

Monday, August 15, 2011

Angela Angove
Alaskan Way Viaduct Project Office
999 Third Ave. Suite 2424
Seattle, WA 98104

Dear Ms. Angove:

I-009-001

This letter is submitted as part of the public response exercise related to the Alaskan Way Viaduct and Seawall Replacement Project's Central Waterfront Final Environmental Impact Statement issued July, 2011.

I believe to even begin to comment on this matter is a futile effort if past comments and other efforts at intervening or participating in this project by many others and myself are to be any guide, because since December 31, 2008 the final decision about what alternative to build was made, and since then this whole environmental review under NEPA and SEPA has been a sham. Sham processes result in sham public participation and outreach processes, and that is what this has been for several years, to even date.

It is well understood administratively, statutorily, and judicially that environmental reviews are to inform project decisions, not to ratify them. However the latter is exactly what this environmental review process has been - the ratification of a final decision by the City of Seattle, King County, and the State of Washington to proceed to build a deep bore tunnel to replace the SR 99 Alaskan Way Viaduct.

Based on the public record there never was any intent on the State or the City's part to bring forward any other alternative but "a tunnel", and then "the tunnel", the present deep bored tunnel. As early as April 21, 2007 the State Legislature directed the Governor to make a final design decision on the Viaduct replacement by December 31, 2008 (ESHB 1094 Section 305 (16)(b)). ESSB 5768 ratified that decision on April 24, 2009, declaring that the State was to "replace the Alaskan Way Viaduct with a deep bore tunnel under First Avenue from the vicinity of the sports stadiums in Seattle to Aurora Avenue north of the Battery Street tunnel."

From these points forward thousands of pages of documents establish that the final decision was made to proceed with the deep bored tunnel project. Those pages are submitted via the following link, I am submitting for the FEIS record the public disclosure documents I have received from WSDOT related to its administration and management of both the AWVSRP and specifically the Central Waterfront Project/Deep Bored Tunnel:

<http://www.seatnow.com/FEIS%20Response/>

These documents confirm in whole or in part that the decision to proceed with the tunnel is exclusive of the environmental review process, that the environmental review process in no

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NEPA requires the identification of a Preferred Alternative as part of the EIS process (see 23 CFR 711.125). This may occur as early as the Draft EIS; however, to provide full opportunity for public input, WSDOT typically does not identify a Preferred Alternative until the Final EIS. For this project, a preferred alternative was identified in the 2010 Supplemental Draft EIS. Throughout the project's environmental process, FHWA and WSDOT have evaluated a reasonable range of alternatives. See Chapter 2 of the Final EIS for more information on alternatives development. FHWA requires the designation of a preferred alternative in the Final EIS to provide full disclosure of the choice most likely to be implemented. However, the final decision on which alternative will be implemented as a federal action that is taken by FHWA is documented in this Record of Decision. FHWA is not obligated to select the preferred alternative or any build alternative, regardless of the expressed opinions of state officials. Notwithstanding what Washington State leadership may favor or announce, the NEPA process requires a reasonable range of alternatives. FHWA has independently evaluated the NEPA documents for this project and has concluded that a reasonable range of alternatives have been identified.

WSDOT's decision to initiate design-build contracting for the project before the Record of Decision is consistent with FHWA regulations. Under 23 CFR § 636.109(3), the contracting agency (in this case WSDOT) may issue a request for proposals (RFP) prior to the conclusion of the NEPA process, as long as the RFP informs proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the No Build Alternative. WSDOT's RFP met those requirements. See Chapter 2 of the Final EIS for more information.

I-009-001 way informed the final decision to proceed with the deep bored tunnel, but just the opposite occurred, the deep bored tunnel project has been underway since on or before January 1, 2009.

I-009-002 In addition, I am questioning the legality of the tunnel project proceeding and the ultimate destruction of the Viaduct based on the matter of the Alaskan Way Viaduct's status as a State protected essential public facility. The Alaskan Way Viaduct, its location, capacity, and all of its structural and transportation elements, the six points of ingress/egress, and its appurtenances north and south of it, the mainline of the SR99/city of Seattle corridor, all those things which establish the Viaduct's identity/use/legal standing, has statutorily protected status as an essential public facility, as a highway of statewide significance, and as a historical transportation structure eligible for national, State, and local recognition as such; none of which has been extinguished in any forum, legal or otherwise, nor through any legislative, executive, or administrative acts. Therefore this idea that with this FEIS or any of the prior or ongoing actions the State and City are taking that the Viaduct can be so easily eliminated is false. In order for there to be any realignment all of these statuses must be extinguished; and none of this was addressed by the FEIS or any other proceeding related to the AWVSRP and its documentary record.

I-009-003 Furthermore, the FEIS did not address the ongoing conflicts between the assorted Notices of Intent that have and have not governed this project, the conflict between just what laws the FEIS was created under. At certain junctures WSDOT claims that it is proceeding under SAFETEA-LU, while not complying with the requirements of that federal act.

Finally the idea that the deep bored tunnel is not proceeding is belied by the fact that WSDOT under its PIN 809936E has expended funds for construction, not just for preliminary engineering, or right-of-way acquisitions. The FEIS does not address those expenditures or several decisions where Moving Forward Projects were terminated upon the January, 2009 decision to proceed with the tunnel.

