From: Peggy Cahill [mailto:cahill@bnd-law.com]
Sent: Thursday, April 15, 2010 11:57 AM
To: SR 520 Bridge SDEIS (2)
Cc: bricklin@bnd-law.com; Claudia Newman
Subject: Comment Letter on SDEIS

Ms. Young:

Attached please find a comment letter from David A. Bricklin on the SDEIS for the I-5 to Medina Portion of the SR-520 Project. The original of the letter will be mailed to you today.

Thank you for your attention to this matter.

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Reply to: Seattle Office

April 14, 2010

Jennifer Young
Environmental Manager
SR 520 Project Office
600 Stewart Street, Suite 520
Seattle, WA 98101

Re: Supplemental Draft EIS for the I-5 to Medina Portion of the SR-520 Project

Dear Ms. Young:

I write on behalf of the Coalition for a Sustainable 520 and its members to provide comments on portions of the SDEIS for the above-referenced project. Thank you for this opportunity to comment.

C-021-001

All Reasonable Alternatives Have Not Been Included

SEPA (and NEPA) were adopted to assure that government agencies made decisions "by deliberation, not default." *Stemple v. Dept. of Water Resources*, 82 Wn.2d 109, 118 (1973). There has been much deliberation regarding addressing the transportation needs in the SR 520 corridor. But despite that, there is still the risk that the lead agencies are defaulting on their obligations to rigorously examine all reasonable alternatives. The alternatives analysis is the "heart of the environmental impact statement." 40 C.F.R. § 1502.14. It must "[r]igorously explore and objectively evaluate **all** reasonable alternatives . . ." 40 C.F.R. § 1502.14(a). The EIS must "[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." 40 C.F.R. § 1502.14(b). Reasonable alternatives include those that are "not within the jurisdiction of the lead agency." 40 C.F.R. § 1502.14(c).

Determining the range of reasonable alternatives flows from the project's purpose and need. The SDEIS states that the project's purpose remains the same today as it was when the purpose statement was first crafted by the Trans-Lake Washington Study Committee in 2000:

> The purpose of the project is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond in a manner that is safe, reliable, and cost-effective, while avoiding, minimizing, and/or mitigating impacts on affected neighborhoods and the environment.

C-021-001

The commenter is correct in noting that the purpose of the SR 520, I-5 to Medina project is to "improve mobility for people and goods." To this end, all traffic analyses for the project have measured not only vehicle trips in the corridor, but person trips, which represent users of transit and carpools as well as single-occupant vehicles. The addition of high-occupancy-vehicle (HOV) lanes to the corridor, with no increase in the existing number of general-purpose lanes, is intended to improve the speed and reliability of transit service, thus providing an incentive to use transit. As noted in the discussion of project need on page 1-6 of the SDEIS, the prospect of substantially increased travel times in 2030 "…makes it imperative that commuters be provided with travel choices that allow them to avoid driving alone, and that the proposed project be built to support increased use of transit and HOVs." As discussed in Section 5.1 of the SDEIS and the Final EIS, HOV and transit commuters would experience substantial travel-time benefits in 2030 with the addition of the HOV lane.

The decision to locate Sound Transit's initial east-west light rail transit corridor on I-90 rather than SR 520 has been made through extensive regional deliberation. Table 2-2 of the Final EIS illustrates the history of regional decision making on east-west mass transit routes, which began in 1967 when the Comprehensive Public Transportation Plan for the Seattle Metropolitan Area identified a rail corridor from Seattle to Bellevue and Redmond on I-90. Subsequent studies and agreements over the next 40 years have all continued to identify I-90 as the preferred rail transit corridor, with predicted ridership similar to or more than SR 520 and substantially lower costs and environmental effects. Some key milestones include:

- In **1986**, the Puget Sound Council of Governments Multi-Corridor Analysis found that light rail transit on SR 520 would have lower ridership, lower feeder bus potential, higher cost, and lower cost

C-021-001 SDEIS at 1-3. This purpose statement is notable in its focus on moving "people and goods" not motor vehicles. Yet every single alternative examined in the SDEIS involves spending billions of dollars to increase the capacity of SR 520 for motor vehicles only. None of the alternatives include light rail. Light rail offers the possibility of accomplishing the project's purposes at lower environmental costs. The decision to omit light rail from any of the alternatives examined in the SDEIS is inexplicable and renders the SDEIS fatally flawed.

The viability of a light rail option has been documented in the recent draft report prepared for the City of Seattle's Mayor: *SR 520 Light Rail Alternatives, Draft Report*, Nelson/Nygaard Consulting Associates (Apr. 2010). A copy of the report is available at www.seattle.gov/mayor/.[1]

The benefits of a rail option are many. At the top of the list, rail offers opportunities to reduce greenhouse gas emissions. In this day and age, an alternative that offers the promise of reducing GHG emission should be examined in great detail in the environmental review process. Your failure to develop and analyze a rail alternative is disheartening given the commitment of the federal and state governments to reducing GHG emissions in the coming years.

C-021-002 State legislation establishes demanding standards for *reducing* our GHG emissions. The legislation calls for GHG emissions to be reduced to 1990 levels by 2020. By 2050, we are to reduce GHG emissions to 50 percent of 1990 levels. RCW 70.235.020.

The State is not going to meet these standards if it continues to pour billions of dollars into constructing highways for motor vehicles in areas where light rail is a viable option. Few areas of the State have opportunities for light rail. Residential densities and employment opportunities are high enough in the SR 520 corridor to support rail. It is a dereliction of duty by WSDOT to fail to seize this opportunity and do everything it can to explore the opportunities for rail in this corridor now.

C-021-003 The SDEIS explains that a rail option was excluded as a result of planning that started in 1998. The SDEIS seems to take the point of view that because rail was eliminated from consideration many years ago, that the momentum behind that decision somehow excuses analyzing a rail alternative in detail in this EIS in 2010. That rationale is flawed in several respects.

C-021-004 First state law mandates WSDOT, Sound Transit, and others to develop a transportation plan "that ensures the effective and efficient coordination of bus service **and light rail services throughout the State Route Number 520 corridor.**" RCW 47.01.410 (emphasis supplied). That multi-modal transportation plan is to be "closely coordinated" with the 520 bridge replacement and HOV projects. *Id.* Excluding light rail from every alternative considered in the SDEIS does not reflect "close coordination" between this project and the legislative mandate to "ensure" light rail "throughout the State Route Number 520 corridor."

[1] I presume the City of Seattle Mayor's Office is providing a paper copy of that report. If you are unable to obtain it otherwise, please contact me and I will be happy to provide you with a copy.

effectiveness than I-90. As a result, SR 520 was eliminated as an alternative light rail transit corridor.

- In **1996**, Sound Transit's first long-range plan identified the I-90 corridor as an HOV expressway with potential light rail transit service and began NEPA evaluation of two-way transit and HOV operations in that corridor. The plan designated SR 520 for "local bus service" (later identified as regional express bus service).
- In **2002-03**, the multimodal alternatives analysis for the Trans-Lake Washington Project (the precursor to the SR 520 Bridge Replacement and HOV Project), conducted by co-lead agencies WSDOT, FHWA, Sound Transit, and the Federal Transit Administration, concluded after evaluating both SR 520 and I-90 that I-90 would be the region's initial cross-lake corridor for high-capacity transit (HCT). The agencies agreed that SR 520 would be designed to accommodate HCT in the future. FTA and Sound Transit subsequently ceased to be co-lead agencies.
- In **2005**, Sound Transit's long-range plan update continued to designate I-90 as the priority HCT corridor, while calling for SR 520 to include bus rapid transit in the proposed HOV lanes.
- In **November 2008**, voters approved funding for Sound Transit's ST2 plan to extend light rail transit east from downtown Seattle across I-90 to downtown Bellevue and east to the Overlake Transit Center in Redmond, as well as north from the University of Washington station to Northgate. The plan also allocates funding for studying the potential for rail transit on SR 520.
- In **December 2008**, WSDOT, Sound Transit, and King County Metro published the SR 520 High Capacity Transit Plan, which provided an outline for how transit could build on capital investments identified for the SR 520 corridor by substantially increasing service and improving off-corridor transit facilities to help meet future demand. The plan identified up to five bus rapid transit routes in the SR 520 HOV lanes and predicted a growth in transit ridership of 60 percent in the corridor by 2020 if funding is made available to implement the

C-021-005 Second, none of the prior planning efforts that resulted in the "no rail" decision for SR 520 had the benefit of the analysis in an EIS. Government decisions on major projects are not allowed to be made until after the decision makers are informed by the content of an adequate EIS. Relying on recommendations made without the benefit of an EIS puts the proverbial cart before the horse. Your agencies' recommendations on how to spend billions of taxpayer dollars must be informed by the contents of an adequate EIS. You should not be justifying the exclusion of reasonable alternatives based on studies that did not enjoy the input of an adequate EIS.

