

GRAHAM & DUNN PC

June 1, 2004

Via Hand Delivery

Allison Ray
ALASKAN WAY VIADUCT & SEAWALL REPLACEMENT PROJECT
999 Third Avenue, Ste. 2424
Seattle, WA 98104

Re: Draft EIS Comments

Dear Ms. Ray:

These comments on the Draft Environmental Impact Statement ("DEIS") are submitted by each of us signing below. We each have deep and long-standing interests in downtown Seattle real estate generally, and more particularly in the Seattle Waterfront. Graham & Dunn, a 110-year old Seattle law firm, occupies much of Pier 70 and currently has 130 people working there. Entities controlled by John Goodman and Fred Grimm own Pier 70, the Northwest Worklofts, the Skyway Luggage Building, the Coleman Building, the OK Hotel Building and other parcels. Goodman's and Grimm's businesses, Pinnacle Realty Management and Triad Development, employ 175 people on Pier 70. Entities controlled by the principals of Martin Smith Inc (Mickey Smith and Jeff Roush) own Piers 55 & 56, the Seattle Trade & Technology Center (RealNetworks) Building, the 1201 Western Building, the 83 King Building, the Provident Building, and other sites. Gregory B. Smith controls the 8-acre WOSCA/Stadium Center site and other nearby parcels. Martin Selig owns the Airborne Building and 3131 Elliott, located exactly where the "bypass tunnel" is proposed to start/finish. Diamond Parking Services operates and owns parking facilities on or near the waterfront; its office is on Elliott. Mithun, the architecture, design and planning firm, occupies much of Pier 56. Argosy Cruises is Seattle's pre-eminent cruise operation on Elliott Bay, and occupies space on Piers 54, 55, 56 and 70. The properties owned, controlled or occupied by the signatories to these comments are depicted in red on the enclosed map.

B-003-001

Each of us submitting these comments has interests in Downtown Seattle and Seattle Waterfront real estate that will be profoundly affected by the Viaduct & Seawall Replacement Project. All of our businesses depend upon, and each of us has invested significantly in reliance upon, the ease of access along Alaskan Way, the amenity of our Waterfront (or nearby) locations and the outstanding pedestrian environment that has been created along and near Alaskan Way over the last decade. Our businesses, our tenants, our employees and our customers will suffer severe,

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B-003-001

The information provided in environmental documents for this project is appropriate for the decision at hand. The alternatives presented in the 2004 Draft EIS and the 2006 and 2010 Supplemental Draft EISs represent a reasonable range of alternatives to meet the purpose and need of the project, as mandated by the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA). Similarly, a reasonable range of construction approaches has been described and evaluated in these documents. The content and level of analysis conducted for these documents is adequate to inform the public and decision makers of the possible effects resulting from the project or from inaction.

Please see this Final EIS for discussion of impacts and proposed mitigation measures.

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B-003-001 indeed in some cases probably fatal, adverse impacts to those values throughout the period of construction of whatever alternative is ultimately selected. With some of the alternatives under consideration, those adverse impacts will be only somewhat moderated after construction is completed, as a result of the additional traffic that the project may permanently direct onto Alaskan Way. Thus, each of us submitting these comments is vitally concerned that the Environmental Impact Statement must fulfill its statutory requirements of providing complete information about environmental impacts before there is a commitment of resources to a course of action, and of ensuring that all reasonable alternatives that could achieve the project's objective at a lower environmental cost are fully considered.

Our financial investments have been very significant. Our commitments to the City and to the Waterfront are obvious, deep and true. The consequences to each of us derived from the fundamental defects we perceive in the DEIS, which we discuss below, could be profound, and calamitous.

B-003-002 I. The DEIS is inadequate because it does not consider alternatives for construction.

