

**J. RICHARD ARAMBURU  
JEFFREY M. EUSTIS**  
**Attorneys at Law**  
505 Madison Street, Suite 209  
Seattle, Washington 98104  
(206) 625-9515 Fax: (206) 682-1376

September 22, 2006

Paul Krueger  
Environmental Manager,  
SR 520 Project Office  
414 Olive Way, Suite 400  
Seattle, WA 98101

Re: DEIS for SR 520 Bridge Replacement  
Pedestrian/Bicycle Connection Options

Dear Mr. Krueger:

We represent SWAMP -- Save the Wetlands of the Arboretum from Multitudes of People. SWAMP is an organization of residents within the Madison Park and Montlake Communities dedicated to protecting the Arboretum and its wetlands from further desecration.

SWAMP has been long involved in working for transportation solutions that protect and preserve the Arboretum and its wetlands. During the course of a prior proposal, SWAMP convincingly demonstrated there to be preferable alternatives to a bike and pedestrian trail which was then proposed to pass through Arboretum wetlands lying between Foster Island and the Broadmoor Golf Course.

We have reviewed the Draft Environmental Impact Statement for the SR 520 Bridge Replacement. Although the DEIS does not include within either its proposed action or its alternatives an additional pedestrian/bicycle connection at Madison Park, there does exist a separate Technical Memorandum, the Madison Park Bicycle/Pedestrian Path Option (May 2, 2006) that addresses two additional options, a connection at 37<sup>th</sup> Avenue East, which would run through wetlands of the Arboretum, and a connection at 43<sup>rd</sup> Avenue East, which would connection with existing City streets.

SWAMP understands there to be interest by some within the City of Seattle to include as a modification to the 520 Bridge Replacement Project a bicycle/pedestrian connection at either of these locations.

SWAMP urges the WSDOT to reject the inclusion of such an alternative on grounds that it is unnecessary, it would be more destructive than the other available

**C-005-001**

**Comment Summary:**

Madison Park Bicycle/Pedestrian Connection

**Response:**

See Section 24.1 of the 2006 Draft EIS Comment Response Report.

C-005-001

alternatives, its consideration would conflict with the City's Critical Areas Ordinance, the National and State Environmental Policy Acts, the federal Clean Water Act and the federal Department of Transportation Act, and its cost is not justifiable.

**An additional connection at 37<sup>th</sup> Avenue East is unnecessary.**

Within the corridor that includes Madison Park, the Arboretum and Montlake, plans for the expansion of 520 already include a number of bicycle and pedestrian connections. The DEIS at Figure 3-9 identifies five connections within the section between Montlake Boulevard and the Arboretum:

a connection to an underpass at Foster Island that serves an existing trail system;

an underpass connecting existing trails east of the Museum of History and Industry (MOHI) to those existing trails within the arboretum south of 520;

a connection to an existing bike trail on an existing overpass west of MOHI;

An overpass connection at Montlake Boulevard; and

a connection to an existing trail passing under 520 and linking the Montlake playfield with Montlake Boulevard.

The abundance of access points belies any need to consider yet additional alternatives for access. By contrast, at its westerly end the bicycle path on I-90 has one entry point, which connects to one route that passes above the bridge.

**An additional connection at 37<sup>th</sup> Avenue East would unnecessarily exacerbate environmental impacts of the bridge.**

An additional access point would involve far greater impacts than any of the other five access points identified above. It would cut a new swath through Arboretum marshlands, thereby displacing important breeding, nesting and rearing habitat for waterfowl. It would cross and obstruct a channel actively used for canoeing, kayaking and wildlife observation. And it would largely displace a public access point to the water. The construction of a separate bridge would involve far greater costs than any of the other access alternatives, since it would require construction of a new over-water span. And yet, despite its additional cost the proposed connection would not link to any existing bicycle route, unlike each of the five other connections. A connection at 37<sup>th</sup> Avenue East would create unnecessary and unacceptable impacts, which themselves would require additional mitigation.

C-005-001

**A connection at 37<sup>th</sup> Avenue East would conflict with the City's Critical Areas Ordinance.**

The contemplated connection would also conflict with the recently adopted amendments to the ECA ordinance. While the new amendments expand the exemptions to allow for the intrusion of trails into environmentally critical areas, that exemption still only applies where "[n]o practicable alternative to the work with less impact on the environmentally critical area or buffer exists . . ." SMC 25.09.045H.1.b Practicable alternatives to a connection at 37<sup>th</sup> Avenue East clearly do exist, at least five. Pursuit of an alternative that would violate recently adopted standards would undercut protections that the City just adopted. The conflict with existing land use codes and other environmental regulations must be identified and analyzed as a significant impact of a proposed connection at 37<sup>th</sup> Avenue East. WAC 197-11-330(3)(e)(iii) and -444(2)(b)(i).