C-021-006 Third, reliance on years of prior planning also is misplaced because the world has changed greatly in the intervening years. Nearly a decade ago, in the early years of the so-called "Trans-Lake Washington Project," rail was jettisoned from consideration for the SR 520 corridor. SDEIS at 1-10. Much has changed regarding our knowledge about climate change. New policies adopted at the city, state, national, and international levels reflect our increasing awareness of the reality of global warming and the need for bold action to avert its worst consequences.

C-021-007 In 2007, the United Nations' Intergovernmental Panel on Climate Change (IPCC) released its frequently cited report reflecting the new scientific consensus that is causing global warming. As summarized by the U.N. News Center in its press release announcing the report:

> The IPCC, which brings together the world's leading climate scientists and experts, concluded that major advances in climate modeling and the collection and analysis of data now give scientists "very high confidence" – at least a nine out of ten chance of being correct – in their understanding of how human activities are causing the world to warm. **This level of confidence is much greater than the IPCC indicated in their last report in 2001.** The report confirmed that it is "very likely" that greenhouse gas emissions have caused most of the global temperature rise observed since the mid-twentieth century. Ice cores, going back 10,000 years, show a dramatic rise in greenhouse gases from the onset of the industrial age. The co-chair of the IPCC working group stated, "There can be no question that the increase in these greenhouse gases are dominated by human activity."

The United Nations went on to summarize the key findings of the report:

> The report describes an accelerating transition to a warmer world – an increase of three degrees Celsius is expected this century – marked by more extreme temperatures including heat waves, new wind patterns, worsening drought in some regions, heavier precipitation in others, melting glaciers and arctic ice, and rising global average sea levels.

recommended service improvements. The HCT plan reiterated ST2's commitment to a planning study of light rail on SR 520 to evaluate potential alignments, stations and costs, and potential implementation strategies.

Given the thorough evaluation of high-capacity transit during the NEPA analysis for the current project, coupled with the continuing consensus of regional transit and planning agencies on I-90 as the preferred rail corridor, it is inaccurate to suggest that consideration of a rail alternative has been omitted from the NEPA analysis. The comment focuses on the fact that the SDEIS contained no rail alternatives. However, as explained in Chapter 1 of both the Draft EIS and the SDEIS and documented more fully in the Range of Alternatives and Options Examined report (Attachment 8 to the SDEIS), the SDEIS design options were the product of an alternatives analysis that had already considered multimodal solutions and a DEIS that evaluated No Build, 4-lane, and 6-lane alternatives. This process identified the 6-Lane Alternative—four general-purpose lanes plus two HOV lanes to serve transit and carpools—as best meeting the project purpose of improving mobility for people and goods.

As noted in the comment, light rail on SR 520 is indeed viable as a future undertaking. WSDOT has worked with Sound Transit since 2003 to design for future rail compatibility in the corridor. The April 2010 Nelson/Nygaard report identified several changes to the SDEIS options that were believed to be necessary to "meet the mayor's goal of an SR 520 bridge that is readily convertible to rail." Although WSDOT believed that the design had already achieved this goal, it continued to work with the City of Seattle and Sound Transit to identify changes that would enhance the corridor's rail compatibility. The Preferred Alternative reflects these design changes and is compatible with two future rail options:

C-021-007

The 2007 report from the IPCC represented a major step forward in the scientific understanding of global warming issues. According to the United Nations, "IPCC Chair Rajendra Pachuari said the science has 'moved on' and the extent of knowledge and the research carried now is several steps beyond what was possible for the last report." "This report by the IPCC represents the most rigorous and comprehensive assessment possible of the current state of climate science and has considerably narrowed the uncertainties of the 2001 report," according to Michel Jarraud, Secretary General of the World Metereological Organization. Executive Director of the United Nations Environment Program was quoted as stating: "[T]his new report should spur policy makers to get off the fence and put strong and effective policies in place to tackle greenhouse gas emissions."

The IPCC was released several years after the Trans-Lake Washington study participants decided not to include rail on SR 520 in the near term. But this information was available to the drafters of the SDEIS in 2009 and 2010 and should have been used by them in determining a regional range of alternatives to simply building more pavement for motor vehicles.

As earth-shaking as the IPCC report in 2007 was (or should have been), scientific analysis since then should be causing alarm bells to ring even louder. The recent Copenhagen Climate Science Congress, attended by 2,000 scientists, concluded with this "Key Message 1:"

> Recent observations confirm that, given high rates of observed emissions, the worst-case IPCC scenario trajectories (or even worse) are being realized. For many key parameters, the climate system is already moving beyond the patterns of natural variability within which our society and economy have developed and thrived. These parameters include global mean surface temperatures, sea-level rise, ocean and ice sheet dynamics, ocean acidification, and extreme climatic events. There is a significant risk that many of the trends will accelerate, leading to an increasing risk of abrupt or irreversible climatic shifts.

International Scientific Congress Climate Change: Global Risks, Challenges, and Decisions (Mar. 12, 2009). (This Scientific Congress was held in advance of the December 2009 Climate Change Conference that drew political leaders from around the world.)

More than our scientific understanding of global warming has changed in recent years. The political firmament is shifting, too. At the national level, in 2007, the Supreme Court rejected Bush administration efforts to preclude EPA from regulating greenhouse gas emissions. *Massachusetts v. EPA,* 549 U.S. 497 (2007). The Supreme Court held that the EPA could regulate those emissions as long as the EPA determines they contribute to climate change. *Id.*

The Supreme Court decision was followed by the election of President Obama, which opened the doors for new federal initiatives to combat greenhouse gas emissions. Pursuant to the Supreme Court decision, the EPA has proposed rules regulating GHG emissions from motor vehicles. On

- **Option 1**: Convert the HOV/transit lanes to light rail. This approach would accommodate light rail by converting the HOV lanes to exclusive rail use. Trains would use the direct-access ramps at Montlake Boulevard to exit, or they could use a 40-foot gap between the eastbound and westbound lanes of the west approach to make a more direct connection to the University Link station at Husky Stadium.
- **Option 2**: Add light-rail-only lanes. This approach could provide several connections—via a high bridge, a drawbridge, or a tunnel, as suggested in the Nelson/Nygaard report—to the University Link station.

Both approaches would allow for the addition of supplemental floating bridge pontoons to support the additional weight of light rail if the regional decision to implement light rail were made and funded. Such a decision would need to be planned and programmed by regional land use and transit agencies, funded by a public vote, and evaluated in its own environmental analysis.

Although any future decision to make SR 520 a rail corridor will require additional authorizations and detailed study, WSDOT undertook additional analysis following the SDEIS to help answer public questions about how rail in this corridor might operate and about the ridership it might generate. In collaboration with Sound Transit, WSDOT evaluated a potential light rail transit route across SR 520 from Ballard to Totem Lake, along with an alignment between Bellevue and Totem Lake to provide a connection between the SR 520 light rail transit route and East Link. Stations along these routes were considered in Ballard, North Fremont, Aurora, Wallingford, Brooklyn, Montlake, Evergreen Point, South Kirkland Park-and-Ride, Kirkland Transit Center, Totem Lake Transit Center, and Bellevue/Overlake Hospital. The evaluated route somewhat resembles alignment 5 – Ballard to Totem Lake via the BNSF Corridor, identified as one of the five preliminary light rail transit

C-021-007 another front, directly relevant to this project, on January 13, 2010, the United States Department of Transportation announced a "dramatic change from existing policy" regarding the funding of major transit projects. DOT Secretary LaHood stated, "We want to base our decisions on how much transit helps the environment, how much it improves development opportunities, and how it makes our communities better places to live." No longer would transit funding decisions be based simply on alleviating congestion "in making funding decisions, the FTA will now evaluate the environmental, community, and economic development benefits provided by transit projects, as well as the congestion relief benefits from such projects." U.S. DOT Press Release (Jan. 13, 2010).

