freeway ramps often harbor undesirable elements --- the Alaskan Way Viaduct has extra policing underneath, and sections of I-5 are fenced off. This proximity was raised as a concern at the SR 520 Seattle Stakeholders' Advisory Committee. WSDOT's response: "IF it

I-1004-023

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-023 gets to be a problem, we'll work it out."

The DEIS, p. 15-16, gives out that the Pacific Street Interchange benefits freeway bus service the most of all the alternatives. In fact, buses benefit only in common with the expedited general traffic flow. As traffic builds, congestion develops and the advantage of speeding traffic disappears. Experience has repeatedly shown that building highway capacity to speed up peak hour traffic encourages the use of private cars for commuting, and reduces the comparative advantages of taking the bus. The modal split favors buses when buses have exclusive lanes and speed by single occupancy vehicles in a general purpose lane. In the short and long run, all things considered, the Pacific Street Interchange is the very worse alternative for public transit.

The Pacific Street Interchange forces motorists going between North East Seattle to downtown by way of I-5 into a roller coaster ride. Motorists can now take a convenient right turn at the intersection of SR 520 and Montlake Boulevard E., and they can exit at the Montlake off-ramp and take a left. The only major change in elevation now occurs in climbing Capitol Hill. Under the Pacific Street Interchange, motorists would turn left in the intersection in the ditch under the doughnut hole of the mounded overpass, rise 110+ feet over the Union Bay Bridge, and at the intersection turn east going down to below Montlake Boulevard E. to reach Portage Bay. The Union Bay Bridge will be as high as Roanoke Street on Capitol Hill. Motorists will climb a 7% grade, then go down even a greater distance, and then up again. It'll be slick in black ice conditions and on those days when the rains bring out the oils accumulated on the pavement during dry spells. Early morning fogs can make it hazardous. If a truck's brakes are weak, it may not be able to make a sudden stop, and gravity will provide acceleration to magnify the impact of a collision. The rapid up and down may create a thrill for immature drivers, especially if tipsy, who'll want to experience a whoop-tee-do.

The Pacific Street Interchange builds an intersection of the Union Bay Bridge with SR 520 east-west lanes at right angles. It may be as high as seventy feet over the water. A collision there may send a vehicle plunging into the depth below. Over the years, the I-5 bridge over the Lake Washington Ship Canal and the Alaskan Way Viaduct have had truck cabs teeter over the edge. Some come about because a truck hits a slick spot, undergoes a load shift while changing lanes, or swerves to avoid colliding with another vehicle. With the Union Bay Bridge, the force of a collision may cause a shower of debris, which accelerated by gravity, would rain like shrapnel on boaters below.

I-1004-024 The Pacific Street Interchange increases the travel distance for all traffic north to west, Appendix V, 6-Lane

I-1004-024

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-024 Alternatives, p. 31, and est to south. That plus the grades cause added consumption of fuel.

I-1004-025 The Pacific Street Interchange contemplates a 7% grade -- - too steep for rail and very steep for buses. Cyclists say only the hardiest can use it. Appendix Q, Social, p. 25 claims that it would improve safety and connectivity. Members of the SR 520 Seattle Stakeholders Advisory Committee, who are regular cyclists, prefer a quieter route through Montlake. The Advisory Committee voted 11 to 1 to substitute a bike lane westward to Montlake Boulevard N.E. and thereby reduce the width of the Union Bay Bridge and its ramps, and reduce the size of the condemnation of the University campus. The DEIS and its appendices should have identified making this substitution as an option.

Citizens raised these concerns during the SR 520 Seattle Stakeholders Advisory Committee. WSDOT gave its standard response: IF it gets to be a problem, we'll work it out. Unfortunately, the problems are inherent and can't be worked out. The DEIS or the appendices should acknowledge and address these safety concerns.

B. Delays in Construction ----

The Pacific Street Interchange will take the longest to construct and is most prone to delays.

The financial plan contemplates additional taxes approved by a public vote for a regional transportation district. The Pacific Street Interchange will generate strong public opposition that may cause the public to vote the entire package of projects down.

The Pacific Street Interchange builds an intersection of the Union Bay Bridge with SR 520 east-west lanes at right angles. It may be as high as seventy feet over the water. A collision there may send a vehicle plunging into the depth. Over the years, the I-5 bridge over the Lake Washington Ship Canal and the Alaskan Way Viaduct have had truck cabs teeter over the edge. Some come about because a truck hits a slip spot, undergoes a load ship while changing lanes, or swerves to avoid colliding with another vehicle. With the Union Bay Bridge, the force of a collision may cause a shower of debris, which accelerated by gravity, would rain like shrapnel on boaters below.

I-1004-026 C. Costs ---

The Pacific Street Interchange is the costliest of all the alternatives by hundreds of million dollars. WSDOT's low estimates anticipate a cost of 10-15% greater than the base six alternative; others estimate a greater spread. Tolls

I-1004-025

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-026

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-026 will have to be higher to pay those incremental expenses and will amount to a tax on the local economy. The DEIS or an Appendix should have set those figures out.

I-1004-027 D. Drainage ---

Appendix T, Water Resources, Addendum, p. 4, assumes that the Union Bay Bridge will have a vertical clearance of seven (70) feet and it describes a system of wet vaults and detention basins for such a bridge. It should also describe the system with a bridge that has one hundred ten (110') of clearance

I-1004-028 E. RTA Station ---

The DEIS, p. 4-14, and p. 4-16, names adverse effects of the Pacific Street Interchange on the RTA Station at Husky Stadium: conflicts in design "including the rail station's north vent, tunnel facilities, station plaza, and entrance structures; relocating bus stops; visual obstruction; construction staging; sidewalk access etc. It should describe them in detail and explain the estimated additional cost to Sound Transit. The three entrances shown on p. 4-14 are immediately adjacent to the streets that the Pacific Street Interchange would widen. They're so close that RTA passengers are likely to be splashed and dodge around puddling on the sidewalk. It's likely that the "station platforms" below the street grade will have to double as underpasses for pedestrians between the main campus and East Campus.

I-1004-029 F. 2030 Results ---

The traffic studies suggest that by 2030, various intersections that access Montlake Boulevard N.E. and N.E. Pacific Street will be congested and delays will occur. Appendix F, Energy, estimates that the average speed on Montlake Boulevard N.E. of the six lane base plan at 26 mph and that of the Pacific Street Interchange at 27 mph. The analysis should have gone on to factor in the added distance that the Pacific Street Interchange requires for traffic to and from the west going north or south. The over-all travel time will equalize.