The most significant adverse impact of the project is its construction. All of the alternatives for the final product have positive outcomes. DEIS at 28. But, for the 7½ to 11 years it takes to build the replacement, the construction process will visit extraordinary adverse impacts on the construction area where our properties are located. Thus the EIS would be expected to focus most heavily on the impacts of construction, alternatives for the construction process to mitigate those impacts, and other mitigation that would lessen those impacts. Instead, the DEIS considers NO alternatives for construction, minimizes the extent of the impacts to businesses in the construction zone (while focusing extensively on the impacts to those who travel through the construction zone), and leaves the identification of any specific mitigation for the final EIS or subsequent permit actions.

The DEIS is required to describe reasonable alternatives "that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." WAC 197-11-440(5). Far from doing so, the DEIS considers only the alternative of leaving at least two lanes of traffic in each direction on SR 99 open during most of the construction period. The DEIS acknowledges that this will lengthen the construction period, and thus the period of significant adverse impact. "One way to shorten construction may be to completely close SR 99 for several years." DEIS at 135. Nonetheless, it does nothing to present the impacts or the benefits of the most obvious construction alternative, which is to close SR 99 and permit traffic to find its own way on the numerous alternative routes through the area.

B-003-003 II. The alternative of closing SR 99 must be analyzed and its impacts disclosed now, before the selection of the preferred alternative for the project.

Analysis of the alternative of closing SR 99 must be considered now, before the preferred alternative for the actual project is chosen, because it may significantly affect the selection of the preferred alternative. If money were no object, the selection of the preferred alternative would

B-003-002

In response to comments such as this, the 2006 Supplemental Draft EIS evaluated three new construction approaches, including closing the SR 99 to through traffic, which present a range of construction durations. As the project evolved, an additional construction approach for Bored Tunnel Alternative was presented in the 2010 Supplemental Draft EIS.

The Final EIS provides information on construction of the preferred Bored Tunnel Alternative as well as the Cut-and-Cover Tunnel and Elevated Structure Alternatives, and how adverse effects can be minimized or mitigated. The information provided accurately describes potential impacts during construction for each of the three alternatives. The project design cannot be finalized until after the environmental process concludes.

B-003-003

The 2004 Draft EIS evaluated one construction plan that considered brief closures of SR 99 during construction, but otherwise assumed that at least two lanes would be provided in each direction on SR 99 or an alternate detour route. In comments received on the 2004 Draft EIS, many people asked the lead agencies to consider more than one construction plan. Specifically, many people wanted to know if closing the corridor would reduce the amount of time it takes to build the project. To respond to this question, three different construction plans were developed (a shorter construction plan, an intermediate construction plan, and a longer construction plan) and evaluated in the 2006 Supplemental Draft EIS. Since 2006, the Cut-and-Cover Tunnel and Elevated Structure Alternatives and the construction approach for each of the alternatives have been refined. One construction plan is analyzed for each of the alternatives (Bored Tunnel, Cut-and-Cover Tunnel, and Elevated Structure) in the Final EIS. Chapter 3 describes each

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be obvious, to the point of being non-debatable. Once built, the Tunnel Alternative (with the option of leaving the Elliott and Western ramps open) has far more benefits and fewer adverse effects than any other alternative. The primary impediment to selection of the Tunnel Alternative, however, is cost – a possibly insurmountable impediment. As the DEIS discloses, however, closing SR 99 for the duration of construction would not only make a huge difference in terms of time of construction and thus the extent of adverse impact on the businesses in the construction zone, but also potentially a huge difference in cost. Not only would the fly-over at Broad or Battery Street be unnecessary, but the construction site could be fully available to the contractor to build the project in the most efficient way possible. There would be no need to build first the southbound and then later the northbound lanes of the tunnel. It would be possible to reduce the number of times the contractor needed to work in the same area. Keeping SR 99 open during construction would assure that the contractor must confront the least favorable conditions possible, which will inevitably maximize the cost of the project. Thus, closing SR 99 may very well reduce the cost of the Tunnel Alternative enough to make it affordable. That is critical information now, not after the selection of the preferred alternative.