The shifting political climate also is evidenced by the passage of the American Clean Energy and Security Act by the House of Representatives last summer. The bill sets a goal of reducing overall greenhouse gas emissions by 17 percent from 2005 levels by the year 2020, and 83 percent by 2050.

C-021-008 In like manner, Washington State adopted greenhouse gas reduction standards in legislation adopted in 2008. The legislation states: "The state **shall limit emission of greenhouse gases to achieve the following emission reductions . . ."** RCW 70.235.070(1)(a) (emphasis supplied). As noted above, the statute establishes that by 2020, emissions shall be reduced to 1990 levels. By 2035, GHG emissions are to be 25 percent below 1990 levels and by 2050, they are to be 50 percent below 1990 levels.

The new law also requires agencies distributing capital funds for infrastructure projects to consider whether the entity receiving the funds has adopted policies to reduce greenhouse gas emissions. The agencies must also consider whether the project is consistent with the State's limit on the emissions of greenhouse gases established in RCW 70.235.020 and the statewide goals to reduce annual per capita miles traveled by 2050. RCW 70.235.070.

C-021-009 Policy shifts have occurred recently at the local level, too. The Seattle City Council's 2010 priorities include the adoption of a "carbon neutral goal for Seattle with specific milestones and implementation steps . . ."[2]

C-021-010 In sum, whatever may have led the Trans-Lake Washington Project group to exclude rail from SR 520 nearly a decade ago cannot be cited in 2010 as justification for refusing to consider rail within the range of alternatives today.

C-021-011 Climate change is the most significant and daunting environmental issue facing this generation. We cannot pass up opportunities to reduce GHG emissions based on dated policy recommendations developed without the benefit of an EIS, without the benefit of our current knowledge of the seriousness of GHG emissions, and without the guidance provided by current governmental policies calling for significant reductions in those emissions in the coming years and decades.

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[2] Http://www.Seattle.gov/Council/Issues/Council_Priorities.htm#1.

alignments selected for further study and analysis in the SR 520 Light Rail Alternatives Draft Report (submitted by Nelson/Nygaard to the City of Seattle Mayor's Office in April 2010).

Modeling showed that opening the East Link route, coupled with bus rapid transit service on SR 520 beginning in 2016, would absorb much of the demand for east-west transit service beyond the year 2030. Thus, if light rail transit were in service on SR 520 before this time, it would have relatively low ridership and would likely fail to satisfy the cost-effectiveness criteria used by FTA in ranking projects for grant funding. The existing economic climate and the resulting challenges in implementing even adopted and funded plans (see Sound Transit's ST2/Sound Move Integration and Implementation White Paper, October 2009) reinforce the decision to prioritize bus rapid transit on SR 520 at present, while continuing to evaluate future implementation of light rail transit as regional demand increases. Please see Chapter 2 of the Final EIS and Chapters 1 and 2 of the Transportation Discipline Report for more information about how light rail transit was evaluated.

The comment also notes that light rail transit would offer opportunities to reduce greenhouse gas emissions. The addition of a dedicated lane for transit and HOV, along with the reduction in general-purpose demand achieved by tolling, would provide similar benefits with the Preferred Alternative. As discussed in Section 5.9 of the Final EIS, the Preferred Alternative would result in a 4 percent reduction in vehicle miles traveled (VMT) in the project area compared to the No Build Alternative, with a corresponding 4 percent reduction in annual fuel consumption. The project area includes the following freeway segments and associated ramps and interchanges: SR 520 between I-5 in Seattle and SR 202 in Redmond; I-5 in Seattle between NE 45th Street and south of the I-90 collector-distributor north connection to the mainline; and I-405 between NE 70th Street in Kirkland and NE 4th Street in Bellevue. The reduction in VMT results in a reduction of approximately 10 percent in GHG

C-021-012 We recognize the existence of political and economic forces (and their friends in the mainstream media) that resist adding a new study of rail at this time. They argue that studying rail now will cause delays and that the project has been "studied to death." First, if delays ensue, they are not the result of those asking that the SDEIS be revised to include a rail option. If the SDEIS had included a rail option in the first place, there would be no need for any delay at all. If an analysis of rail at this stage causes any delay, it is because of the failure of the authors of the SDEIS to include a rail option in the SDEIS in the first place when it was published earlier this year. Don't shoot the messenger.

Second, the new information about climate issues and government policies addressing global warming are issues of the highest environmental magnitude. We understand that at some point, planning must stop and decisions must be made. If there were new information policies about a relatively minor environmental issue, the need for making a decision might outweigh the need for additional study. But as stated above and as recognized by virtually every credible source, there is not a more important environmental issue than dealing with climate change. This SDEIS recognizes that close to 50 percent of the State's GHG emissions come from the transportation sector. One of the most heavily traveled transportation corridors in the State is the SR 520 corridor. We are about to make a decision regarding transportation options in that corridor that will be with us for the next 50 to 100 years. How can we possibly in good conscience (thinking not only of ourselves, but of the next generation) make a decision of this magnitude and with such long-lasting impacts without taking a hard look at a rail option now?

Third, reliance on the old recommendations to exclude consideration of rail in the SR 520 corridor is misplaced because it is inconsistent with Sound Transit's current plan for the SR 520 corridor. Sound Transit has not ruled out constructing light rail in the 520 corridor. Rather, Sound Transit's current plan ("ST 2") calls for an analysis of opportunities to develop high capacity transit, including light rail, in that corridor. Yet all of the alternatives currently under consideration would effectively eliminate the opportunity to bring rail to this corridor. *See* Nelson/Nygaard report. An EIS is required to assess opportunities that will be lost if the proposal goes forward. RCW 43.21C.030(2)(b)(v). But rather than disclose that all of the studied alternatives will doom light rail in this corridor, the SDEIS suggests light rail can be readily added later. Such a claim is debunked by the extensive analysis in the Nelson/Nygaard report. As those authors state, we have one chance to get this right – and that time is now.

C-021-013 The failure of the SDEIS to provide a detailed assessment of a rail option infects other portions of the SDEIS, too. For instance, in the discussion of the project's consistency with local land use plans and policies (SDEIS at 5-42, *et seq.*), there is no acknowledgement that proceeding with the current proposal would stymie the region's long-term plans that call for possible inclusion of rail in the SR 520 corridor. As just noted, Sound Transit (and other regional planning bodies) still consider rail in the SR 520 corridor a viable option that requires further study. Yet this project would effectively eliminate that option from future consideration (for the next 50 to 100 years). That inconsistency should be disclosed in the EIS.

emissions compared to the No Build Alternative, which is consistent with state legislation calling for such reductions and would contribute to other regional and national reduction efforts. It should be noted that this estimate does not take into account the estimated 60 percent increase in transit ridership that would be achieved if bus rapid transit is implemented in the corridor as part of the SR 520 HCT Plan.

C-021-002

WSDOT is not the agency responsible for implementing light rail in the Puget Sound region; however, the project is designed to accommodate light rail in the 520 corridor if it is implemented by others in the future. Please see the response to Comment C-021-001 for information about the consideration of light rail on the SR 520 corridor and the expected reduction in greenhouse gas emissions with the Preferred Alternative. As noted in that response, demand for light rail in the corridor is not expected to be sufficient to support new infrastructure until beyond the project design year of 2030. WSDOT will continue to work with Sound Transit as ST studies the potential for long-term implementation of rail in the SR 520 corridor.

C-021-003

Please see the response to Comment C-021-001. The SR 520 High-Capacity Transit Plan endorsed in 2008 by the state, King County Metro Transit, and Sound Transit found that until at least 2030, demand for transit in the 520 corridor could be satisfied by bus rapid transit that runs in HOV/transit lanes—complementing Sound Transit's East Link on I-90.