I-1004-030 **VIII WSDOT as Promoter**

To promote the Pacific Street Interchange, the DEIS presents it in its best possible light, down playing all its drawbacks, and WSDOT's project management team makes promises and representation that it will not keep. Here are a few examples.

I-1004-027

Comment Summary:

Water Resource Effects During Operation

Response:

See Section 15.2 of the 2006 Draft EIS Comment Response Report.

I-1004-028

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-029

Comment Summary:

Format and Content

Response:

See Section 23.1 of the 2006 Draft EIS Comment Response Report.

I-1004-030

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-030

A. Apples and oranges ---

The DEIS compares the Pacific Street Interchange with tolls with the current situation without tolls. The tolls diminish the traffic volumes by 24%, Appendix R, Transportation, p. 3-32 -- a factor used in setting noise estimates. The proper comparison is to measure volumes for both without tolls or discount current volumes to reflect hypothetical tolls.

The DEIS estimates savings in travel time using the current pattern of signalization vis-a-vis its streamlining with the Pacific Street Interchange. Much of the current rush hour traffic delays on Montlake Boulevard N.E. occur because the Stadium Traffic Light is set to allow the Husky Stadium parking lot to exit on to Montlake Boulevard N.E.; the exiting cars fill up the street capacity between N.E. Pacific Place and N.E. Pacific Street so that the cars further north of the signal can just inch along. When the Stadium light gives a green signal, only one or two cars can pass through the intersection and be in a position to go through the next green light at N.E. Pacific Street. The Pacific Street Interchange ends the Stadium exit for U of W parking and requires all access to be on the north at N.E. 45th St. That restriction could be imposed without the new interchange. A better measure of saving in travel time by the Pacific Street Interchange would be to use as a base the situation that would exist if the City and WSDOT were to set the signals and put in traffic control devices to favor the north-south flow on Montlake Boulevard N.E..

I-1004-031

B. Behold the traffic numbers ---

The DEIS puts out its traffic volumes figures much as a magician at a performance pulls out an object and says "Behold." Neither it nor any appendices explain how those figures were derived.

At the SR 520 Seattle Stakeholders Advisory Committee, members pressed to know the assumptions underlying those figures. Citizens asked such questions as:

- Did WSDOT figure on gasoline at $ 2 per gallon, $ 2.50? $ 3.00, or $ 4.00? Gas prices are a major factor in determining how much people drive and whether they use the bus.
- What assumptions did WSDOT make for economic growth in the immediate area? for the North Seattle/Bellevue part of King County? (Appendix K, Land Use, p. 20 projects Seattle at a population of 718,389, 27% above current numbers, and jobs increasing by 36%. Yet even with the 40% added highway capacity and attraction of traffic from other routes, morning peak traffic will rise 17.3% and afternoon peak by 20%. Perhaps WSDOT assumes that the model split will change.)

I-1004-031

Comment Summary:

Methodology (Freeway)

Response:

See Section 5.1 of the 2006 Draft EIS Comment Response Report.

I-1004-031

- How were the model split numbers derived? The frequency and quality of transit service influences a commuters decision to drive or take the bus. What sort of east-west transit service did WSDOT envision?

- Parking availability is a key factor in vehicle usage. Seattle has been reducing parking requirements for multi-family structures in the University District and proposing lower ratios for units. What sort of parking supply did WSDOT envisioned in the area when making its calculations

- University Village generates a substantial volume of traffic in the vicinity. What sort of growth or further development for that shopping center did WSDOT factor into its numbers?

- Technology is moving at a rapid rate and allowing people, who work with information, ideas, and other intellectual property, to conduct their activities off their employer's site. What allowance was made for that in WSDOT's calculations?

WSDOT replied that the numbers are what they are.

Public confidence in the numbers requires full disclosure as to how they were derived. Several years ago, University Village supplied the City of Seattle a traffic analysis for building its four story parking garage at the north east corner of its shopping center and the City dutifully issued a determination of no significant impact for the project. Simultaneously the Village management were soliciting new merchants and using figures of future shoppers at the village. The figures that the developers gave the City's Department of Construction and Land Use as part of its application for a Master Use Permit were substantially below those used by the Village's lease/marketing people. Neighbors around Northgate said that the traffic figures used by the shopping center owner in determining whether redevelopment would be feasible were higher than the numbers contained in its application to Seattle for a master use permit. In fact, community activists sometimes compare the traffic projections in the environmental analysis for different projects in the same business district and find them to be dissimilar. WSDOT is building 40% more lane capacity, and the Union Bay Bridge will have wide shoulders that can be converted to traffic lanes; its ramp entrance and exit at N.E. Pacific Street allows for that possibility.

The DEIS or its appendices should have --- and still should --- disclose to the public the way that WSDOT derived its figures, and let the public critic its assumptions and projections. Futurists and economists commonly lay out a range of numbers in forecasting the situation at a target date, giving a confidence level at various points. That would have been very helpful. The correct approach would lay out for public review the factors and reasoning used to prepare its forecast.

I-1004-031

C. Peak hour figures ---

The DEIS presented peak hour traffic volumes only -- not total daily traffic volumes. That gives an incomplete picture of the added traffic over the course of the day.

WSDOT told the SR 520 Seattle Stakeholders Advisory Committee that the Pacific Street Interchange required the two added lanes on Montlake Boulevard N.E. and on N.E. Pacific Street --- a 40% increase in lane paving --- to accommodate peak hour traffic. It implicitly assumed that the pattern of commuting peaks will continue for the indefinite future. A member of the SR 520 Seattle Stakeholders Advisory Committee challenged that projection. He pointed out that:

+ Peak hour (congestion) pricing of tolls could spread the peak volumes to encourage motorists to commuter earlier or later;

- Fixed hour work shifts are giving way to employer flex time programs, especially as technology improves telecommuting; and

- The demographics of Seattle are changing. More people are retired. The retired have more freedom to chose trip times.

The DEIS should lay bare its assumptions. If it assumes that traffic flows twenty three years from now will be like those today, the foregoing critique is apt. The DEIS would then be looking backward instead of looking forward.