An alternative that closes SR 99 will presumably also have adverse impacts. It may be that when that alternative is fully explored, the decision will be to proceed with construction as the DEIS now assumes will occur. But, the purpose of an EIS is to explore and disclose the impacts of reasonable alternatives, so that the public and its elected officials can make fully informed decisions. Thus, the DEIS should address the impact of traffic relocation during a construction period which closes SR 99, and should identify strategies for mitigating such disruption. We believe that whatever adverse impacts occur to traffic if SR 99 is closed may be offset by a shorter construction schedule and a reduced construction budget, i.e., that there may not be a net adverse impact. However, the important point here is that the DEIS fails to examine this alternative and assess its ramifications.

B-003-004

III. The DEIS is inadequate because it does not adequately disclose the impacts of construction on the businesses and their employees and customers in the construction zone.

Throughout, the DEIS discloses a bias towards keeping traffic flowing and disregards the impacts on the businesses and residences in the construction zone. The DEIS identifies both the number of businesses, and the number of employees of the Ballard/Interbay/Northend Manufacturing Center and the Duwamish Manufacturing and Industrial Center. DEIS at 40. Nowhere, however, does it disclose the number of employees who work within a block of the construction zone, nor the number of people who live within a block of the construction zone, much less the total number of people who annually visit or recreate or shop within a block of the construction zone. Those are the people who will be subject to 24-hour impacts for months at a time, over many years, as “construction will pass by properties located in the construction zone more than once.” DEIS at 135. The DEIS says nothing about the impacts on employees of businesses or residents of the construction zone – although it discloses that noise will reach 83 dbA at 100 feet and 76 dbA at 200 feet from activities such as pile driving and jack hammering, that will occur during construction. The DEIS at most suggests that “the combination of . . .

alternative and its construction plan, and Chapter 6 describes construction effects.

B-003-004

The 2004 Draft EIS adequately describes construction conditions and the potential for adverse affects on local businesses. Factors determining failure or success of a business are very complex under any circumstance and it is impossible to predict specific project effects to businesses, such as probably business failure rate, without considerable speculation. While construction will be underway throughout the corridor, from the perspective of a individual business the level of activity will not be constant. Mitigation measures for businesses will be provided and are discussed in Chapter 8 of the Final EIS.

At this point in project development, there is no basis for predicting a vacancy rate during construction. The 2006 Supplemental Draft EIS expands upon this discussion by examining a range of construction approaches and the 2010 Supplemental Draft EIS describes an additional construction approach for the Bored Tunnel Alternative. The Final EIS describes current construction plans and sequencing. Coordination and outreach to businesses and residents in the project area will continue through the design and construction of the project.

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B-003-004 construction effects *could* cause people to avoid the waterfront, which *could* reduce business revenues.” DEIS at 149. That is an extraordinary understatement. There has been no study of the probable failure rate of businesses resulting from construction. Without such study it is impossible to give real numbers, but the EIS should have done such study, and had it done so, it would be required to disclose that the impact of the project may be 30-70% vacancy of buildings along the construction zone by completion. By failing to fully and adequately describe the impacts on the people whose lives and livelihoods depend upon the accessibility and desirability of the construction area, the DEIS provides no basis for analysis of the consequences of alternatives to the one construction process proposed.

B-003-005 IV. The DEIS is inadequate because it provides no specific mitigation.

Throughout the DEIS chapter on construction, the DEIS says that mitigation will be described in the final EIS, or at some even later point. See, e.g., “Additional information describing how SR 99 and Alaskan Way surface street will operate during construction will be presented in the Final EIS,” DEIS at 144; “A parking mitigation strategy will be included in the Final EIS,” DEIS at 145; “A specific plan incorporating the strategies [for minimizing traffic impacts] will be included in the Final EIS,” DEIS at 145; “[Noise] mitigation requirements would be defined in contractor specification and by the noise variance,” DEIS at 146; “Specific mitigation measures for affected businesses will be provided in the Final EIS,” DEIS at 150. A critical function of the EIS is to “discuss reasonable mitigation measures that would significantly mitigate these impacts.” WAC 197-11-440(6)(a). The discussion of mitigation must occur within the DEIS, so that the public has an opportunity to comment upon it. The final EIS should respond to those comments, not be the first opportunity for the public to review proposed mitigation.

