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Dear Ms. Freudenstein:

This letter provides my comments on the final environmental impact statement ("FEIS") for the Alaskan Way Viaduct Replacement Project ("AWV"). I also incorporate my December 2010 comments on the draft by this reference.

I am a resident and property owner in downtown Seattle and a semi-retired lawyer with thirty eight years of experience as a practicing attorney and as a manager in the public and nonprofit sectors. I have long followed the AWV Project and have made a number of comments to both State and local officials.

Although the FEIS partially corrects a major defect in the Draft – the refusal to fully acknowledge the fact that the proposed action is a tolled deep-bored tunnel ("DBT") - I continue to believe that the FEIS fails to adequately inform decision makers and the public.

I-007-001

**1. The Purpose and Need Statement Remains Too Narrow and Real Options Are Given Short Shrift.**

The Statement of Purpose and Need is a critical part of any EIS as it circumscribed the range of alternatives that were considered. In this case, the Project's Purpose and Need Statement was rewritten from the even handed "The project will maintain or improve mobility, accessibility, and traffic safety for people and goods along the existing Alaskan Way Viaduct Corridor" to feature the much narrower concept of "vehicle capacity." Using the term capacity instead of mobility eliminated from consideration potentially viable and cost effective solutions that include transit, demand management, or available capacity on other facilities. As

**I-007-001**

We disagree with your comment that the project's purpose and need statement is too narrow and has eliminated potentially viable and cost-effective solutions that rely on transit, demand management, or adapting available capacity on other facilities. Changes made to the project's purpose and need statement and the reasons for these changes are discussed in Chapter 2, Question 6 of the Final EIS. Changes made to the project's purpose and need statement did not serve to narrow the scope of concepts that could be considered. Instead, the changes that were made allowed for a broader scope of solutions to be considered. The purpose and need statement presented in the 2006 Supplemental Draft EIS stated, "the project will maintain or improve mobility, accessibility, and traffic safety for people and goods along the existing Alaskan Way Viaduct Corridor..." This purpose indicated that mobility must be maintained or improved. The project's current purpose and need statement is less restrictive by stating that it will provide a facility that "provides capacity for automobiles, freight, and transit to efficiently move people and goods to and through downtown Seattle." An important difference between the two purposes is that the earlier purpose statement required mobility to be maintained or improved, the updated purpose statement is focused on providing capacity to efficiently move people and goods to and through downtown Seattle, but it doesn't specify that existing capacity must be maintained.

Various surface and transit concepts have been considered throughout the life of this project, beginning with the Surface Alternative that was fully evaluated in the 2004 Draft EIS. The Surface Alternative was eliminated from evaluation in the 2006 Supplemental Draft EIS because it didn't meet the project's purpose and need statement. In the 2010 Supplemental Draft EIS, a new Surface and Transit Hybrid concept was considered and dropped as discussed in the Final EIS in Chapter 2, Question 6. Additional traffic analysis was completed after the 2010 Supplemental Draft EIS was published in response to comments

**I-007-001** a result, FEIS users have been denied a full analysis of a surface/transit option. This unfortunate because, in the real world, the current debate is between advocates of the DBT and those who believe that the Viaduct can be removed and freight and personal mobility maintained with a suite of incremental road and transit improvements. The FEIS is not as helpful in this debate as it could have been.

**I-007-002** **2. Why Not a Planned Viaduct Closure?**

In evaluating the "Viaduct Closed" Alternative, only "Unplanned" closures are studied. Evidently a planned closure is unthinkable. Why? I understand that transportation officials have developed plans to respond to an emergency Viaduct closure. Why not think through transportation life without the Viaduct and develop incremental strategies to phase the facility out while allowing time for incremental improvements to be implemented and the public to adjust?

**I-007-003** **3. The Project's Financial Plan is Still Not Firm and the Contingency Mostly Spent**

The State Legislature has capped State funding for the Project at of \$2.4 billion. The rest of the funding package - \$700M – is no firmer now than it was when the SDEIS was released months ago. The Port of Seattle's \$300 million has still not been legally committed, and according to a recent press report, the Port Commission won't even look at a "Financing Plan" before the end of 2011. Moreover, the \$400M required to be raised by future tolls is on thin ice. WSDOT has still not even asked the Legislature to authorize tolling the facility.

