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HONORABLE RICHARD EADIE

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

SEATTLE CITIZENS AGAINST THE)
TUNNEL and ELIZABETH A. CAMPBELL,)
Plaintiffs,)

NO. 09-2-36276-9SEA
(CONSOLIDATED WITH
NO. 09-2-40939-1SEA)

vs.)

WASHINGTON STATE DEPARTMENT OF)
TRANSPORTATION; PAULA HAMMOND,)
IN HER OFFICIAL CAPACITY AS)
SECRETARY OF THE WASHINGTON)
STATE DEPARTMENT OF)
TRANSPORTATION,)

PLAINTIFF’S RESPONSE IN
OPPOSITION TO DEFENDANTS’
MOTION TO DISMISS

Defendants.)

ELIZABETH A. CAMPBELL,)

Plaintiff,)

vs.)

CITY OF SEATTLE, a municipal corporation,)
Defendant.)

COUNTER STATEMENT OF FACTS

1. The H2K Project was created by segmenting out a portion of another project that had undergone substantial environmental review, the “Alaskan Way Viaduct and Seawall

1 Replacement Project” (AWVSR Project). The section of the SR99 roadway between S. Holgate
2 and S. King streets was never considered to be a separate element under that project’s scope, nor
3 under the NEPA environmental review which was conducted pursuant to the FHWA’s Notice of
4 Intent, dated June 22, 2001, and pursuant to the amended NOI’s thereto.

5 The now H2K Project elements were never considered to be separate elements either in
6 the Draft Environmental Impact Statement (“DEIS”) issued for the AWVSR Project in 2004, and
7 in the subsequent Supplemental Draft Environmental Impact Statement (“SDEIS”) that was
8 issued for it in 2006.

9
10 1. In 1989 a major earthquake in the San Francisco Bay Area, the Loma Prieta
11 Earthquake, causing the Cypress Viaduct to collapse. The collapse of this structure prompted
12 concerns in Washington about the Alaskan Way Viaduct. Despite those concerns it was not until
13 1992, and then again in 1995, that the Washington State Department of Transportation
14 (“WSDOT”) requested that the University of Washington Department of Civil Engineering
15 prepare seismic studies of the SR 99 Alaskan Way Viaduct structure (“Viaduct”). The
16 conclusion of those studies were that one, the Viaduct would have structural vulnerabilities, but
17 more important it would have foundational vulnerabilities due to the possible liquefaction of the
18 soil under the Viaduct during an earthquake, two, there were structural differences between the
19 Cypress Viaduct and the Alaskan Way Viaduct, and therefore its earthquake-related vulnerability
20 was different than that of the Cypress Viaduct, it was less; and two, a detailed plan and timetable
21 for retrofitting the Viaduct was created so that the earthquake-related risks to the Viaduct could
22 be greatly reduced. WSDOT never undertook the recommended retrofitting of the Viaduct.

23 2. In the late 1990’s WSDOT embarked on an initiative to replace the Viaduct, the
24 Alaskan Way Viaduct and Seawall Replacement Project (“AWVSR Project”). In 2001 it issued
25 with the Federal Highway Administration a Notice of Intent to prepare an environmental impact
26 statement for the Project, and in 2004 it issued a Draft Environmental Impact Statement, and in
27 2006 it issued a Supplemental Impact Statement; the conclusion of both statements were that
28 either an elevated replacement structure or a cut-and-cover tunnel were the most realistic

1 alternatives for replacing the Viaduct, however the drawback for the tunnel alternative was that it
2 would cost substantially more than the elevated structure, and it would disrupt the Central
3 Waterfront area where the Viaduct was located. Despite the disparity in costs, the City of Seattle
4 legislative and executive branches rejected the elevated option, threatened to withhold necessary
5 permits for the AWVSR Project if WSDOT did not accede to its demands that a tunnel option be
6 selected. Later in 2006 the Governor of Washington weighed in on the matter of which option to
7 choose, expressing support for an elevated replacement structure. Thereafter the City of Seattle
8 (“City”) promulgated a number of legislative acts to thwart an elevated replacement for the
9 Viaduct and to ensure that a tunnel would be built.