I-1004-032

D. No local street improvements --

The DEIS assumes that the existing City street grid and traffic control patterns will continue, e.g. Appendix K, Land Use, p. 35. This is a fanciful way of understating the full adverse impacts. See the discussion at pages 5 and 14 above. Seattle's history shows a pattern of road building to accommodate major highway projects. For I-5, the City of Seattle widened Northgate Way, connected N.E. 125th St. to N.E. 130th St. and widened both, paved N.E. 92nd St. between Meridian and Roosevelt Way, widened N.E. 85th St., widened Columbian Way and S.E. Spokane St., improved Michigan St. and Albro Place and proposed a Mercer St. connector, later called the "Bay Freeway." It was ultimately rejected by the voters. With I-90, the City of Seattle widened Rainier Avenue So. at its intersection. The new West Seattle Bridge led to roadway improvements in North Delridge. The viaduct at Royal Brougham Way So. led to a major re-orientation and construction of the surface streets in the area of the stadia. The DEIS should lay out reasonably anticipated changes that the Pacific Street Interchange would prompt at various congested areas, e.g. 25th Avenue N.E., "five corners", 15th Avenue N.E. at N.E. Pacific Street, the

I-1004-032

Comment Summary:

Local Street Network

Response:

See Section 5.3 of the 2006 Draft EIS Comment Response Report.

I-1004-032 Arboretum, and the southern access roadways in Madison Valley, and discuss the cumulative environmental impacts.

I-1004-033

E. Tunnel by Arboretum Alternative ---

The DEIS, p 3-6 discusses a proposal for crossing the Arboretum wetlands in a tunnel. It describes a tunnel alternative with a "T" intersection under water that would have a tube extending northbound to near five corners on N.E. 45th St. It concluded that an intersection under water was unworkable and therefore *all* tunnel alternatives should be rejected. After studying WSDOT's report, citizens in Broadmoor, Madison Park, and Roanoke made a revised proposal. The revised proposal contemplates an island near Madison Park and a tunnel for traffic from there to Montlake; the revised proposal would be entirely south of the Lake Washington Ship Canal. The revised proposal would not have any "immersed intersection;" it would not disturb Union Bay north of the Canal. A tunnel expert spoke to members of the SR 520 Seattle Stakeholders Advisory Committee and said the concept was feasible. WSDOT rejected the revised proposal out of hand because it would not connect directly to the north side of the Lake Washington Ship Canal --- something neither the 6-Lane base nor the 4 Lane alternatives do. Its insistence on all tunnel alternatives having a direct connection to N.E. 45th St. imputed an immersed intersection into the revised proposal, and WSDOT then rejected it because the revised proposal would then have an immersed intersection and construction of the northbound stem would disturb Union Bay!

This analogy shows the fallacy of its approach. Envision an athlete about to enter a footrace; the athlete is far faster than the competition. The race officials then say to equalize competitors the top athlete must wear shackles, and then when the shackled athlete comes to the starting line, the same officials disqualify him because he's shackled.

I-1004-034

F. Financing Arboretum Master Plan ---

WSDOT told the SR 520 Seattle Stakeholders Advisory Committee that converting Lake Washington Boulevard to an access road for SR 520 would allow the City of Seattle to collect a share of the tolls and use those tolls to carry out the Arboretum Master Plan. That's illusory. Amendment 18 of the Washington Constitution requires that motor vehicle excise taxes, gasoline taxes, and "... all other state revenue intended to be used for highway purposes shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes." A provided clause excludes from the scope of the dedication of revenues general or special taxes not levied primarily for highway purposes. A toll is the quintessinal payment for highway purposes: the

I-1004-033

Comment Summary:

Tube/Tunnel Concepts

Response:

See Section 1.1 of the 2006 Draft EIS Comment Response Report.

I-1004-034

Comment Summary:

Arboretum (Concerns)

Response:

See Section 9.3 of the 2006 Draft EIS Comment Response Report.

I-1004-034

payor receives a right of passage over the highway built. The long tradition of applying ferry and bridge tolls in Washington confirms this principle; that principle preceded adoption of Amendment 18 in 1944 and has been unbroken afterward. Yes, tolls may be used to "improve" Lake Washington Boulevard to maintain its surface or to carry more traffic; but, No, neither the bondholders nor the Good Roads groups will allow tolls to be used for landscaping, tree planting, drainage, or rebuilding shelters in the Arboretum away from the right-of-way. They would promptly bring suit and prevail if WSDOT were to divert any portion of the tolls for such purposes.

I-1004-035

G. Property Displacement ---

The DEIS and appendices state that the Pacific Street Interchange takes the least property off the tax roles. Appendix V, 6-Lane Report, p. 24. WSDOT assumes that it can take almost fifteen acres of University property and shrink the size of the campus. Appendix K, Land Use, p. 31-32. In fact, the University's master plan shows increased use of its campus with new development; and, the University and the SR 520 Seattle Stakeholders Advisory Committee agreed that the SR 520 Replacement Project could not result in any net loss of University property. If the Pacific Street Interchange takes 15 acres of University property, the University will replace it by taking equivalent acreage elsewhere --- most of it from property currently on the tax roles. The Pacific Street Interchange thereby will result in the largest loss of taxable property. Moreover, by blighting properties to the north and east, the Pacific Street Interchange will reduce property values and tax revenues to state government for schools and local governments for vital services.

H. Absent and gussied up depictions ---

Attachment "B" contains the single most informative depiction of what the Union Bay Bridge and associated campus ramps would look like. WSDOT prepared it. It ought to have been in the DEIS or the appendices. It is not in any of them.

Attachment "B" is in fact a flattering rendering. Two representatives on the SR 520 Seattle Stakeholders Advisory Committee, Louis Hoffer and Ted Lane, have a accurate depiction based on the actual specifications for the project. Their drawing shows a viaduct-like bridge similar to WSDOT construction in the area of Seattle's stadia.

Attachment "B" shows the Union Bay Bridge at seventy (70') above Lake Washington's elevation. The drawing should have been at one hundred ten feet (110'), the height without

I-1004-035

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-035 a waiver. A waiver is an exception, and exceptions can not be expected. It also omits the noise walls although WSDOT based its predicted noise levels from the project on high sound barriers flanking the roadway. The Seattle Design Commission cautioned that artists sketches invariably make proposed construction look better than it turns out in reality. For example, the drawings show spiffy white highway structures; after a period of use, the structures pick up a grimy gray look.