B-003-006 V. The DEIS is inadequate because it does not adequately disclose the impacts on the pedestrian environment in the North Waterfront area.

Over the last 20 years public and private investment has created a major pedestrian promenade along what the DEIS describes as the “North Waterfront.” While the Central Waterfront is primarily tourist and ferry traffic oriented, the North Waterfront is used during the day and on weekends by thousands of primarily local residents for walking, jogging and similar recreation. The DEIS fails to recognize this, and thus completely ignores the impact of the proposed closure of the Elliott and Western ramps, which directs all permanent traffic from Ballard/Interbay onto Alaskan Way. The DEIS misses the impact on the pedestrian environment by apparently having only counted pedestrian usage in the winter, at the PM peak hour. DEIS, Appendix C at 105. Usage of the North Waterfront is primarily during the workday and on weekends, and primarily in spring, summer and fall. The EIS should contain data that discloses the actual use, at the peak periods for pedestrian use, and then should analyze the impact of pouring additional traffic onto Alaskan Way on such pedestrian uses.

The DEIS simply assumes the existence of the tunnel under the Seattle Art Museum’s Olympic Sculpture Park – never disclosing the significant adverse impacts of that tunnel on the Sculpture Park and the entrance to Myrtle Edwards Park, or its effect of quadrupling traffic on Alaskan

B-003-005

Mitigation measures for the preferred alternative, consistent with those described in in the 2004 Draft EIS and 2006 and 2010 Supplemental Draft EISs, are described in further detail in Chapter 8 of the Final EIS. Further, the lead agencies have provided information on mitigation as it has been developed through on-going public meetings and coordination.

B-003-006

We appreciate your concerns regarding pedestrian access in the north waterfront area. Updated pedestrian volumes were collected by video along the Alaskan Way surface street in downtown Seattle in 2006. The purpose of these counts was to quantify pedestrian activity in the summer season along the waterfront for use by the project team in assessing transportation conditions, developing mitigation programs, completing a Final EIS and furthering project design. To account for pedestrian volumes in the north waterfront area, a count station was located at Pier 66. Data collected for this effort confirms that pedestrian activity on the waterfront promenade is substantially higher in the summer, particularly during summer weekends. The updated pedestrian counts have been included in the Final EIS.

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B-003-006 Way along the North Waterfront. Then the DEIS assumes that the primary – indeed the only – adverse impact on the pedestrian environment will come from changing the “look” of an area, and completely ignores the impact on the pedestrian environment of quadrupling the amount of adjacent traffic. “One of the main concerns with the Alaskan Way Viaduct and Seawall Replacement Project is how new structures and facilities might change the *look* of the different areas near the corridor, and how changes to that *look* might affect people’s experience in the area.” DEIS at 43. Of course, experience teaches that a quadrupling of traffic has a profound impact on the pedestrian environment. From the disclosure, at 39, that 33,500 vehicles daily use the Elliott and Western ramps, and the statement that there are currently about 9,000 vehicles on Alaskan Way at the Central Waterfront, one can surmise that closure of the Elliott and Western ramps and direction of their traffic onto Alaskan Way will more than quadruple the traffic on the North Waterfront; yet the DEIS never states any of this. Nor does the DEIS provide any justification for closure of the Elliott and Western ramps. Leaving them open is simply stated as an “option.” The DEIS must be supplemented to fully explain and analyze the basis for the decision to close the Elliott and Western ramps, and to disclose the impact of the alternative.

VI. A Draft Supplemental EIS is Essential.

B-003-007 These are flaws in the DEIS which cannot simply be rectified by the Final EIS. One of SEPA’s functions is to allow the public to comment on the proposal before the public decision-makers. The information that is missing here is fundamental to the decisions that must be made, and the public should not lose its right to comment because of the inadequacy of the DEIS.