In the end, I object to this project proceeding due to the false pretenses that both the FEIS was created and under which the deep bored tunnel project is proceeding.

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Cc:

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SR 99, not the Viaduct as a separate structure, is part of the state highway system and as such is a highway of statewide significance and an essential public facility. The fact that SR 99 is a highway of statewide significance and an essential public facility does not preclude WSDOT from making safety improvements or replacing the structures that make up that highway route.

The Viaduct was considered as a structure eligible for inclusion on the National Historic Register. Eligibility for the National Register does not prevent the replacement of an aging transportation structure. The impacts of removing the Viaduct structure and mitigation for the removal are addressed in a memorandum of agreement signed by the state historic preservation officer. Neither Section 106 of the National Historic Preservation Act nor NEPA require that the structure's historic status be extinguished, only that it be considered in accordance with those two statutes.

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WSDOT prepared a project history report that described the changes that have been made to the project over the years, much of which have resulted from the input of citizens, businesses, and other public agencies. The Project History Report was included as Appendix S in the 2010 Supplemental Draft EIS, which is also provided on CD with the Final EIS. The scope of the environmental review has changed in order to address these changes. WSDOT prepared a project history report that documents the development of the project and its environmental review over the last 10 years. Because environmental review began on this project in 2001 prior to the enactment of SAFETEA-LU, WSDOT and FHWA were not required to repeat work that had been previously done and was allowed to continue the ongoing environmental review rather than starting the process over again under Section 6002 of SAFETEA-LU (23 U.S.C. 139). However, other provisions of SAFETEA-LU may still

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ⁱ On the part of the City of Seattle the effort to eliminate any Viaduct replacement alternative but a tunnel (first it was a cut-and-cover tunnel, now it is the deep bored tunnel) started long before the December 31, 2008 joint decision with the State and King County. The City of Seattle took numerous legislative and City sponsored actions to ensure that another elevated structure to replace the Alaskan Way Viaduct could never be built, including but not limited to the following:

- a. 2000 Ordinance 120045 Relating to the Department of Parks and Recreation; authorizing the Superintendent to proceed with consideration of planning options for the development of a new aquarium facility and waterfront park in the area covered by the Central Waterfront Master Plan
- b. 2003 "Central Waterfront Plan Background Report Precedent Study"
- c. 2003 "Blue Ring, Seattle's Open Space Strategy for the Center City" that will "serve as the critical guide to the numerous plans currently underway downtown, and the many more sure to come in the next 100 years. Among others, the Alaska Way Viaduct replacement".
- d. 2004 Waterfront Charrette
- e. 2004 Resolution 30664 Adopting Principles for Development of a Central Waterfront Plan.
- f. 2004 Resolution 30717 Relating to the Central Waterfront Master Plan; amending the Central Waterfront Master Plan - Portal to the Pacific to reconfigure the site plan
- g. 2005 "Administering Financing & Implementing Seattle's Waterfront Vision" report written concurrently with the Draft Central Waterfront Concept Plan; report relating to a strategic effort for decision makers as they begin codifying the process and administrative structure for managing and implementing Seattle's Central Waterfront plan; including how to ensure that "with removal, of the Alaska Way Viaduct, properties along the city's western edge will become highly desirable".
- h. 2005 Resolution 30724 Adopting Guiding Principles for decisions related to the Alaskan Way Viaduct and Seawall Project.
- e. 2006 Ordinance 122247 Relating to the central waterfront, declaring that an aerial highway along the central waterfront is discouraged by adopted City of Seattle ("City") policies, stating that construction of an aerial highway structure is inconsistent with current use and height regulations, and stating the City's intent to amend existing regulations and policies to further clarify that an aerial highway structure in the central waterfront area is inconsistent with the City's Comprehensive Plan.
- f. 2006 Final Environmental Impact Statement for the Central Waterfront Master Parks Plan

apply to this project.

WSDOT has undertaken other projects in the Alaskan Way Viaduct Replacement Program after all required environmental review was complete. WSDOT has entered into a design-build contract for the Central Waterfront section of the project as allowed by federal rule, 23 CFR section 636.109. WSDOT's contract and the work allowed under that contract prior to the Record of Decision meet the requirements of this rule and of the NEPA rules, 40 CFR part 1500.

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- g. 2006 US Army Corps of Engineers (USACE) Environmental Assessment pursuant to expired NOI
 - e. 2006 USACE Scoping Report. Elliott Bay Seawall, WA General Investigation (Alaskan Way Seawall Feasibility Study Environmental Impact Statement) pursuant to expired NOI
 - f. 2007 Ordinance 122406 Relating to the development of a Mobility Plan to replace the central waterfront portion of the Alaskan Way Viaduct
 - g. 2009 Seattle Pedestrian Plan
 - h. 2009 Ordinance 123142 Establishing Central Waterfront Partnerships Committee – redevelopment and master use planning related to AWVSRP.
 - i. 2009 Ordinance 123212 Amending Ordinance 123142 to alter the composition of the Central Waterfront Partnerships Committee.
 - j. 2009 \$225 Million appropriated for seawall replacement and SDOT issues Request for Qualifications for design of seawall; no SEPA, NEPA, or other environmental review precedes.