10
11 2. Because of this conceptual impasse and dilatory tactics by the City, in December 2006
12 the Governor issued a set of findings that “The finance plan for the Elevated Structure
13 Alternative project as described in the draft environmental impact statement [2006] (DEIS) is
14 “feasible and sufficient” to complete the project; The finance plan for the Tunnel Alternative as
15 described in the DEIS is not “feasible and sufficient” to complete the project; With either option,
16 opponents intend to obstruct a path forward through legislative or permitting processes; and To
17 break the stalemate, we must ask the voters of Seattle to vote to select either the tunnel or
18 elevated structure with the understanding of the fiscal responsibility for the City.”

19
20 3. In March 2007 a vote was held pursuant to the Governor’s mandate, with a twist, the
21 voting choices had been modified from those ordered by the Governor in order that the results of
22 the vote would be rendered meaningless; instead of a straight up or down choice between a
23 tunnel or an elevated alternative as directed by the Governor, the ballot was intentional mis-
24 drafting by the City of Seattle Council and the Mayor’s office (see attached Exhibit A). This
25 provided both the opportunity to claim that the voters had rejected both structures, and therefore
26 it would be necessary to revisit the matter of what structural option would be appropriate for the
27 replacement of the Viaduct.

28
29 5. Shortly thereafter the Alaskan Way Viaduct Stakeholders Advisory Committee
30 (“AWV SAC”) was convened. It consisted of 33 members, hand picked predominately by the

1 City; it was front loaded with individuals the majority of which favored a tunnel replacement
2 alternative. At the same time the FHWA and WSDOT segmented the “Alaskan Way Viaduct
3 and Seawall Replacement *Project*” (“AWVSR Project”), creating an appellation known as the
4 “Alaskan Way Viaduct and Seawall Replacement *Program*” (“AWVSR Program”) (see attached
5 Exhibit B).

6 The AWVSR *Program* consists of portions of the former AWVSR *Project* which have
7 been segmented out as standalone projects - a group of projects identified as the “Moving
8 Forward Projects”, and four standalone projects, the Alaskan Way Seawall replacement (AWV
9 Seawall Project”), the City of Seattle Utilities projects, the Central Waterfront Viaduct
10 Replacement project (“Central Waterfront Project”), and the SR99 S. Holgate St. to S. King St.
11 project (“H2K Project”), the latter the subject of this case.

12 Only one of the four standalone projects, the Central Waterfront project, is being
13 subjected to a substantial environmental review (a full EIS is being prepared for it). The rest of
14 the projects have all received greatly reduced levels of environmental review, including the H2K
15 Project. Even though the H2K Project makes up over 40% of the former AWVSR Project, it was
16 reviewed through an environmental assessment (“EA”) which did not consider any cumulative
17 impacts of the projects that are literally on either side of it. On February 11, 2008 the Federal
18 Highway Administration and WSDOT issued a Finding of No Significant Impact (“FONSI”) for
19 the SR 99 S. Holgate St. to S. King Street Project.

20
21 6. The AWV SAC under the guidance of the City of Seattle Department of
22 Transportation (“SDOT”) and WSDOT embarked on a year long assessment of replacement
23 options for the Viaduct. At the end of its charter in November, 2008, the AWV SAC released its
24 findings, that the two viable replacement options for the Viaduct were a “hybrid-elevated
25 alternative” and a “hybrid-surface alternative”. The AWV SAC could not justify any tunnel
26 option; and accordingly on December 11, 2008 City of Seattle Mayor Nickels, King County
27 Executive Sims, and Governor Gregoire assembled for a news conference and received the
28 conclusions of the AWV SAC, that the two hybrid alternatives should move forward and that a

1 “A bored tunnel was not formally carried forward as a hybrid alternative at this time due to its
2 high cost”.