I-1004-036 I. What's being tolled ---

The DEIS, p. 3-46 and 3-47, leaves unanswered a significant issue in tolling: will motorists who go between North East Seattle and downtown by way of the Union Bay Bridge and Portage Bay be subject to tolls? WSDOT personnel told the SR Seattle Stakeholders Advisory Committee that it has no intention of levying tolls; but, there's a definite benefit to the motorists and a use made by them, and so, it'll be up to the toll administrators. Sounds like the grade school pupil's answer: "Yes, No, Maybe so." It's a significant issue, because if a toll applies, traffic that now use Montlake Boulevard E. to or from I-5 may shift to going by way of N.E. 45th St. The DEIS should caution readers about its figures like prospecti accompanying security sales do with a statement of the risks and imponderables.

I-1004-037 J. Toll collection ---

The DEIS, p. 3-47, states that tolls would be collected using an electronic toll collection system, rather than manual collection at a toll plaza. Motorists or vehicles would have a device showing prepayment or get billed later. The DEIS should have explained that in the Midwest some local drivers are infrequent users and go into the truck lane to pay cash. The authorities also use collection agencies, which report non-payment to credit agencies, and non-payment of a small amount can trigger higher interest charges on outstanding, unrelated debt. (A case made the news several years ago when the toll authorities billed a car's owner under these circumstances: a thief stole the car, drove away on the turnpike, seeing a state patrol car, jack rabbited at excessive speeds and crashed; the car was destroyed; and the toll was not paid.) Some toll roads use radio frequency identification (RFID) to track the flow of traffic with computers recording every vehicle caught on camera; the information is put into a vast database. This has advocates of civil liberties and privacy very concerned. *Wall Street Journal*, December 30, 2005, p. W11.

I-1004-036

Comment Summary:

Tolling Scenarios, Pricing, and Revenue

Response:

See Section 3.3 of the 2006 Draft EIS Comment Response Report.

I-1004-037

Comment Summary:

Tolling Technology and Infrastructure

Response:

See Section 3.3 of the 2006 Draft EIS Comment Response Report.

I-1004-038

K. "Montlake Historic District" ---

The DEIS refers to the Shelby-Hamlin area as the "Montlake Historic District" at pages 4-36, 4-38, 5-39 etc.. In fact, it is not listed on the Seattle, the State of Washington, or the federal register of historic places. The notion of listing it came up in the course of proceedings for the SR 520 Replacement Project as a way of creating a special preference for those wealthy homes and of deflecting the bridge access roads and traffic to the integrated communities to the south and east, to the Arboretum, and to the University of Washington campus. It should be treated as a ploy.

I-1004-039

L. Public Involvement

WSDOT showed its biases in its public involvement program. Its project manager made presentations to the University District Community Council, the Ravenna-Bryant Community Association, and the University Park Community Council; it got a very negative response to the Pacific Street Interchange. The first two of these community associations sent representatives to the SR 520 Seattle Stakeholders Advisory Committee. Yet, none of the three was sent a copy of the DEIS. Distribution List, p. A-10. Roanoke Park and Eastlake/Floating Homes, which also were negative on the project, were also omitted. Moreover, the list of meetings in Appendix B, public involvement, shows five meetings with BetterBridge.org., after August 2005 and only one with the University of Washington.

Conclusion

Appendix "B " on public involvement should have contained the report of the SR 520 Seattle Stakeholders Advisory Committee as an addendum. Over many sessions this summer it listened carefully to WSDOT's project manager, associate engineers, and allied experts make a hard sell for the Pacific Street Interchange. WSDOT revealed what it wished --- no presentation was allowed from the Arboretum Foundation, Parks, the UW or outside consultants and the final meeting occurred before the DEIS came out. When the communities finally got the opportunity to state their opinions, only two NIMBY communities (Montlake and North Capitol Hill) voted for the Pacific Street Interchange. Eight (Parks, Eastlake, Laurelhurst, University District, Ravenna-Bryant, the Arboretum, Madison Park and the UW) specifically rejected it. Broadmoor, Roanoke, the Arboretum, Laurelhurst, Ravenna-Bryant and University District opposed all designs; they would accept four lanes plus transit only lanes but not any HOV lanes. It shows that the Pacific Street Interchange benefits only parts of two neighborhoods

I-1004-038

Comment Summary:

Section 106 Process

Response:

See Section 11.1 of the 2006 Draft EIS Comment Response Report.

I-1004-039

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

I-1004-039

while doing irreparable damage to the remainder of Seattle.

Yours truly

Jorgen Bader

Attachments
23 USC ¶ 138
Extract of Seattle's brief on appeal
in the R.H. Thomson Expressway case,
State ex rel Duvall v. City Council
Pacific Street Interchange as
shown by WSDOT

Contents

Truck Parking Facilities

Pub.L. 109-59, Title I, § 1305, Aug. 10, 2005, 119 Stat. 1214, provided that:

"(a) **Establishment.**—In cooperation with appropriate State, regional, and local governments, the Secretary shall establish a pilot program to address the shortage of long-term parking for commercial motor vehicles on the National Highway System.

"(b) **Allocation of funds.**—

"(1) **In general.**—The Secretary shall allocate funds made available to carry out this section [this note] among States, metropolitan planning organizations, and local governments.

"(2) **Applications.**—To be eligible for an allocation under this section [this note], a State (as defined in section 101(a) of title 23, United States Code) [23 U.S.C.A. § 101(a)], metropolitan planning organization, or local government shall submit to the Secretary an application at such time and containing such information as the Secretary may require.

"(3) **Eligible projects.**—Funds allocated under this subsection [of this note] shall be used by the recipient for projects described in an application approved by the Secretary. Such projects shall serve the National Highway System and may include the following:

"(A) Constructing safety rest areas (as defined in section 120(c), of title 23, United States Code) [23 U.S.C.A. § 120(c)] that include parking for commercial motor vehicles.

"(B) Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas.

"(C) Opening existing facilities to commercial motor vehicle parking, including inspection and weigh stations and park-and-ride facilities.

"(D) Promoting the availability of publicly or privately provided commercial motor vehicle parking on the National Highway System using intelligent transportation systems and other means.

"(E) Constructing turnouts along the National Highway System for commercial motor vehicles.

"(F) Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year-round.

"(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

"(4) **Priority.**—In allocating funds made available to carry out this section [this note], the Secretary shall give priority to applicants that—

"(A) demonstrate a severe shortage of commercial motor vehicle parking capacity in the corridor to be addressed;

"(B) have consulted with affected State and local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations; and

"(C) demonstrate that their proposed projects are likely to have positive effects on highway safety, traffic congestion, or air quality.