**A connection at 37<sup>th</sup> Avenue East would violate NEPA and SEPA.**

The consideration of alternatives within an EIS must be devoted to those alternatives that could attain the proposal's objectives but at a lower environmental cost. See WAC 197-11-440(5)(b) (requiring the consideration of less harmful alternatives under SEPA) and *Roosevelt Campbello International Park Commission v. EPA*, 684 F.2d 1041 (1<sup>st</sup> Cir. 1982)(in which the court ruled that it was proper under NEPA to exclude consideration of an alternative whose impacts were worse than those of the proposed project). After all, where it is the function of both NEPA and SEPA to "prevent and eliminate damage to the environment", no purpose is served by pursuing an alternative that would be even more destructive to the environment than the actions already proposed. See 42 USC §4321 (NEPA) and RCW 43.21C.020 (SEPA). A modification to the project that would exacerbate its environmental impacts would contradict the purposes of NEPA and SEPA.

**A connection at 37<sup>th</sup> Avenue East would violate the Clean Water Act.**

The contemplated connection would conflict with Section 404 of the Clean Water Act. Regulations adopted by the EPA under 42 USC §404(b)(1) prohibit the discharge of fill material into waters of the United States unless there exist no "practicable alternatives" with less adverse impact on the aquatic ecosystem. Where the basic purpose of the proposed project does not require siting at the aquatic site, practicable alternatives are presumed to exist. 40 CFR §230.10(a)(3). The proposed connection to 37<sup>th</sup> Avenue East falls within this prohibition: it would involve the placement of fill (concrete pilings) within a US water (Lake Washington); its purpose would be to provide a connection to City streets and not to promote some aquatic use or purpose; and other, non-aquatic connections already exist, such as connections at Foster Island, the MOHI and Montlake Boulevard as listed above.

C-005-001

**A connection at 37<sup>th</sup> Avenue East would violate the Federal Department of Transportation Act.**

Section 4f of the Federal Department of Transportation Act of 1966, 49 USC § 303, prohibits the Federal Highway Administration, a source of funding for the 520 Bridge Replacement project, from approving a project that would use significant public park, recreation areas, wildlife or waterfowl refuge, or an historic site unless there exist no feasible and prudent alternative to the use of such land and the project includes all possible planning to minimize harm to such an area. Conversely, if a feasible and prudent alternative does exist, it must be selected.

Under section 4f, the 37<sup>th</sup> Avenue East street end is a Seattle Parks and Recreation resource. It provides public access to the water, it is used for recreation and the area provides wildlife and waterfowl refuge. A pedestrian/bicycle connection would displace this public resource with a concrete, elevated bridge that would be at least 14 feet wide and rise up 10-14 feet from the shoreline.

The full impact of the proposed connection upon the public access has not been disclosed within the Technical Memorandum. Neither words, dotted blue lines (Ex. 3) nor solid blue lines (Ex. 13) adequately portray the impact that a 14 foot wide structure rising 10-14 feet above the shoreline would have at this public access. If the connection is proposed as part of the project, a full, graphic rendering of the connection should be provided.

Any commitment to mitigate for these displaced resources would not avoid the section 4f limitations. Before alternative planning is even considered, there must be some demonstration that there exist no feasible and prudent alternatives. But in the case of the 37<sup>th</sup> Avenue East connection, feasible and prudent alternatives clearly do exist, the five present connections. Section 4f flat out precludes an additional connection at 37<sup>th</sup> Avenue East.

**Marginal benefits of the connection do not warrant its additional cost.**

The Technical Memorandum does not disclose the cost of a connection at 37<sup>th</sup> Avenue East. SWAMP has heard estimates of \$25 million for an additional Madison Park Connection. The Technical Memorandum should be revised to disclose the estimated cost of this facility. At an estimated \$25 million, a proposed pedestrian/bicycle bridge that would connect to no existing pedestrian/bicycle trail would provide little, if any, marginal benefit.

For each of the above reasons, we ask the WSDOT to affirmatively reject the notion that an additional connection at Madison Park, and particularly one at 37<sup>th</sup> Avenue East, be considered among the pedestrian and bicycle access alternatives within the EIS for the 520 bridge replacement. Such a proposal would only exacerbate the adverse effects (and costs) of a project that will already have tremendous impacts on the

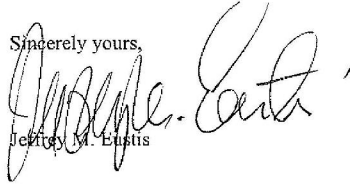
September 22, 2006  
Page 5

C-005-001 |

Arborctum, its wetlands and waterways.

Thank you for your consideration of these comments. SWAMP requests to be listed as a party of record. Further correspondence may be directed to this office.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jeffrey M. Eustis".

Jeffrey M. Eustis

JME/py

cc:  
James Leonard  
Megan White  
Perry Weinberg  
SWAMP