3 7. However, both before and after the December 11th public release the AWV SAC’s
4 preferred alternatives, privately WSDOT personnel and a number of stakeholders were meeting
5 with tunneling industry representatives in order to invalidate the findings of the AWV SAC and
6 in order to bring forward the project they had been quietly proceeding with during the AWV
7 SAC process – the deep bored tunnel alternative. Between mid-November 2008, and December
8 2008, WSDOT in cooperation with the tunneling industry representatives crafted and submitted
9 to the Governor a plan for upsetting the findings of the AWV SAC that favored the hybrid
10 elevated and surface alternatives, and setting in their stead a hastily designed concept for a bored
11 tunnel, and an highly favorable accompanying budget for the same. The budget was first based
12 on project cost estimates provided by the tunneling industry figures, and the final figure, \$1.9
13 Billion for the tunnel, was the final cost for the tunnel project that a WSDOT public relations
14 consultant had brokered during the negotiations between WSDOT executives and the tunnel
15 industry reps.
16

17 8. On January 13, 2009 the executives of the City, County, and State announced that they
18 had agreed that the preferred alternative to replace the Alaskan Way Viaduct was a deep-bored
19 tunnel. Following the announcement WSDOT continued with the work that it had already
20 started before the announcement, commencing to implement the AWVSR Program, which was
21 now based on the construction of a 50 foot plus diameter, deep bored tunnel.

22 9. To that end WSDOT has proceeded as the lead agency for the project. While it has
23 been pursuing environmental reviews under NEPA of certain elements of the Program, the
24 overwhelming effort and amount of resources WSDOT is expending are devoted to moving
25 forward the bored tunnel project, and in many cases, taking final actions which both preordain
26 the outcome of the environmental reviews in favor of the bored tunnel alternative, and which
27 ensure that the bored tunnel project is actually moving forward literally as a project.
28

1 An example of this is one project in the AWVSR Program, the SR 99 S. Holgate St. to S.
2 King St. Project (“H2K Project”). At the time the FONSI for the H2K Project was issued, the
3 H2K Project was presented as being “Viaduct replacement alternative *neutral*”, in other words it
4 was designed so that when it was constructed it would be suitable for whatever structure was
5 chosen to replace the Alaskan Way Viaduct. The original four main components of the H2K
6 Project included:

- 7 • New grade-separated access for freight and general purpose traffic between the Seattle
8 International Gateway Railyard, SR 519, Port of Seattle and the stadiums.
- 9 • Improvements to Colorado Avenue South.
- 10 • New Alaskan Way South frontage road that would provide access between Alaskan Way
11 South at South King Street and South Atlantic Street.
- 12 • Reconfigured intersections where South Atlantic Street meets Alaskan Way South, the
13 new U-shaped undercrossing, Colorado Avenue South, the new Alaskan Way South
14 frontage road, and First Avenue South.

15 Since that time, according to the FHWA and WSDOT documents, the H2K project has been 1)
16 dramatically scaled back - \$100 Million worth of project elements have been eliminated from the
17 project; 2) the U-shaped undercrossing at Colorado Avenue South has been eliminated, in its
18 stead an elevated bridge is to be constructed; and the most dramatic change to the project’s scope
19 are the changes made to the project so that when Phase 2 of H2K is completed the necessary
20 roadway connections and structures will be in place for the H2K roadway to connect with the
21 9,200 foot long, 52’ diameter, deep bored tunnel.

22 Any replacement option chosen to replace the Viaduct portion of SR99 must eventually
23 be connected to the H2K Project roadway, and therefore at some point the H2K roadway must be
24 constructed to conformity with the replacement alternative chosen – the deep bored tunnel.

25 However, despite there being an environmental review underway for the Viaduct
26 replacement portion of the AWVSR Program, the Central Waterfront Project, *and no Record of*
27 *Decision being issued*, the H2K Project, as well as all the other projects spawned out of the
28

1 AWVSRP Project no longer remain neutral in their design and construction - they are beyond
2 having a prejudicial effect on the outcome of the Central Waterfront Project environmental
3 review that is underway – they reflect the FHWA’s and WSDOT’s decision to proceed with the
4 bored tunnel alternative.

5 10. The “Massachusetts Street to Union Street Moving Forward Project” has also
6 undergone similar changes that reflect WSDOT’s final decision to proceed with the bored tunnel
7 project. WSDOT has suspended work on it “between S. Royal Brougham Way and Railroad
8 Way S., until further design is complete on the southern portal for the bored tunnel section of the
9 central waterfront section of SR 99.”