"(c) **Report to Congress.**—Not later than 3 years after the date of enactment of this Act [Aug. 10, 2005], the Secretary shall submit to Congress a report on the results of the pilot program.

"(d) **Funding.**—

"(1) **In general.**—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section [this note] $6,250,000 for each of fiscal years 2006 through 2009.

"(2) **Contract authority.**—Funds authorized under this subsection [of this note] shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code [this chapter; 23 U.S.C.A. § 101 et seq.], except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section [this note] shall be determined in accordance with sections 120(b) and 120(c) of such title [23 U.S.C.A. § 120(b), (c)].

"(e) **Treatment of projects.**—Notwithstanding any other provision of law, projects funded under this section [this note] shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code."

CODE OF FEDERAL REGULATIONS

Eligibility and approval, see 23 CFR § 810.2 et seq.

LIBRARY REFERENCES

American Digest System

Highways ⇐99.1.
Key Number System Topic No. 200.

§ 138. Preservation of parklands

(a) Declaration of policy.—It is declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(b) De minimis impacts.—

(1) Requirements.—

(A) Requirements for historic sites.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) Requirements for parks, recreation areas, and wildlife or waterfowl refuges.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) Criteria.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) Historic sites.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) Parks, recreation areas, and wildlife or waterfowl refuges.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(Added Pub.L. 89–574, § 15(a), Sept. 13, 1966, 80 Stat. 771, and amended Pub.L. 90–495, § 18(a), Aug. 23, 1968, 82 Stat. 823; Pub.L. 94–280, Title I, § 124, May 5, 1976, 90 Stat. 440; Pub.L. 100–17, Title I, § 133(b)(10), Apr. 2, 1987, 101 Stat. 171; Pub.L. 109–59, Title VI, § 6009(a)(1), Aug. 10, 2005, 119 Stat. 1874.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2005 Acts. House Conference Report No. 109–203, see 2005 U.S. Code Cong. and Adm. News, p. 452.

Statement by President, see 2005 U.S. Code Cong. and Adm. News, p. S24.

References in Text

The effective date of the Federal-Aid Highway Act of 1968, referred to in text, is the effective date of Pub.L. 90–495, which was approved August 23, 1968.

Amendments

2005 Amendments. Subsec. (a). Pub.L. 109–59, § 6009(a)(1)(A), struck out "it is hereby" and inserted "(a) **Declaration of policy**—It is".

Subsec. (b). Pub.L. 109–59, § 6009(a)(1)(B), added subsec. (b).

Clarification of Existing Standards

Pub.L. 109–59, Title VI, § 6009(b), Aug. 10, 2005, 119 Stat. 1876, provided that:

"(1) **In general.**—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], the Secretary shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

"(2) **Requirements.**—The regulations—

"(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

"(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers."

CODE OF FEDERAL REGULATIONS

Privately owned wetlands, see 23 CFR § 777.1 et seq.

LIBRARY REFERENCES

American Digest System

Highways ⇐99.1, 103.
Key Number System Topic No. 200.

Corpus Juris Secundum

CJS Bridges § 21, In General.
CJS HIGHWAYS § 182, Location and Establishment.

Research References

ALR Library

124 ALR, Fed. 593, Validity, Construction, and Application of Marine Mammal Protection Act of 1972 (16 U.S.C.A. § 1361 et seq.).

64 ALR, Fed. 15, Necessity and Sufficiency of Environmental Impact Statements Under § 102(2)(C) of National Environmental Policy Act of 1969 (42 U.S.C.A. § 4332(2)(C)) in Cases Involving Highway Projects.

60 ALR, Fed. 386, "Compliance With State Standards" as Requirement to Granting Right-Of-Way Over Federal Public Lands Under § 505(A)(iv) of the Federal Land Policy and Management Act of 1976 (43 U.S.C.A. § 1765(A)(iv)).

48 ALR, Fed. 908, What is a "Mass Transportation Company" Under § 3(E) of the Urban Mass Transportation Act of 1964 (49 U.S.C.A. § 1602(E)).

25 ALR, Fed. 706, Authority of Secretary of Army to Deny Dredging and Filling Permit for Ecological Reasons Under § 10 of Rivers and Harbors Act of 1899, 33 U.S.C.A. § 403.

19 ALR, Fed. 904, Construction and Applicated, and § 18(A) of Federal-Aid Highway Act of 1968 (23 U.S.C.A. § 138) Requiring Secretary...

14 ALR, Fed. 508, Construction and Application of Wilderness Act (16 U.S.C.A. §§ 1131 et seq.) Providing for National Wilderness Preservation System.

47 ALR 3rd 1267, Propriety of Court's Consideration of Ecological Effects of Proposed Project in Determining Right of Condemnation.

192 ALR, Fed. 129, Validity, Construction, and Application of Intermodal Surface Transportation Efficiency Act.

181 ALR, Fed. 147, Validity, Construction, and Operation of Evidentiary Privilege of 23 U.S.C.A. § 409.

68 ALR, Fed. 578, Application and Construction of § 106 of the National Historic Preservation Act of 1966 (16 U.S.C.A. § 470f), Dealing With Federally Sponsored Projects Which Affect Historic Properties.

32 ALR, Fed. 332, Validity, Construction, and Application of Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531-1543).

11 ALR, Fed. 556, Standing of Private Citizen, Association, or Organization to Maintain or Construction of Highways, or Other Governmental...

Encyclopedias

Am. Jur. 2d Highways, Streets, and Bridges § 57, Preservation of Public Parks, Recreation Areas and Wildlife Refuges.

Am. Jur. 2d Parks, Squares, and Playgrounds § 21, Highways, Roads, and Walkways.

Forms

Federal Procedural Forms § 38:1, Scope of Division.

Federal Procedural Forms § 38:5, Public Hearings.

Federal Procedural Forms § 38:10, Standing to Sue.

Federal Procedural Forms § 38:16, Complaint-For Injunctive and Declaratory Relief-Highway Project Encroaching Upon Habitat of Endangered Species-Violations of Federal-Aid Highways and Endangered Species Acts...

Federal Procedural Forms § 38:17, Complaint-Against State and Federal Officials-To Enjoin Construction of Federal Highway Through Parkland...