C-021-004

As discussed in the response to Comment C-021-001, WSDOT, Sound Transit, and King County Metro published the final SR 520 High-Capacity Transit Plan in December 2008. The plan responded to the requirements of Engrossed Senate Substitute Bill 6099, which was

C-021-014 In like manner, the Section 4(f) analysis (SDEIS, Attachment 6) totally ignores the light rail option and fails to provide any consideration of the ability of that alternative to avoid or reduce impacts to parklands protected by federal law. A light rail option could eliminate the need for HOV ramps and, thereby, reduce the footprint of the project and its impacts on protected Section 4(f) lands. Yet this avoidance and minimization strategy was not analyzed because rail had been eliminated as an alternative to be studied in detail in the EIS. *See* Attachment 6 at 121. This is yet another fatal flaw in the SDEIS.

The failure to consider rail as a means of reducing impacts to parks is ironic given the Governor's quote in the SDEIS that called for Seattle communities to develop a design for the project in Seattle that "will best serve the neighborhoods, University of Washington, **and parks and natural resources.**" SDEIS at 1-16 (emphasis supplied). The Governor called on WSDOT "to provide support" to that effort. It is not too late. A rail alternative could be the best option for protecting parks and our most vulnerable natural resource – our atmosphere under attack from GHG emissions. We urge the FHWA and WSDOT to provide support for that effort now.

C-021-015 Segmentation

The SDEIS assesses impacts (and alternatives) only within a part of the SR 520 Project corridor. As the SDEIS recognizes, the earlier Draft EIS evaluated the entire SR 520 corridor from I-5 in Seattle to 108th Avenue NE in Bellevue (just shy of I-405). In contrast, though, the SDEIS chops that corridor in two. The current SDEIS evaluates only the portion of the corridor from I-5 to Medina. This is error.

Federal Highway Administration regulations set forth three criteria that must be met to justify conducting environmental review for only a segment of a longer highway project. The segment evaluated in the EIS "shall:"

> (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
>
> (2) Have independent utility or independent significance, *i.e.*, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
>
> (3) Not restrict consideration of alternatives for reasonably foreseeable transportation improvements.

23 C.F.R. § 771.111(f).

The I-5 to Medina segment analyzed in the SDEIS fails all three of these tests.

passed in the 2007 session of the Washington State Legislature and codified as RCW 47.01.410. The citation excerpted in the comment is provided in full below.

> RCW 47.01.410
>
> State route No. 520 improvements — Multimodal transportation plan.
>
> *As part of the state route number 520 bridge replacement and HOV project, the governor's office shall work with the department, sound transit, King county metro, and the University of Washington, to plan for high capacity transportation in the state route number 520 corridor. The parties shall jointly develop a multimodal transportation plan that ensures the effective and efficient coordination of bus services and light rail services throughout the state route number 520 corridor. The plan shall include alternatives for a multimodal transit station that serves the state route number 520 - Montlake interchange vicinity, and mitigation of impacts on affected parties. The high capacity transportation planning work must be closely coordinated with the state route number 520 bridge replacement and HOV project's environmental planning process, and must be completed within the current funding for the project. A draft plan must be submitted to the governor and the joint transportation committee by October 1, 2007. A final plan must be submitted to the governor and the joint transportation committee by December 2008.*

As stated in the law, the plan was mandated to ensure "the effective and efficient coordination of bus services and light rail services throughout the state route number 520 corridor" [emphasis added]. The Legislature's intent was not, as the excerpts in the comment suggest, "to 'ensure' light rail 'throughout the State Route Number 520 corridor'." The plan satisfied the legislative mandate by developing a proposal for high-

C-021-016

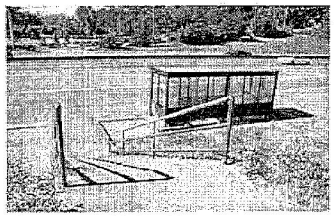
Logical Terminus

The SDEIS explains the logic of the two endpoints in Section 1.14: "These termini are logical because the I-5/SR 520 interchange is a major system interchange in the City of Seattle, while Evergreen Point Road is the location of a major transit transfer point for the Eastside." We have no quarrel with recognizing the I-5/SR 520 interchange as a major system interchange and a logical terminus for the western end of the project. A parallel eastern terminus is SR 520's intersection with I-405 in Bellevue or its intersection with SR 202 in Redmond. But there is no comparable "major system interchange" at Evergreen Point Road. The SDEIS claim that Evergreen Point Road in Medina is a logical endpoint because it is a "major transit transfer point" is illogical in several respects.

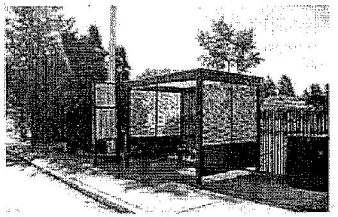
First, an infinitesimal number of persons traveling along SR-520 use the Evergreen Point Freeway Station. According to data in the SDEIS, of the 160,000 people who use the bridge on an average weekday, only 1,000 of them are transit riders who use the Evergreen Point Freeway Station. That is, barely more than one-half of one percent of persons crossing the bridge use the Evergreen Point Freeway Station.[3] That hardly makes it a "major" transit transfer point.

Second, even if the comparison is made to transit riders crossing the bridge, the numbers are not much better. According to the EIS, there are 15,000 transit riders passing across the bridge on an average weekday (ES 2-1). The 1,000 transit riders using the Evergreen Point Freeway Station constitute just seven percent of all transit riders crossing the bridge. The Evergreen Point Freeway Station simply is not a "major" transfer point.

Third, the minor role of the Evergreen Point Freeway Station is visually conveyed by these pictures of the facility:



Evergreen Point Freeway
Transit Station – Westbound



Evergreen Point Freeway
Transit Station – Eastbound

SR 520 Transit station Usage summary Page 2
WSDOT Aug 2005

[3] According to the EIS, 160,000 people cross the bridge on an average weekday (ES 1-2) of which only 1,000 are transit riders using the Evergreen Point Freeway Station (SDEIS at 2-8 and Ex. 2-5).

capacity bus rapid transit on SR 520 and by developing a plan for the Montlake Multimodal Center to serve as a major transfer point between the University Link rail station, the proposed SR 520 bus rapid transit lines, and local bus service. The multimodal center will ensure effective and efficient coordination of bus services and light rail services, as called for in the legislation.

C-021-005

Extensive analysis was conducted to determine the location and timing of high-capacity transit between Seattle and the Eastside. Sound Transit has documented the history of the decision to locate its East Corridor HCT line on I-90 in the East Corridor High Capacity Transit Mode Analysis History (Sound Transit, August 2006), available at http://www.soundtransit.org/documents/pdf/projects/eastlink/East_Corridor_Mode_Analysis_History_Report_8-2006.pdf.

Because Sound Transit is the regional agency responsible for implementing high-capacity transit in the Puget Sound region, it bears the responsibility for environmental analysis of its project and non-project proposals. In 2005, Sound Transit completed the Final EIS on its Regional Transit Long-Range Plan, which identified SR 520 as a BRT corridor. Sound Transit has also prepared EISs on previous planning documents with similar conclusions beginning in 1993. As discussed in the response to comment C-021-001, the potential inclusion of light rail transit on SR 520 was studied as part of the NEPA alternatives analysis for the SR 520 Bridge Replacement and HOV Project, but was not carried into detailed analysis.

C-021-006

Please see the responses to comments C-021-001 and C-021-005 regarding the more recent analysis that continues to confirm the regional decision to build HCT on I-90 and the potential for HCT on SR 520 in the

C-021-016 These small bus stops on the side of a major freeway hardly constitute a "logical terminus" for this environmental analysis.

Fourth, in justifying Evergreen Point Road as the western terminus for the segment of this project stretching east to Redmond, the SDEIS asserts: "The existing freeway transit stop at Evergreen Point Road is a key hub for transit on the Eastside, connecting north-south routes with east-west routes across Lake Washington; . . ." SDEIS at 1-36. Key hub? Connecting north-south routes? According to Metro's Route Map, there are no major north-south bus routes using the Evergreen Point Transfer Station. The only two routes that do not simply pass through the transfer station while remaining on 520 are Route 261 and Route 271. Each of these routes travel south for a short distance and then turn east through downtown Bellevue and then beyond to points further east in Overlake (Route 261) and southeast in Eastgate (Route 271). Characterizing the Evergreen Point Transfer Station as a "logical terminus" on the basis of it being a "key hub" linking east-west with north-south routes is pure fiction. For all of these reasons, the first test in the federal regulation is not met. Evergreen Point is not a major hub and is not a logical terminus.