Meanwhile, the practicality of tolling the Tunnel is beginning to be questioned in light of the large unmitigated impact of diverted traffic to the City's street and transit systems. The FEIS coyly states that, with the DBT, Seattle's CBD access would be "less direct", travel time between Ballard and Spokane St. would be 1-6 minutes longer than with the existing Viaduct, and freight travel times would be increased. But this is claimed to have a "negligible effect" on the overall economy. And now we learn from the State's recently released Financial Plan that transit into and through downtown Seattle will be slowed as well. Quite a pay-off for a \$2B investment, don't you think?

received on the 2010 Supplemental Draft EIS. A discussion of this analysis and the rationale for not evaluating a surface and transit hybrid in the Final EIS is provided in the Final EIS in Chapter 2, Question 7.

**I-007-002**

The long-term effects of closing the viaduct and not replacing it, which would effectively be a planned closure, are described in Chapter 5, Question 1 of the Final EIS.

**I-007-003**

The Washington State Legislature passed into law RCW 47.01.402, which commits the state to providing funding up to \$2.8 billion to replace the SR 99 Alaskan Way Viaduct, with tolling to provide up to \$400 million of that commitment.

WSDOT has informed FHWA that:

"The state funds programmed by the State Legislature include gas tax revenue from the Motor Vehicle Fund through the Nickel and Transportation Partnership Act (TPA) taxing authorities, and federal funding. The funds are used across Washington State for highway related projects and are bonded with General Obligations bonds backed by the good faith and credit of the state (RCW 47.10.864). Bonds issued under the authority of RCW 47.10.861-866 are a general obligation of the State of Washington and pledge the full faith and credit of the state to the payment of principal, interest and contain an unconditional promise to pay such principal and interest when the bonds become due. Bond proceeds for toll revenue may include General Obligation bonds, Toll Revenue bonds or a combination of both as determined by the Washington State Treasurer and the State Finance Committee. In addition, on February 9, 2010, the Port of Seattle Commission, by a 5 to 0 vote, moved to affirm the Port's support and financial commitment to the Bored Tunnel Alternative."

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Then there is the matter of cost overruns. Neither the State nor the City of Seattle has been willing to accept responsibility for paying these potential costs and each claim to think that this responsibility is on the other. But experts hired by the City saw a 40% probability that cost overruns will occur. And that was before the State acted to commit more than 75% of its \$415M contingency before the Tunnel portion of the Project has even begun. When Protect Seattle Now tried to get a court to rule on the legality of the cost overruns portion of the Tunnel enabling statute, the State trotted out technical defenses to block any judicial resolution. It would seem that “what they don’t know won’t hurt them” is the official State doctrine on this matter.

And then there is Mr. Elman’s latest initiative which would scupper the State’s preferred differential tolling scheme and force the Legislative to vote to imposed specific tolls rather than punt to the Transportation Commission.

In addition, the State has said publicly that it intends to deal with any emerging cost problems by “managing scope.”

The FEIS should have evaluated a backup plan that discloses in detail how the State plans to respond to the uncertainty described above including exactly which elements of the Project scope will be sacrificed if necessary to avoid cost overruns and how the Port and tolling revenues would be replaced if necessary.

I-007-004

#### 4. The Project’s Economic Benefits Should be Better Justified

Project boosters have made much of the alleged economic benefits of the Project and specifically its Deep Bored Tunnel preferred alternative. Hence, the Economics Discipline Report (“EDR”) that is part of the FEIS takes on special importance to the public and decision makers.

Direct Job Creation: The EDR states that the average number of temporary jobs created by the Deep Bored Tunnel portion of the project would total 480. But how many of these jobs will actually be “local” as opposed to filled by technical specialists in the tunneling industry who move about as tunneling work presents

Finally, WSDOT has submitted a federally required finance plan to FHWA, entitled *Initial 2011 Financial Plan SR 99 Alaskan Way Viaduct Replacement Project*, which is currently under review. FHWA expects to complete its review and approve the finance plan following FHWA's authorization of this Record of Decision.

#### I-007-004

Chapter 5, Question 20 and Chapter 6, Question 18 as well as Appendix L, Economics Discipline Report, describe the permanent and construction effects of the Bored Tunnel. The analysis provided follows FHWA and WSDOT guidance and provides appropriate information for the public and decision makers.