Federal Procedural Forms § 38:25, Allegations in Complaint-Noncompliance With Requirements as to Preservation of Parklands, Wildlife Refuges, Etc. (23 U.S.C.A. § 138; Fed R Civ P Rule 8(a)).

2C West's Federal Forms § 2817.95, Pretrial Order-Stipulated by Counsel Without Pretrial Conference.

AMJUR PP Forms Highways Streets & Bridges § 215, Complaint in Federal Court-Against Federal and State Officials-For Injunctive and Declaratory Relief-Federal Highway Project Encroaching on Habitat of Endangered Species-Violations of Federal-Aid Highway And...

AMJUR PP Forms Highways Streets & Bridges § 216, Complaint in Federal Court-Against Federal and State Officials-To Enjoin Construction of Federal Highway Through Parkland.

AMJUR PP Forms Highways Streets & Bridges § 221, Complaint in Federal Court-Allegation-Noncompliance With Requirements as to Preservation of Parklands, Wildlife Refuges, etc.

20 Am. Jur. Pl. & Pr. Forms Pollution Control § 15, Complaint in Federal Court-Against State and Federal Officials-To Enjoin Construction of Federal Highway Through Parkland.

Notes of Decisions

2. —— Administrative Procedure Act, construction with other laws

Federal Highway Administration's (FHWA) issuance of final guidance regarding transportation enhancement activities was not final agency action, and thus was not subject to judicial review pursuant to Administrative Procedure Act (APA), where guidance was merely one step relied on to reach decision, and had no legal effect. Friends of Potter Marsh v. Peters, D.Alaska 2005, 371 F.Supp.2d 1115. Highways ⇐ 103.1

7. Project stages to which section applicable

Federal Highway Administration (FHWA) acted reasonably in concluding that planned highway expansion project would not "use" land with historical significance within meaning of Department of Transportation Act (DTA), and thus that FHWA was not required to make findings under Act concerning feasible and prudent alternatives and minimization of harm; prior to issuance of Record of Decision (ROD) and in coordination with State Historic Preservation Officer (SHPO), FHWA made extensive efforts to identify properties potentially within Act's definition and obtained SHPO's agreement as to non-use, considered factors mandated by regulations, engaged in several field studies, and followed procedural requirements. Valley Community Preservation Com'n v. Mineta, D.N.M. 2002, 246 F.Supp.2d 1163, affirmed 373 F.3d 1078. Highways ⇐ 103.2

11. —— Sufficiency of administrative record, feasible and prudent alternative

Federal Highway Administration's (FHWA) National Historic Preservation Act (NHPA) review of highway project was not deficient under Administrative Procedures Act (APA) because of properties studied were determined to be located well away from the actual project corridor, resulting in the agency's determination that no adverse effects to those properties were anticipated, and agency, in consultation with state, considered the project's adverse effects and adopted a mitigation plan. Concerned Citizens Coalition v. Federal Highway Admin., W.D.La. 2004, 330 F.Supp.2d 787, affirmed 134 Fed.Appx. 760, 2005 WL 1467044. Highways ⇐ 103.2

Federal Highway Administration (FHWA) did not act arbitrarily or capriciously, under Department of Transportation Act (DTA) provision governing use of land with historical or local significance, by designating as area of potential effect (APE) for planned highway expansion project 150 feet from edge of pavement on either side of existing roadway, with variable width for historic properties; FHWA in determining APE took adequate and appropriate steps including field studies and evaluations for visible effects, and identified cultural resources within APE and evaluated effect on each identified resource prior to Record of Decision (ROD), and programmatic agreement's indication that future refinement in road design could necessitate reevaluation of affected historical sites did not constitute improper deferral of entire process. Valley Community Preservation Com'n v. Mineta, D.N.M.2002, 246 F.Supp.2d 1163, affirmed 373 F.3d 1078. Highways ⇐ 103.2

13. —— Miscellaneous alternatives not feasible and prudent

Fact that Federal Highway Administration (FHWA) only included alternatives within a five-mile strip of land rendered the environmental impact statement (EIS) for highway project invalid; FHWA's failure to include other by-pass

No. 38996

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON ex rel. ROBERT H. DUVALL, AINSWORTH BLOGG as executor of the estate of VIOLET A. BLOGG, deceased, MRS. JOHN KING, OTTILIE I. DUVALL, IRA ALEXANDER, C. I. ANDERSON, JACK O. GORMAN and EUGENE F. HOOPER, *Respondents*,

vs.

THE CITY COUNCIL OF THE CITY OF SEATTLE, and M. B. MITCHELL, CHARLES M. CARROLL, CLARENCE F. MASSART, MYRTLE S. EDWARDS, FLOYD C. MILLER, PAUL J. ALEXANDER, TED C. BEST, EDWARD S. RILEY and RAY L. ECKMANN, the members of and constituting the said City Council, *Appellants*.

APPEAL FROM THE SUPERIOR COURT OF KING COUNTY

HONORABLE THOMAS G. JORDAN, *Judge*

BRIEF OF APPELLANTS

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Att "B"

A. Well, the value of the portion of the Arboretum that is taken, in my judgment, can only be measured by the cost of substituting other lands that would be adaptable for arboretum use, and adapting to that the present worth or Arboretum improvements in the part that is to be taken and plantings in that area. (1 CR 426)

Each appraiser added to the cost of the land occupied, the values of trees and shrubs destroyed; and the cost of relocating valuable plants, and where necessary, the Japanese Tea Garden. Moving or replacing site improvements and replanting expenses are additional costs.

The City Council's approach is correct for the law permits valuation of property taken for a public project at the cost of a "reasonably practical substitute facility," where (a) the municipality is required by law to provide a substitute facility or (b) a substitute facility is in fact necessary. Both exceptions apply here.

The Arboretum is a special purpose property and has a value quite different from vacant acreage. Located between Capitol Hill and Lake Washington, the Arboretum combines a variety of terrain from woodlands and meadows to thickets and cypress bogs (1 CR 339) suitable for all types of plant growth. Technically speaking, the City owns the land, but under the Arboretum Agreement (Ex. 6) the University of Washington utilizes it along with former state lands granted to it under R.C.W. 28.77.310 and R.C.W. 28.77.337 for Arboretum purposes. For the last thirty years, the University, the City, many private citizens and organized groups – the Arboretum Foundation, many Garden Clubs and even the W.P.A. – have made great investments of time and money, developing its potential as an Arboretum. Expensive sprinkler systems have been installed; footpaths and roads have been laid out and other improvements – including a meticulously authentic Japanese Tea Garden – have been added; innumerable varieties of trees, shrubs, vines and

flora have been planted and carefully cultivated. Like vintage wines, each year's growth adds to the Arboretum's value (1 CR 352-3).