C-021-017 Independent Utility

Limiting environmental analysis to this western segment also fails the second test which requires that the project have "independent utility," "even if no additional transportation improvements in the area are made." Certainly the "no action" alternative would have independent utility by eliminating safety issues associated with the existing, aging structures. But the proposal is to do much more than that, *i.e.*, to expand the road to include new HOV lanes across the lake and in Seattle. The SDEIS claims that these HOV lanes "will complete the SR-520 HOV system in keeping with regional planning." SDEIS at 1-23. Hardly! Completion of this segment would not complete the SR-520 HOV system in keeping with regional planning. The Eastside project would have to be completed as well.

Eastbound on SR 520 from the Evergreen Point Station, there are no HOV lanes until considerably east of Evergreen Point Road. Constructing eastbound HOV lanes in Seattle and on the bridge would create a huge backup where that traffic has to merge with the general purpose lanes due to the absence of any eastbound HOV lanes from Evergreen Point east.

The eastern segment of this now bi-sected project (*i.e.*, the segment east of Evergreen Point Road) is described as including this major element:

> Construct a new eastbound HOV lane from Lake Washington to the existing HOV lane west of the I-405 interchange. **This improvement** would complete the currently discontinuous HOV network on the Eastside and improve travel time reliability for buses and carpools.

future. Please see the responses to comments C-021-001 and C-021-002 regarding greenhouse gas emissions.

C-021-007

Please see the responses to comments C-021-001 and C-021-002 regarding greenhouse gas emissions and the response to Comment C-021-001 regarding how the Preferred Alternative would accommodate future light rail in the SR 520 corridor.

C-021-008

In February 2010, the state's Office of Financial Management (OFM) provided guidance to agencies for applying RCW 70.235.070 to funding programs. This guidance states that programs using federal funding when the distribution criteria cannot be changed are not subject to this requirement. Because this project is federally funded, it is not subject to this state requirement. Nevertheless, as discussed in responses to previous comments, the project would support increased use of transit and decreased use of single-occupant vehicles, and thereby would reduce GHG emissions in the project area.

C-021-009

Comment noted.

C-021-010

As discussed in previous responses, regional decisions regarding cross-lake rail transit have been reaffirmed numerous times since the Trans-Lake Washington Study. While WSDOT is not the agency responsible for implementing light rail in the Puget Sound region, the project is designed to accommodate future implementation of light rail in the SR 520 corridor (see Chapter 2 of the Final EIS). Please see the response to Comment C-021-001 and Section 2.4 of the Final EIS for the explanation of why initial implementation of light rail on SR 520 is not studied in the EIS.

C-021-017 SDEIS, Appendix Q at 1-4 (emphasis supplied). Not unless the west of Medina segment is combined with the east of Medina segment will there be a continuous eastbound HOV system in the SR 520 corridor.

Westbound, HOV lanes exist from I-405 to Lake Washington, but they are on the outside of the right-of-way. The project in Seattle and on the bridge call for the HOV lanes to be on the inside of the other lanes. "This change would enhance safety by eliminating the need for merging vehicles to weave across the faster-moving HOV lanes to reach the general purpose lanes." Thus, completing the SR 520 HOV system involves more than building HOV lanes in Seattle and on the bridge. The Eastside HOV lanes must be moved so that they form a continuous protected lane inside of the general purpose lanes. Unless the westbound HOV lanes east of Lake Washington are relocated to the inside, the SR 520 HOV system will not be complete, contrary to the claim in the EIS that the Seattle and bridge segment of the project alone will "complete the SR 520 HOV system."

C-021-018 Segmentation Precludes Alternatives

Carving out the Seattle and Lake Washington portion of the corridor as a separate segment also violates the third test of the federal regulation, *i.e.*, it will "restrict consideration of alternatives for other reasonably foreseeable transportation improvements." As we have already seen, adding rail to this corridor is a "reasonably foreseeable transportation improvement," yet all the alternatives under consideration for this segment would not just "restrict" consideration of light rail, but effectively eliminate it. That would be a loss not just for Seattle communities, but for Eastside communities, too.

In like manner, proceeding with the eastern segment in advance of the Seattle and bridge segment threatens the feasibility of adding rail to the Seattle and bridge segment. Unless provision is made now for rail east of Evergreen Point Road, the decisions made on the eastern segment will "restrict," if not effectively preclude, consideration of adding rail to this corridor at any time in the reasonably near future.

Segmenting the overall project also threatens consideration of alternatives for the Seattle and bridge segment because of funding limitations. There is only so much money that the federal and state agencies can find to fund this project overall. Revenue sources for the entire project have not been found. *See, e.g.,* SDEIS at 2-34. Project cutbacks seem inevitable. By segmenting the project and allowing the eastern segment to go first, scarce funds will be devoted to designing, building, and mitigating impacts on the eastern segment, effectively limiting options when the time comes to design, build, and develop mitigation for the western segment. For all these reasons, the third criterion is not met and this attempted segmentation must be abandoned. A new Supplemental Draft EIS should be prepared that evaluates the entire project. No further action should be taken to implement the eastern segment (east of Evergreen Point Road) until a Final Supplemental EIS is published.

C-021-011

Please see the responses to comments C-021-001, C-021-002, C-021-005, and C-021-008.

C-021-012

Please see the response to Comment C-021-001. The SR 520, I-5 to Medina project would not preclude light rail in the SR 520 corridor.

C-021-013

The project would not preclude light rail in the SR 520 corridor. Please see the response to Comment C-021-001.

C-021-014

Section 4(f) of the U.S. Department of Transportation Act of 1966 (23 U.S.C. 138 and 49 U.S.C. 303) specifies that FHWA may only approve a transportation project or program requiring the use of parks, recreation areas, wildlife and waterfowl refuges, or historic sites for transportation purposes if (1) there is no feasible or prudent alternative to use of the land, and (2) the project includes all possible planning to minimize harm to the property. The Nelson/Nygaard report recommended widening the west approach structures by up to 10 feet to accommodate light rail (Executive Summary, page 2). This would have increased, rather than reduced, right-of-way acquisition in the Washington Park Arboretum, a Section 4(f) resource. However, WSDOT in consultation with Sound Transit identified a design approach that would narrow the SR 520 footprint through the Arboretum, yet still allow light rail transit to be added in place of the HOV lanes. As a result, the Preferred Alternative uses less Section 4(f) property than the design options evaluated in the SDEIS. With regard to NEPA alternatives analysis and GHG emissions, please see the responses to comments C-021-001 and C-021-002.

C-021-019

Section 4(f) Lands

Section 4(f) of the Department of Transportation Act and Section 138 of the Federal-Aid Highway Act preclude the use of parklands for highway projects absent extraordinary circumstances.[4] Prior to enactment of Section 4(f), parklands had been an easy mark for highway projects. Building highways in parks typically involves less expense and less political and practical problems than building a highway through established residential or commercial areas. As the Supreme Court stated in the seminal 4(f) case of *Citizens to Preserve Overton Park v. Volpe*,[5] Section 4(f) "expresses the Congressional will 'that protection of parkland was to be given paramount importance.'"

In *Overton Park*, the highway departments argued that parkland should be used because of cost, safety, and other factors. The highway departments claimed they had discretion to consider these other factors and to determine "whether, on balance, alternative feasible routes would be 'prudent.'" *Id.* at 412. The Supreme Court rejected these contentions:

> But no such wide-ranging endeavor was intended. It is obvious that in most cases considerations of cost, directness of route, and community disruption will indicate that parkland should be used for highway construction whenever possible. Although it may be necessary to transfer funds from one jurisdiction to another, there will always be a smaller outlay required from the public purse when parkland is used since the public already owns the land and there will be no need to pay for right-of-way. And since people do not live or work in parks, if a highway is built on parkland no one will have to leave his home or give up his business. Such factors are common to substantially all highway construction. Thus, if Congress intended these factors to be on an equal footing with preservation of parkland there would have been no need for the statutes.
>
> Congress clearly did not intend that cost and disruption of the community were to be ignored by the Secretary. But the very existence of the statutes indicates that protection of parkland was to be given paramount importance. **The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes.** If the statutes are to have

[4] These provisions are currently codified at 23 U.S.C. § 138 and 49 U.S.C. § 303. They were originally enacted as § 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as "Section 4(f)."