10 **ISSUES PRESENTED**

- 11
- 12 1. Has WSDOT not yet taken a final agency action that is subject to judicial review for
13 compliance with SEPA?
 - 14 2. Where WSDOT has not yet taken a final action that is subject to judicial review, does the
15 court lack subject matter jurisdiction over this action, requiring the court to dismiss the action?
 - 16 3. Are the Memorandum of Agreement between the State and the City, and the City Council’s
17 approval of the Memorandum, also not final agency actions because WSDOT has yet to take a
18 final agency action on the Viaduct replacement?

19 **SUMMARY OF ARGUMENT**

20

21 The Washington State Legislature via ESSB 5768, and WSDOT and the City of Seattle
22 have jointly and severally made a final decision to proceed with the bored tunnel replacement
23 alternative. They have taken so many final actions pursuant to their collective decision that it is
24 a challenge to decide which and how many examples of their final acts to provide herein.

25 **ARGUMENT**

26

27 The State on behalf of the Defendants has framed its argument that the Defendants are
28 conducting environmental reviews and therefore everything they are engaged in for the AWVSR

1 Program is sacrosanct, and until such time as an EIS is completed there cannot possibly be a final
2 action, and even then that is not a final action.

3 The problem with this line of reasoning is that the environmental review aspect is a minor
4 part of the matter; while it is preparing the necessary environmental reviews, WSDOT is also
5 issuing contracts, commencing construction, obtaining assorted permits that are unissued in
6 name only, and otherwise taking innumerable acts the majority of which remain undisclosed due
7 to the information embargo it has maintained in this matter.

8 The following inventory of on-going final acts of the Defendants defies the assertions of
9 the Defendants in their Motion to Dismiss:

10 State Legislature

11 The State legislature passed Engrossed Substitute Senate Bill 5768, Chapter 458, Laws of
12 2009 (see attached Exhibit A); effective date July 1, 2009. It states “The state shall take the
13 necessary steps to expedite the environmental review and design processes to replace the
14 Alaskan Way viaduct with a deep bore tunnel under First Avenue from the vicinity of the sports
15 stadiums in Seattle to Aurora Avenue north of the Battery Street tunnel.”

16 WSDOT

17 On December 9, 2009 WSDOT presented its **Alaskan Way Viaduct Quarterly**
18 **Presentation in Olympia. As part of its presentation was a report WSDOT had compiled**
19 **regarding the status of all of the project elements in progress under the AWVSR Program,**
20 **which includes a** project entitled *AWV&SRP - SR99 BORED TUNNEL CENTRAL*
21 *WATERFRONT VIADUCT REPLACEMENT*, WSDOT Work Identification Number U09936E,
22 which includes multiple directly related projects, including the *SR99 King St to Roy – Viaduct*
23 *Replacement* project, WSDOT Project Identification Number, 809936E (see attached Exhibit B).
24 The project scope/description for the latter project indicates that “**The existing Alaskan Way**
25 **Viaduct and Battery Street tunnel will be replaced with a deep bore tunnel...The project is**
26 **comprised of a deep bore tunnel**” [Emphasis added] No such corollary project(s) exist for
27
28

1 either of the other two alternatives, the elevated and surface options, that are allegedly under
2 consideration in the NEPA environmental review being carried out by WSDOT.

3 In May, 2009, WSDOT convened three stakeholder panels to advise it about the
4 implementation of the bored tunnel project portion of the AWVSR Program - the North Portal
5 Working Group, the Central Waterfront Working Group, and the South Portal Working Group,
6 each with between 20 and 25 members apiece. The Groups meet with WSDOT monthly. No
7 working group has been convened for either the Elevated or the Surface options.

8 **H2K and Central Waterfront Project**

9 **WSDOT Central Waterfront South Portal Working Group Presentation: South Portal** 10 **Considerations, May 6, 2009 (see attached Exhibit C):**

11 Slide 30 of 35: “S. Holgate St. to S. King Replaces almost half of existing viaduct.
12 •Improves public safety, access and traffic mobility. •Keeps traffic moving on existing viaduct
13 during tunnel construction. •Connects to bored tunnel and city street grid when tunnel is
14 complete in 2015.”

15 **WSDOT South Portal Working Group Presentation: Preliminary Construction Phasing,** 16 **June 24, 2009 (see attached Exhibit D):**

17 “Alaskan Way Viaduct South Portal Working Group – June 3, 2009 Meeting Summary:
18 Working Group Members’ Questions / Comments” (see attached Exhibit E):

19 Herald Ugles: Is a waterfront trolley in the design? Is the roadway in front of Pier 66 two or four
20 lanes? Will the ferry dock have north and south access or will it be one direction?