The Arboretum now contains a vast variety of trees and plants. For example, just in the path and doomed by Route "S" are collections of birch (1 CR 307), willows (1 CR 307), larch (1 CR 307), lilac (1 CR 300-301), viburnum (1 CR 306), costly azaleas and cherry trees (1 CR 307), and several acres of the Pinetum (1 CR 339). Yet, the Arboretum is more than just a botanical collection of trees and woody plants; it comprises a sylvan setting and natural environment (1 CR 340-341, 629), for birds (1 CR 328, 478-480), bugs (1 CR 333) and bacteria (1 CR 372).

The President of the University of Washington, Dr. Charles E. Odegaard, told the City Council about the many uses of the Arboretum:

> The University treasures the arboretum because of four functions which it performs, and which are of inestimable value to the public interest. It is (1) a laboratory for research; (2) a specialized classroom for students from the University of Washington, but also from other colleges and from elementary and high schools in the area; (3) a resource for continuing education of adults through many kinds of programs which bring them to the arboretum; and (4) an open park area in a city already congested with building and concrete strips, an island of green which gives the city breathing room for the recreational and esthetic enjoyment of its people (1 CR 276).

A long procession of professors — Messrs. Gordon Orions (Zoology, rodent research, 1 CR 324-9); Melvin Hatch (entomology and biology, 1 CR 331-5); Arthur R. Kruckeberg (botany, 1 CR 336-344, 475); Walter A. Fairservis (public field trips, 1 CR 362-382); James S. Bethel (forestry, 1 CR 382-393); Stanley P. Gessel (soils, 1 CR 394-404); Robert E. Wearne (horticulture, 1 CR 405-8); Reinhard F. Stettler (forest genetics, 1 CR 408-12) and Victor Steinbruek (architect, 1 CR 499-502) — explained how the Arbo-

retum was used as a living laboratory for scientific studies and as a teaching tool in lectures to students and for field trips with the public (1 CR 475). It is ideally located contiguous to the University (1 CR 277).

The University declares that any land taken from the Arboretum must be replaced by substitution of similar land (2 CR 14-5). The facts in the record declare the necessity of replacing any land taken from the Arboretum:

> Any taking of land from the University of Washington Arboretum would do irreparable damage to the teaching and research function of the Arboretum and, hence, to the University of Washington.
>
> If any land is taken for highway purposes from the Arboretum, such land must be replaced by other like land to be used for Arboretum purposes.
>
> The most suitable land to be substituted for land that would be taken by the Thomson Expressway would be that land presently being used as a playfield at the south end of the Arboretum and known as the Madison Street Playfield (1 CR 271-2).
>
> A facility at a location outside the city, some distance removed from the campus and the population center, could not possibly serve the same variety of functions (1 CR 277).
>
> It must be borne in mind that the Arboretum, even in its earlier dimensions, was not a large expanse of land. Compared with other arboretums of consequence, its restricted size has always required very careful planning and management. Lake Washington Park and Foster Island originally comprised approximately 240 acres for long term arboretum purposes. This area has been reduced through the approaches to the Second Lake Washington Bridge by 47 acres (1 CR 233, 234).

If a portion of Washington Park and Playground were transferred to the Arboretum, an alternate location for Washington Park would have to be condemned, because such recreation areas are already "very short" and deficient in the neighborhood (1 CR 233).

In evaluating right of way acquisition costs, The City of Seattle

is obliged to consider the interest of the University of Washington in the Arboretum and required to make full compensation to the University. R.C.W. 43.09.210, which is sometimes called the Accountancy Act, reads as follows:

> Separate accounts shall be kept for every appropriation or fund of a taxing or legislative body showing date and manner of each payment made therefrom, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid.
>
> Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.
>
> All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.
>
> All unexpended balances of appropriation shall be transferred to the fund from which appropriated, whenever the account with an appropriation is closed.

Since the Arboretum is already devoted to a public use, the City will have to negotiate for – rather than condemn – whatever rights are required for the Thomson Expressway from the University and its Board of Regents.

Under these circumstances, use of the substitution theory was proper. A recent line of authority stems from the United States Court of Appeals for the Ninth Circuit and begins with *State of Washington v. The United States*, 214 F.2d 33 (9th Cir. 1954). In that case the United States sought to condemn from the State of Washington a section of highway situated within the limits of Hanford Engineering Works. At page 39 the court stated the general rule:

> The overwhelming weight of modern authority is to the effect that a municipality, a county, a State or other public entity is

of an elongated valley extending generally from Aloha Street to the Arboretum Interchange [1 CR 70-72, 396-397, (Ex. 20]. A route to the east of the Arboretum would not align with the Arboretum Interchange, would require the latter's reconstruction and would not be a direct route. A route to the west of the Arboretum would require expensive cuts in the side of Capitol Hill and would bisect the Montlake District [1 CR 97-98].

"The City owned property comprising the Arboretum has, pursuant to the "Arboretum Agreement" [Ex. 6, 1 CR 35, modified by Ex. 8, 1 CR 35, Ex. 9, 1 CR 36, 1 CR 443-6] authorized by Ordinance 65310 [Ex. 7, 1 CR 35], for thirty years been developed under the supervision of the Board of Regents of the University of Washington through donations of material and labor, and expenditures of University funds, plus private contributions [1 CR 273-9], into one of world-wide reputation and is now used by the University and other institutions of higher learning as a laboratory for research [1 CR 294-423], also by public school districts for outdoor classroom instruction and extensively by the public as an area for passive recreation [1 CR 443-482, 504-510, 583, 623-4, 646; Ex. 39, 46, 47, 49].

"The University of Washington Arboretum is a vital and irreplaceable teaching and research adjunct to the University of Washington [1 CR 273-9, 282, 318-422]. The University of Washington Arboretum provides an irreplaceable recreational and open space, amenity to the people of the City of Seattle in its central area [1 CR 218-219, 221, 269-271, Ex. 39, 295, 422, Ex. 49, 443-482, 500-510, 646].

IV.