In summary, we believe the DEIS is inadequate and requires supplementation because:

- (a) It fails to consider any alternatives for the construction process, particularly the obvious alternative of closing SR 99 to shorten and reduce the cost of the project construction.
- (b) By failing to consider alternatives now that would shorten and reduce the cost of the construction process, the DEIS prejudices the selection of the preferred alternative by a misleading inflation of the cost of the Tunnel Alternative.
- (c) The DEIS does not disclose the impacts of construction on the people who must live and work in its midst; the DEIS does a disservice to thousands of people who must live through years of disruptions by saying nothing more than this “could” drive customers away.
- (d) The DEIS fails in its obligation to disclose mitigation that may reduce the primary adverse impacts of the project; it is simply not good enough to disclose potential mitigation later.
- (e) The DEIS fails to adequately describe the impacts of additional traffic on Alaskan Way from the closure of the Elliott and Western ramps and the assumed Broad Street tunnel.

B-003-008

B-003-009

B-003-007

As discussed in B-003-003, the 2006 Supplemental Draft EIS was prepared, in part, to more fully evaluate construction effects. Chapter 7, Question 16 of the 2006 Supplemental Draft EIS presents the expected effects to the local and regional economy during construction. In addition, the Economics Technical Memorandum (Appendix P of the 2006 Supplemental Draft EIS) describes the effects associated with displacement of customers from the construction corridor. Since that time, the alternatives and the construction approach for each of the alternatives have been refined. Details about the Bored Tunnel, Cut-and-Cover Tunnel, and Elevated Structure construction plans are presented in Chapter 6 of the Final EIS.

B-003-008

A range of reasonable mitigation measures were presented in the 2004 Draft EIS and updated in the 2006 and 2010 Supplemental Draft EISs. These mitigation measures have been developed in more detail and are discussed in Chapter 8 of this Final EIS.

B-003-009

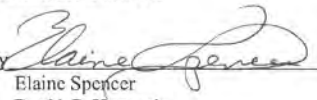
After the 2004 Draft EIS was published, your comments along with others led to additional analysis and revised alternatives presented in the 2006 and 2010 Supplemental Draft EISs. Because the project has evolved since comments were submitted in 2004, please refer to the Final EIS for the current information and additional traffic analysis.

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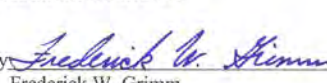
B-003-010

The DEIS must be supplemented to address these issues. Only a supplemental Draft EIS, not simply providing the information in the Final EIS, will fulfill the requirements of SEPA. Alternatives to construction will have different impacts on different people and businesses, as an alternative that reduces the adverse impact on those in the construction zone may increase the impact on others who simply travel through it and would need to find alternative routes if it were closed. The public is entitled to comment on these differing impacts, and only by supplementing the DEIS will that be possible.

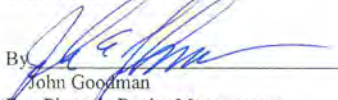
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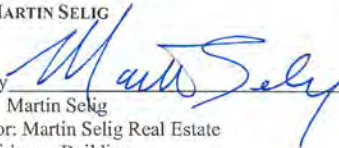
Since this comment was submitted, the project has published two Supplemental Draft EISs. The Supplemental Draft EIS published in July 2006 addressed additions to the project north of Battery Street Tunnel, modifications to the alternatives, and additional construction approaches. The Supplemental Draft EIS published in October 2010 addressed the permanent and construction effects of the Bored Tunnel Alternative.

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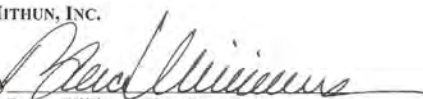
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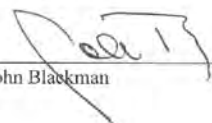
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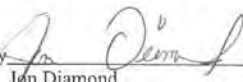
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