21 *Answer: Instead of a waterfront trolley, **the bored tunnel decision** prioritized investment on a*
22 *First Avenue streetcar.” [Emphasis added]*

23 “Public and property safety is a priority **as we prepare to construct the SR 99 bored**
24 **tunnel.” [Emphasis added]**

25 **WSDOT Directors of South, Central and North Projects AWVSR Program at NW** 26 **Region’s 2010 Design-Construction Conference, February 23, 24, 2010 (see attached** 27 **Exhibit F):**

1
2 “WSDOT suspended work between S. Royal Brougham Way and Railroad Way S., until
3 further design is complete on the southern portal for the bored tunnel section of the central
4 waterfront section of SR 99.”

5 **City of Seattle**

6 **Failure to conduct environmental reviews.** The City of Seattle (“City”), which is listed along
7 with the FHWA and WSDOT as being a co-lead agency for the AWVSR Program, has not
8 actively engaged in the NEPA mandated environmental review being carried out by WSDOT for
9 the Central Waterfront Project, the project in the Program that is the bored tunnel project. The
10 City also has not engaged in any SEPA mandated environmental review related actions for the
11 Program elements, in particular those that the City is listed by WSDOT as being the lead agency
12 responsible for conducting the environmental review for the Alaskan Way surface street and
13 promenade project, the Seawall repair or replacement project, and the Mercer West project (see
14 attached Exhibit G); this despite the fact that the City has convened an ad hoc redevelopment
15 agency for the Central Waterfront (see attached Exhibit H), and despite the fact that it has
16 instituted the planning and design work for both the West Mercer Project and the Seawall
17 replacement project.
18

19 **Confirmation of City final actions to proceed with bored tunnel.** Early on the City has
20 affirmed its rejection of any Alaskan Way Viaduct replacement that is an elevated structure
21 through legislative acts (Resolution 30960 and Ordinances 122246 and 122247 (see attached
22 Exhibit I):

23 “BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE THAT: Section
24 1. The City reaffirms its explicit rejection of an elevated structure alternative in adopted
25 Ordinance 122246...Section 2. The City reaffirms its findings and declaration in Ordinance
26 122247 (C.B. 115737) that an elevated structure alternative would be contrary to the goals and
27 objectives of the Waterfront Concept Plan, and to many adopted City policies”. Accordingly the
28

1 City has made a final decision, it has rejected the elevated replacement option, prior to the
2 completion of either the NEPA or SEPA reviews in this matter.

3 Just as WSDOT prepares and issues AWVSR Program timelines that indicate that the
4 bored tunnel project is going forward towards implementation (see attached Exhibit J), so too
5 does the City. The Program timeline that the City maintains on its website establishes the fact
6 that the City is proceeding with the redevelopment of the Central Waterfront (which is premised
7 on SR 99/the Viaduct/a bored tunnel being built) through the Central Waterfront Partnership
8 Committee (“Committee”) it has convened, as well as that it is proceeding with the Seawall
9 replacement project (see Exhibit K). The timeline also has no reference to any environmental
10 review that the City is supposed to be conducting as part of the City’s participation in the
11 AWVSR Program. Instead the document indicates that as of even date the only City actions that
12 are being taken are to carry the Seawall, bored tunnel, and the Central Waterfront redevelopment
13 projects forward for construction. The City has also proceeded in concert with the Committee to
14 go forward with an RFQ for the design work related to the Central Waterfront redevelopment
15 project, again without benefit of any SEPA compliance (see Exhibit L Org chart).

16 As late as February 26, 2010 the Plaintiff has sought the compliance of the City in
17 regards to its duty to initiate the SEPA process for those elements of the AWVSR Program it has
18 claimed responsibility for (see attached Exhibit M), to no avail. The City by its non-response
19 and inaction affirms its failure to fulfill its obligations under SEPA.