[5] 401 U.S. 402, 412-13 (1971).

C-021-015

WSDOT worked closely with FHWA to ensure that the both the SR 520, I-5 to Medina Bridge Replacement and HOV Project and the Medina to SR 202: Eastside Transit and HOV Project satisfied the FHWA criteria for consideration as independent projects. According to 23 CFR 771.111(f), the purpose of these criteria is to "to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated." WSDOT and FHWA are confident that this requirement has been satisfied. Please refer to the discussions of specific criteria under the responses to the next three comments.

C-021-016

The Evergreen Point Freeway Station is the eastern terminus of the SR 520, I-5 to Medina project (evaluated in the SDEIS on which these comments were submitted) and the western terminus of the SR 520, Medina to SR 202 project (evaluated in an Environmental Assessment that resulted in a Finding of No Significant Impact in May 2010). Because the Medina to SR 202 project was identified as a separate NEPA action in 2008 and because its NEPA process concluded earlier than the process for the I-5 to Medina project, the Evergreen Point Freeway Station was evaluated as a terminus in the Medina to SR 202 project development process. The rationale for the station as a terminus is documented in correspondence between WSDOT and FHWA, which is included as Attachment 8 to the Final EIS. To quote from that correspondence:

> The Evergreen Point freeway transit stop is the primary transfer point for people changing from local and regional north-south bus routes to the regional east-west service that operates on SR 520. In this sense, it is the transit equivalent of a highway interchange. Twenty-three bus routes, operated by both King County and Sound Transit, use this stop as a time and transfer point. (In comparison,

C-021-019

> any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems.

Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 at 411-12 (1971) (emphasis supplied; footnotes omitted). *See also Arlington Coalition on Transportation v. Volpe*, 458 F.2d 1323, 1335 (4th Cir. 1972) ("Congress has declared through sections 138 and 4(f) that conservation of parkland is of the **utmost primary importance**") (emphasis supplied).

Section 4(f) prohibits FHWA from approving any project:

> which requires the use of any publically owned land from a public park, recreation area, or wildlife and water fowl 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 water fowl refuge, or historic site resulting from such use.

23 U.S.C. § 138(a).

The legislation not only provides the utmost protection for parklands, but it also provides local governments with a major role in deciding whether local parklands can be used for a highway project. The Act protects publicly owned park lands "of local significance," and the Act reserves to the "local officials having jurisdiction" the right to determine whether municipally owned park lands have "local significance." 28 U.S.C. § 138(a). In like manner, a finding that an impact to a municipally owned park is *de minimis* requires concurrence by the municipality. 28 U.S.C. § 138(b)(iii)(B). This local concurrence cannot be inferred. There must be an explicit determination by the local government. *Arlington Coalition on Transportation v. Volpe, supra*, 458 F.2d at 1336. *See also* 23 C.F.R. 774.11(c) (in the absence of an explicit determination by the officials with jurisdiction over a park that it is insignificant, park property "will be presumed to be significant").

In making the "significance" determination, "the desirability of using the particular parkland in question as a highway must be ignored and only the value of the park as a park can be considered. Were this not so, land valuable to the community as a park could be used for a highway even though 'feasible and prudent alternatives' existed because federal or State officials had decided that using the park for highway purposes was desirable according to criteria other than whether such alternatives existed, the *only criterion* allowed by the Acts." *Id.* (emphasis in original).

15 routes transfer at the Montlake freeway transit stop on the west side of Lake Washington.) Buses that use the Evergreen Point stop serve the neighborhoods north and south of SR 520, neighboring cities, and destinations as distant as Totem Lake, Issaquah, and Renton. This makes it one of the key transit hubs of the Eastside, facilitating trips both across Lake Washington and to many points north, south, and east. For a project designed to enhance the operation of transit and HOVs, such a major regional linkage point is a logical terminus.

A letter from King County Metro to WSDOT in 2008 emphasizes the importance of this facility:

> The bus stops just east of Evergreen Point Road Northeast are very important transfer points for Sound Transit, Community Transit, and Metro fixed-route services across SR 520, which combined, carry over 14,000 riders each weekday. This is because it is the only place where all buses crossing the bridge serve a common pair of stops. There are over 650 boardings and alightings every weekday at the westbound stop. Route destinations include downtown Bellevue, Redmond, Overlake, Kirkland, Totem Lake, University of Washington, Northgate, and downtown Seattle. (Letter from Kevin Desmond to Paula Hammond, April 22, 2008)

The appearance of the current facilities at the Evergreen Point Freeway Station is not relevant to the station's existing or future use. As part of the SR 520, Medina to SR 202 project, the existing shelters will be incorporated into a substantial transit facility beneath the Evergreen Point lid, with greatly improved access and capacity to support the expected increase in cross-SR 520 bus transit ridership (see the response to Comment C-021-001). The new facility will be sized and designed to accommodate potential future use by riders of light rail in the corridor, as well as by bus patrons.

C-021-020 There is no requirement that land that functions as a park be formally designated as a park to enjoy the protection of Section 4(f). *Stewart Park & Reserve Coalition, Inc. v. Slater*, 352 F.3d 545 (2nd Cir. 2003).

Some of the lands at issue here are owned by the State and managed by WSDOT. If WSDOT were to determine that these lands that have been used as park land for decades are not "significant," the Federal Highway Administration has the duty to independently review that determination and reach its own conclusion. 23 C.F.R. § 774.11(d).

C-021-021 Under separate cover, my clients are providing you with a detailed analysis of the project's use of and impacts to significant parklands protected by Section 4(f). That analysis demonstrates that the EIS and its Attachment 6 do not comply with the requirements of either NEPA, SEPA, or Section 4(f). Lands that have local significance for park purposes have been ignored in the analysis. Impacts to lands that have been identified as Section 4(f) lands have not been adequately assessed. The EIS and the accompanying 4(f) analysis fail to recognize and disclose numerous project impacts that will substantially impair the activities, features, and attributes of these park lands. That substantial impairment constitutes constructive use of the park lands and triggers Section 4(f) requirements. 23 C.F.R. § 774.15(a). The failure of the EIS and its Attachment 6 to fairly and fully acknowledge the substantial impairment of these park lands renders the EIS and the accompanying 4(f) analysis inadequate and void.

My clients' comments regarding the impacts to the parks (and the comments of many other citizens, too) are echoed also by the Seattle Board of Park Commissioners. Their recent resolution states that the Parks Board "cannot endorse any of the alternatives . . . due to the profound negative environmental impacts the project would have on the Washington Park Arboretum and the other City of Seattle Parks along the SR 520 corridor." The resolution goes on to explain that "the visual impacts and noise associated with the project, both during construction and after it is completed, will be significant" for Montlake Playfield. The resolution notes that the SDEIS "fails to recognize Lake Washington Boulevard as a historic resource or a park and recreation resource." "This officially designated park boulevard is a 204-acre, 9.2 mile long linear park wholly owned by the City and under the jurisdiction of Seattle Parks and Recreation." The project's "increased traffic through the heart of the Arboretum limits access to the Japanese Garden from the rest of the Arboretum, reduces the air quality due to vehicle emissions, increases noise from traffic and makes crossing Lake Washington Boulevard unsafe." The resolution further explains that recent improvements to Washington Park Arboretum "will likely be negatively impacted" by the project. The Parks Board has adopted a plan for future improvements to the Park, yet "redevelopment of SR 520 has the potential to negate the potential to undertake some or all of these projects to the detriment of the Arboretum and contrary to the goals set out in the Master Plan." The failure of the SDEIS and the Section 4(f) analysis to fully disclose these impacts renders the disclosure functions of those documents inadequate. These impacts also demonstrate the impropriety of using these park lands for the project and failing to minimize impacts as required by Section 4(f).