"Several routes, identified for convenience as A, B, S, S Modified and C, were considered by the City Engineer and his staff. B, A and S were respectively primary and alternative proposals of the City

OWNERSHIPS

[All Petitioners listed, except Alexander]

* * *

and further, that with respect to each of the following numbered parcels (as more fully illustrated on Exhibit 2), the public convenience and necessity requires the acquisition of only a part thereof for Route B, but does require that the existing rights of access from said parcels to existing avenues or streets, as more fully set out in the table below, be acquired for the purpose of limiting access to said Route B:

* * *

Parcel No.	*Name*
7-2151	Ira H. Alexander"

* * *

Petitioners dispute Findings II, III, VI, VII, IX, X, and XI.

(b) The Finding Are Correct

These Findings touch only the main points. The Council Record includes testimony in support of the above Findings showing the serious disadvantages of Route "S" modified. Route "S" modified cuts a swath 130 feet wide almost down the middle of the swale of the Arboretum (1 CR 610, 613, 619), destroying all natural growth underneath and blighting that alongside (1 CR 340-1, 588-592, Ex. 65). The Dean of the University's College of Forestry testified as follows:

> The route would essentially eliminate the space that would be occupied by the freeway, regardless of the fact that it would be elevated . . . (I)t would not be possible to grow the kinds of collections that are important, here, underneath the freeway through the Arboretum. As a matter of fact, depending upon the elevation and some of the other topographic features, the different portions of the Arboretum along this freeway, there

would be substantial areas to either side of this structure that would also not be useful for reasonable and useful Arboretum plantings (1 CR 629).

> The structure would affect the entire microclimate of the area, including the availability of light and situations that would be normal to the kinds of environment one has to have in an Arboretum, the moisture situation, the condition with respect to the movement of air, wind and in fact most environmental factors in the microclimate would be affected one way or another. It simply wouldn't be an appropriate environment for an Arboretum for scientific and technical use (1 CR 630).

The noise of traffic would destroy the natural serenity, disrupt teaching (1 CR 376), and scare away some of the bird life (1 CR 327, 376-7, 479-481). The ethylene and other chemicals precipitating from auto exhaust will have unkown side-effects (1 CR 374, 636). Concrete columns will detract from the natural woodland setting; and the structure itself will dominate and damage the view:

> There would be a tremendous visual impact of this structure going across the Western edge. We have been working for a number of years on developing vistas that presumably now, instead of going off into the hillside in the area of Capitol Hill, would smash right into the freeway which would be constructed there (1 CR 636).

A heavy shadow would be thrown over the Japanese Tea Garden (1 CR 600-2, 606, 616, 553). Portions of the Arboretum would be severed and their usefulness for Arboretum purposes gone (1 CR 614). Valuable plants would be destroyed (1 CR 616), and development of the Arboretum in the future impaired (1 CR 411-2). Frederick M. Mann, University Architect, gave this cogent analogy:

> To illustrate the point, I think that one can consider — and I don't say this facetiously — that the appropriateness, the common commode can be a very graceful and beautiful article; however, one would not put it in the middle of his living room. I make a direct comparison with it and a structure of this kind in the middle of the Arboretum (1 CR 640).

An elevated expressway is totally inappropriate through the Arboretum.

Outside the Arboretum, Route "S" modified would generate earth slide problems with several houses on 26th Avenue East at Station 35 (1 CR 603-4), carry traffic at window level past homes at Station 58 (1 CR 604-5), and erect an unsightly retaining wall in front of residences at Station 66 (1 CR 605). Route "S" modified would not connect with the Arboretum Interchange already built (1 CR 564). In contrast, Route "B" integrates smoothly with that structure, and permits easy access to the Evergreen Point Floating Bridge or the Seattle Freeway via the Roanoke connection (1 CR 94).

As a depressed roadway at the edge of the Arboretum, Route "B" minimizes or avoids most of the rival plans' drawbacks. A small change in location can make a large difference in effect (1 CR 381). Among other advantages, Route "B" has certain safety features that also promote efficiency: the side slopes more easily retain cars out of control (1 CR 563) and its full shoulders provide a refuge off traveled lanes for disabled vehicles (1 CR 562). Perhaps, the cost of acquiring private property for Route "B" is about a million dollars greater than for plan "S" modified (1 CR 168,616), but the cost of construction of Route "B" is almost two million dollars less! (Finding VI, 1 CR 140, 538, 594).

Route "B" does not conflict with the City's general Comprehensive Plan of 1957. The comprehensive plan was a general guide, consistent with both Route "B" and "S" modified (1 CR 229, 518-520). Had it been intended that an expressway be plowed through the middle of the Arboretum, the Japanese Tea Garden would never have been established in its present location in 1960 (1 CR 451).

In this modern and urbanized society, the value of open spaces and green areas is becoming increasingly appreciated (1 CR 320-1).

In 1962 a national conference of leading highway and city planning officials and landscape architects issued the now-famous "Hershey Report." A recommendation in the report reads as follows:

> Freeways should not encroach upon park land. They should add to rather than subtract from the city's open spaces . . . In extreme cases, where no reasonable alternative location exists, and a portion of park land must be traversed by the freeway, all possible means should be taken to minimize the adverse effects. In such cases, equivalent land should be provided elsewhere for park purposes according to approved land-use plans (1 CR 280, Ex. 44).

A City may condemn property to establish a park. Certainly, it should be allowed to condemn property to preserve an Arboretum. Other highway officials have done so (1 CR 356-7). Such action co-incides with the President's and the federal government's policy of preserving our natural heritage and beautifying our cities (1 CR 280).

Traffic conditions compel construction of the Expressway, (Finding 1). The choice lies between condemning private homes or the Arboretum. It calls for a policy decision. After a public hearing and careful consideration of all viewpoints, the City Council chose to save the Arboretum. Its adoption of Route "B" was certainly reasonable, and for the community, the best choice.

CONCLUSION

In *The Deaconess Hospital v. State,* 66 Wn.2d 378, 384 (1965), the second opinion begins by recognizing that legal processes sometimes paralyze public projects:

> The king, it was once said, can do no wrong. Though so ancient an aphorism be held to declare the rule for today, clothing the king's sovereign successor in the same immunity, this case demonstrates a silent corollary to it, that wrong or no wrong, whatever the successor sovereign would do, his officers and agents can long be delayed in the doing of it.

Finding I (not contested) and photographs show that streets in the

6-Lane Alternative Design Options: Seattle Pacific Street Intersection (draft rendering)

Att. "C"