I-007-004

itself? The EDR doesn't say. When I raised this question in comment on the Draft, the response was that WSDOT could not control who ends up getting hired. But I didn't ask for control but rather a good faith analysis. The FDIS should have provided this analysis. .

Direct Job Elimination: Deep Bored Tunnel construction will actually eliminate or displace some existing local jobs due to property acquisition at the two Tunnel portals. According to the FEIS, the total job loss would be 152. At least some of this job loss will probably be temporary but that is also true of the jobs created. So it would seem fair to net out the loss and set the temporary direct job creation number at 328. And of course, all of the lost jobs, unlike the new ones, would affect local workers. The FEIS should have acknowledge this

Indirect Economic Impact: The Bored Tunnel portion of the Project is estimated to cost \$1,960M. But, according to the EDR, DBT expenditures include \$130M in federal "new money". Only this money would provide secondary economic "stimulus" as the State and local funds would be spent in the state even without the DBT project. But how much of total Project expenditures will actually occur locally? The successful bidder is national and international in make-up so it is probable that a substantial amount of Project direct and secondary spending will actually take place outside of Washington and outside of the United States. For example, the Tunnel Boring Machine, rumored to cost \$80M, will be fabricated in Japan. What about the portion of Project expenditures that necessarily goes to contractor overhead and profit? Won't a lot of this money be spent where the successful firms are based? The FEIS does not deal with this. It is possible that the "money out" could be greater than the (new) money in. If so, the stimulus value of the project could be zero or negative. Moreover, DBT construction will disrupt area businesses. Shouldn't these losses be netted out when calculating the temporary stimulus value of the project? The FEIS should have provided additional information to clarify these matters.

Loss of City Revenue and Higher O&M Costs: The EDR points out that the DBT project will eliminate a number of parking spaces, mostly in the areas of the north and south portals as well as under the existing Viaduct. This permanent parking revenue loss has been estimated to cost the City about between \$500M and \$2.1M in annual revenue. During the construction period, 630-850 on street parking spaces will be lost. Annual revenue loss to City: \$1.5 - \$1.8M.

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The FEIS does not discuss how the City is expected to make up this ongoing revenue loss. In addition, business displacement caused by Project construction would cause an unspecified loss in tax revenue to the City and other governments.

The FEIS reports that annual operations and maintenance costs of a Deep Bored Tunnel enhanced SR99 are expected to exceed current expenditure by an estimated \$3.5 M annually. The Report does not state this, but presumably most, if not all of these costs will fall on the State. It is also not stated what the O&M costs of tolling the Tunnel will be. The projected O&M increase raises clear sustainability issues that the EDR neither discusses nor explains. The FEIS should have discussed these issues.

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#### 5. A Chance to Reduce Greenhouse Gases?

The FEIS's Air Report makes the point that the study area is located within a maintenance area for carbon monoxide (CO) and an attainment area for all of the other criteria pollutants.

"Because the Bored Tunnel Alternative would not cause or exacerbate an exceedance of the NAAQS or increase regional emissions, it would meet the project-level conformity requirements (40 CFR 93.123)."

"Because regional MSAT emissions are not expected to increase and no exceedances of the NAAQS are expected, no significant adverse effects on air quality are expected to result from the three build alternatives. Therefore, no mitigation measures for operational effects would be required."

This sounds good, but don't both the State and the City of Seattle have policies and commitments to work to **reduce** greenhouse gases to attempt to curb or reverse global warming? How serious are these commitments really?

The DBT will contain an elaborate exhaust system to collect vehicle emissions in the Tunnel and release them into the air from two point source stacks. To the best of my knowledge there is no plan to do anything to manage or treat these toxic gases at the stacks.

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Greenhouse gas effects and climate are evaluated in Appendix R, Energy Discipline Report, and not in Appendix M, Air Discipline Report. Both report fully evaluate relevant effects of the Bored Tunnel Alternative. Mitigation measures related to energy usage and air quality are described in Chapter 8 of the Final EIS and included in this Record of Decision.

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Shouldn't the State commit, as a mitigation measure, to use reasonably available control technology at the stacks to reduce greenhouse gases? And if the State chooses not to do this, shouldn't the City of Seattle use its substantive authority under existing environmental law to require this? Or is the alleged commitment to curb greenhouse gases just more hot air?

Sincerely,

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