C-021-017

As noted in the SDEIS (page 5-10), the 2030 transportation analysis for the SR 520, I-5 to Medina project did assume that the Medina to SR 202: Eastside Transit and HOV Project had been completed. This is because the Medina to SR 202 project had been planned and programmed, was in the final stages of NEPA evaluation at the time the SDEIS was published and was, therefore, considered reasonably foreseeable. Since the SDEIS was published, the Medina to SR 202 project has received a Finding of No Significant Impact, received funding, and begun construction. Therefore, it was appropriate that the SR 520, I-5 to Medina project make this assumption, and the statement on page 1-23 in the SDEIS regarding completion of the HOV system remains true. The quotation from SDEIS Appendix Q regarding the Medina to SR 202 project also remains true:

> *Construct a new eastbound HOV lane from Lake Washington to the existing HOV lane west of the I-405 interchange. This improvement would complete the currently discontinuous HOV network* ***on the Eastside*** *and improve travel time reliability for buses and carpools.* ***[emphasis added]***

Contrary to the assertion in the comment, the purpose of the Medina to SR 202 project is not to provide "a continuous eastbound HOV system **in the SR 520 corridor**" **[emphasis added]**. The Medina to SR 202 project responds to increasing transit demand in the communities east of Lake Washington. This demand, documented in the SR 520, Medina to SR 202: Eastside Transit and HOV Project Environmental Assessment, requires improved transit infrastructure (e.g., HOV lanes and direct access) and the reliability provided by that infrastructure to meet the regional need. These improvements will support local and regional plans that call for higher land use density in Eastside urban centers, increased reliance on transit, and reduced GHG emissions.

C-021-022 The EIS and the Section 4(f) analysis also failed to consider the substantial impairment that will occur to park lands if construction of the lids is deferred. Given the considerable funding uncertainties and the lead agencies' acknowledgment that the project may be completed in phases, there is a significant possibility that the lids will be deferred for a considerable period of time, if they ever are built. Analysis of that issue should not be delayed until that decision point arrives. At that juncture, with most of the rest of the project built and money available to complete the Seattle section (but not enough money for the lids), there will be severe pressure to complete the highway project and build the lids at some unspecified time later. That possibility must be addressed now. This dynamic also further demonstrates the impropriety of segmenting this project into an east and west segment.

C-021-023 The EIS and Section 4(f) analysis also are inadequate in their failure to consider the possibility of alternatives that would avoid or minimize the amount of park lands to be used by this project. The rail option, discussed above, for instance, would result in a narrower footprint in some areas, thereby, reducing the amount of park land used for the project. The analysis also fails to consider the alternative of double decking the roadway to drastically reduce the width of the project and its use of adjacent park lands.

C-021-024 Finally, the EIS and the Section 4(f) analysis are inadequate in their treatment of measures to mitigate the use of and adverse impacts to park lands. Both NEPA and Section 4(f) require the lead agencies to develop and assess all reasonable measures available to mitigate these adverse impacts. As detailed in the accompanying letter from my client, that task remains undone. Of particular (but not exclusive) concern is the extent to which the analysis relies on the unfunded lids. Given the severe funding constraints, exacerbated by your current decision to allow the Eastside segment to proceed in advance of the Seattle segment, there seems to be a significant possibility that the lids never will be built. The EIS and the Section 4(f) analysis must take that into account.

C-021-025 Based on the various inadequacies described in this letter, the lead agencies should proceed promptly to develop a new Supplemental Draft EIS that, among other things, addresses the entire project, not just the Seattle/bridge segment and which includes a reasonable range of alternatives, including a light rail alternative. It is unfortunate that decisions made by the lead agencies in the early stages of drafting this document led to such a flawed document. Those decisions will, unfortunately, result in the loss of some time in planning for this project. The sooner the agencies rectify these errors, the sooner this project can get back on the right path. Ignoring these errors or making excuses for them now will simply delay the inevitable and result in yet more lost time. If a mid-course correction is made quickly now, the amount of time lost can be minimized and this project can still move into the construction phase in a reasonable time frame.

C-021-018

Adding rail to the SR 520 corridor is not a reasonably foreseeable transportation improvement. As discussed in the response to Comment C-021-001, the proposed mode of high-capacity transit in this corridor in bus rapid transit, with future rail funded only for long-range study and not included in any regional plan. Nevertheless, the portion of SR 520 east of Lake Washington has been designed to be compatible with potential future light rail. As explained in the response to Comment C-021-016, the Evergreen Point Freeway Station included in the SR 520, Medina to SR 202: Eastside Transit and HOV Project has been designed to accommodate multimodal use for buses and rail if rail is implemented on the corridor in the future.

As described in Chapter 1 of the Final EIS, funding for the floating bridge—the most vulnerable portion of the SR 520, I-5 to Medina corridor—has been secured, and WSDOT has solicited proposals for construction of this portion of the project. Chapter 1 also describes construction sequencing for the project, which allows several years for full funding to be obtained through a variety of state and federal sources (see Section 1.10). Thus, funding and construction of the Medina to SR 202 project does not preclude the Preferred Alternative or any other alternative for the SR 520, I-5 to Medina project.

C-021-019

WSDOT and FHWA are familiar with Section 4(f) and the Overton Park case. Since 2004, WSDOT has been working with the "local officials having jurisdiction" over Section 4(f) resources in the project area to identify measures to minimize harm to these properties. As discussed in the response to Comment C-021-014, the Preferred Alternative requires less use of Section 4(f) lands than any of the SDEIS design options and has less Section 4(f) use than any reasonable build alternative evaluated throughout the NEPA process.

Thank you for your consideration of these comments.

Very truly yours,

BRICKLIN & NEWMAN, LLP

David A. Bricklin

DAB:psc

cc: Clients

Friends of SR 520\SDEIS Comment Letter to Jennifer Young

The SR 520 Parks Technical Working Group, convened in 2008 as a subunit of the project's Regulatory Agency Coordination process, has evaluated the functions and values of project area parks and recreational areas and coordinated with WSDOT in developing appropriate mitigation for unavoidable impacts. In May 2010, WSDOT began working with the Arboretum and Botanical Garden Committee—composed of representatives from City of Seattle, the University of Washington, and the Arboretum Foundation—to develop the Arboretum Mitigation Plan (in Attachment 9 to the Final EIS).

C-021-020

The Federal Highway Administration has reviewed and concurred with WSDOT's findings regarding the applicability of Section 4(f) to recreational lands in the project area. Although it is not explicitly stated in the comment, it is assumed that the land referred to as being "owned by the state and managed by WSDOT" is the present location of the Lake Washington Boulevard and R.H. Thomson Expressway ramps, which is referred to informally as the "WSDOT peninsula." This area (which includes the Miller Street Landfill) is not subject to Section 4(f) as a recreational property. It was purchased for transportation purposes and still contains operating transportation facilities. The agreement between WSDOT and the City of Seattle regarding this WSDOT right-of-way holds that, while the state allows Seattle to use and maintain portions of the property for park purposes, the property remains under WSDOT ownership and must be relinquished within 90 days if WSDOT needs it for transportation purposes (see page 30 of the Cultural Resources Discipline Report). Both FHWA and the U.S. Department of the Interior have concurred that the peninsula property is therefore not subject to Section 4(f). In addition, rather than being adversely affected, the peninsula would be benefited by removal of the existing Lake Washington Boulevard ramps and the R.H. Thomson Expressway ramps, which is included in the Preferred Alternative.

However, since the SDEIS was published, FHWA and WSDOT have determined that, based on the peninsula's former status as part of the Arboretum, the peninsula is subject to Section 4(f) as a historic property. However, WSDOT has determined, and the Washington State Department of Archaeology and Historic Preservation has concurred, that the Miller Street Landfill is not eligible for the NRHP. Therefore, the landfill is not a Section 4(f) resource. This determination is documented in the Final Cultural Resources Assessment and Discipline Report (Attachment 7 to the Final EIS).

The CFR cited in the comment (23 CFR 774.11(d) is quoted in full as follows:

> Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl refuge purposes. The determination of which lands so function or are so designated, and the significance of those lands, shall be made by the official(s) with jurisdiction over the Section 4(f) resource. The Administration will review this determination to assure its reasonableness.

Since the WSDOT peninsula is not administered under a statute permitting management for multiple uses, but rather is land designated for transportation that is currently managed for interim park use, 23 CFR 774.11(h) is applicable:

> When a property formally reserved for a future transportation facility

temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).

C-021-021

The Federal Highway Administration has reviewed and concurred with WSDOT's findings regarding the applicability of Section 4(f) to lands in the project area. The referenced attachment to the comment letter from the "Coalition for a Sustainable 520" includes a number of incorrect interpretations of Section 4(f)'s applicability to various properties, including properties in the existing WSDOT right-of-way. As defined in 23 CFR 774.17, "Section 4(f) property means publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance." Lands designated for transportation purposes, regardless of any formal or informal interim use, are not Section 4(f) properties.

Since the SDEIS was published, and after review of public comment, WSDOT has conducted further evaluation of the applicability of Section 4(f) to properties in the study area. For example, WSDOT revisited its analysis of Lake Washington, and upon completion of additional research, determined that Lake Washington Boulevard, from Madison Street to Northeast Pacific Street, is a historic property. Lake Washington Boulevard has been designated as a park boulevard and has been evaluated as such in the Final EIS, the Final Cultural Resources Assessment and Discipline Report (Attachment 7 to the Final EIS), the Recreation Discipline Report Addendum (Attachment 7 to the Final EIS), and is discussed in the Final Section 4(f) Evaluation (Chapter 9 of the Final EIS). However, under this designation it remains a city arterial street, and the Seattle Department of Transportation has not defined special traffic restrictions or other protective measures for park boulevards. Note also that Lake Washington Boulevard is discussed in

the Final Section 4(f) Evaluation as a historic property, but not a park property, because its primary use is not as a park. For more information, please see the Final Section 4(f) Evaluation (Chapter 9 of the Final EIS).

The Preferred Alternative includes a number of design modifications that would reduce effects on the Arboretum, compared to the No Build Alternative and the design options evaluated in the SDEIS. It would remove the existing Lake Washington Boulevard eastbound on-ramp and westbound off-ramp and the R.H. Thomson Expressway ramps. Access to Lake Washington Boulevard by westbound SR 520 traffic would be moved to a new intersection located on the Montlake Boulevard lid at 24th Avenue East, which would result in a reduction in traffic through the Arboretum compared to No Build. Under the Preferred Alternative in 2030, a.m. peak hour volumes on Lake Washington Boulevard through the Arboretum would be 1,330 vehicles per hour, compared to 1,950 vehicles per hour with the No Build Alternative. P.m. peak hour volumes would be 1,410 vehicles per hour compared to 1,730 with the No Build Alternative. The Preferred Alternative would acquire less right-of-way than any of the SDEIS design options. It would also reduce traffic noise in the Arboretum compared to No Build, particularly in locations close to the highway. The noise-reducing effects of the Montlake lid, changes in the west approach profile, elimination of the Lake Washington Boulevard ramps, and the 4-foot concrete traffic barriers with noise-absorptive coating would lower noise levels in this area compared to the No Build Alternative. For more information, please see Section 5.7 of the Final EIS and the Noise Discipline Report Addendum (Attachment 7 to the Final EIS).

During the 2010 legislative session, the Washington State Legislature passed and Governor Gregoire signed Engrossed Substitute Senate Bill (ESSB) 6392. Among other requirements, ESSB 6392 directed WSDOT to work with regional agencies to develop a mitigation plan for the Washington Park Arboretum. WSDOT began this coordination in May

2010, and it continued over a series of 11 meetings with representatives from the Arboretum and Botanical Garden Committee (ABGC, which includes the City of Seattle, the University of Washington, and the Arboretum Foundation) and the Seattle Department of Transportation. Throughout these meetings, WSDOT and ABGC consulted the 2001 Arboretum Master Plan to determine which projects in the plan could be funded by WSDOT as mitigation measures.

The workgroup coordination culminated with publication of the Arboretum Mitigation Plan (Attachment 9 to the Final EIS), which contains the specific mitigation measures agreed to by all parties. A number of these mitigation measures were derived from the Arboretum Master Plan, and the remaining measures were supported by ABGC because they would reduce the project's effects on the Arboretum. Some of these measures would be implemented by WSDOT in conjunction with project construction, and others would be funded by WSDOT and implemented by the City of Seattle or the University of Washington. The ABGC approved the Arboretum Mitigation Plan on December 8, 2010.

Regarding effects on other parks, as noted in the response to Comment C-021-019, the SR 520 Parks Technical Working Group, which includes the Seattle Parks and Recreation Department, the University of Washington, the Washington State Recreation and Conservation Office, and the National Park Service, has evaluated the functions and values of project area parks and recreational areas and coordinated with WSDOT in developing appropriate mitigation for unavoidable impacts. As the agencies with jurisdiction over park resources, the Parks TWG has concurred with WSDOT's proposed measures to minimize harm.

The Section 4(f) evaluation for the project contains an analysis of constructive use for those resources in the project area that would not experience a direct Section 4(f) use. FHWA and the agencies with jurisdiction have concurred that the project would not result in substantial

impairment of the activities, features, and attributes of these Section 4(f) lands. Please see the Section 4(f) evaluation in Chapter 9 of the Final EIS.

C-021-022

The SDEIS discussed the possibility of constructing the project in separate phases over time, with the vulnerable structures (the Evergreen Point floating bridge, west approach bridge, and Portage Bay bridge) built first. This "Phased Implementation scenario" was analyzed for each environmental resource. Due to the funding shortfall, FHWA and WSDOT still believe it is prudent to evaluate the possibility of phased construction of the corridor should full project funding not be available by 2012. Currently committed funding is sufficient to construct the Evergreen Point floating bridge and landings; a Request for Proposals has been issued for this portion of the project, with proposals due in June 2011. Accordingly, this Final EIS discusses the potential for the floating bridge and landings to be built as the first phase of the SR 520, I-5 to Medina project. This differs from the SDEIS Phased Implementation scenario, which included the west approach and the Portage Bay bridge in the first construction phase. See Section 2.8 of this Final EIS for further information on potential project phasing.

However, the lids are integral to the project design and would be constructed at the same time as the section of the SR 520 corridor in which they are located (e.g., the Montlake lid would be completed at the same time as the Montlake interchange improvements). WSDOT has never proposed to defer the lids until after completion of the SR 520 roadway improvements.

C-021-023

Please see the response to Comment C-021-014 regarding rail and Section 4(f). WSDOT has considered double-decked designs in an effort to minimize the overall width and maximize the efficiency of the floating

bridge. However, WSDOT found that as the pontoons became narrower, they needed to have much more depth with significant ballast to make them stable. WSDOT also found that the taller double-deck structure raised the center of gravity of the bridge and presented a larger area for the wind to catch, increasing the load on the bridge and decreasing stability. The double-deck roadway also created problems at the ends of the floating bridge, where the ramps from the lower roadway would have to weave through the columns of the upper roadway, creating a taller structure with larger girders and foundations. This would have increased aquatic habitat effects, as well as making the resulting roadway much more costly and visually obtrusive to viewers on the shoreline. Therefore, double decking was eliminated from consideration as a design option for the NEPA review of the project.

C-021-024

For current information on mitigation for Section 4(f) resources, please see the Final Section 4(f) Evaluation (Chapter 9 of the Final EIS). The ESSB 6392 workgroup coordination culminated with publication of the Arboretum Mitigation Plan (Attachment 9 to the Final EIS), which contains the specific mitigation measures agreed to by all parties. A number of these mitigation measures were derived from the Arboretum Master Plan, and the remaining measures were supported by ABGC because they would reduce the project's effects on the Arboretum.

Please see the response to Comment C-021-022 regarding construction of the lids as part of the project and revised potential phasing. See also the responses to comments C-021-017 and C-021-018 regarding funding of the SR 520, I-5 to Medina and Medina to SR 202 projects.

C-021-025

Please see the responses to previous comments in this letter. WSDOT has evaluated a reasonable range of alternatives for the project.