20 The City of Seattle’s recently published (December, 2009) “Central City Realm Guide”
21 (see attached Exhibit N) which it is using as a guide for the redevelopment work that the City
22 and the Committee are doing, is consistent with internal and semi-internal WSDOT documents,
23 the City’s references in this guide regarding the bored tunnel project being implemented are
24 unqualified – it contains numerous affirmative statements that the bored tunnel project will be
25 built; one more indication that the City has also weighed in, made a final decision, and is taking
26 final actions to proceed with its responsibilities in the Program which features the bored tunnel
27 project; and again without any City of Seattle compliance with SEPA.
28

1 In 2009 the City also entered into a seven memorandums of agreement with WSDOT in
2 order to implement the individual projects of the AWVSR Program (see attached Exhibit M2):

3 **May 19, 2009 MOA No. GCA 5934:** SR 99 Alaskan Way Viaduct Property, Environmental
4 Remediation, Design Review, Permitting, and Construction Coordination Agreement for SR 99
5 South Holgate Street to South King Street Viaduct Replacement Project, Stage 1

6 **MOA No. UT 01343:** SR 99 Alaskan Way Viaduct SCL Facilities Work - for SR 99 South
7 Holgate Street to South King Street Viaduct Replacement Project, Stage 1, Port of Seattle
8 Property TCE Approved Easement

9 **MOA No. UT 01342:** SR 99 Alaskan Way Viaduct SPU Facilities Work - SR 99 South Holgate
10 Street to South King Street Viaduct Replacement Project, Stage 1

11 **September 17, 2009**

12 **MOA No. GCA 6075:** SR 99 Alaskan Way Viaduct Property, Environmental Remediation,
13 Design Review, Permitting, and Construction Coordination Agreement for SR 99 South Holgate
14 Street to South King Street Viaduct Replacement Project, Stage 2; at § 6.2 **“The Parties**
15 **anticipate, due to the decision to construct a bored tunnel alternative, that some urban design**
16 **elements and alignment changes may be necessary.”** [Emphasis added]

17 **MOA No. UT 01394:** SR 99 Alaskan Way Viaduct Replacement South Holgate Street to South
18 King Street - Stage 2 SCL Facilities Work;

19 **MOA No. UT 01393:** SR 99 Alaskan Way Viaduct Replacement South Holgate Street to South
20 King Street - Stage 2 SPU Facilities Work and Permanent Easement Deed - WSDOT to City of
21 Seattle, SPU; Permanent Easement Deed - From 1201 Building, L.L.C. (Pyramid) to WSDOT
22 for transfer to City of Seattle, SPU; Permanent Easement Deed - From Seattle Hometown Fans,
23 L.L.C. (Fortune) to WSDOT for transfer to City of Seattle, SPU

24 **October 27, 2009**

25 **MOA No. GCA 6366** For the Alaskan Way Viaduct and Seawall Replacement Program Bored
26 Tunnel Alternative; § 1 thru I 1: **“IT IS MUTUALLY AGREED THAT: Jointly the STATE**
27 **and CITY intend to: 1. Continue to work collaboratively toward the successful completion**
28

1 **of the AWVSR Program; and 2. Endeavor to open the bored tunnel to drivers by the end of**
2 **2015; and...The STATE will be responsible for the following: 1. The Moving Forward**
3 **Projects; and 2. A bored tunnel from a point just north of S. Royal Brougham Way to**
4 **Harrison Street including connections to the city street system and the reconnection of John**
5 **Street, Thomas Street, and Harrison Street over SR 99”**

6 in order to formalize its collaboration with WSDOT in ensuring that the AWVSR
7 Program proceeds and is built in accordance with the final decision made by *both* agencies – to
8 build the bored tunnel alternative. The many references to the bored tunnel element in the
9 MOA’s are unambiguous and affirm that the tunnel is to be built. The MOA’s are evidence of
10 the City of Seattle’s final actions in this matter. On December 14, 2009 the City passed
11 Resolution 31174 (see attached Exhibit N2) affirming its commitments to the MOA’s between it
12 and WSDOT, and specifically affirmed its commitments in MOA No. GCA 6366, stating, “We
13 support moving forward on the deep- bore tunnel as the preferred alternative for replacement of
14 the Alaskan Way Viaduct and upholding the responsibilities set forth in the Viaduct
15 Memorandum of Agreement (Seattle Ord. 123133). As the project manager for the deep-bore
16 tunnel, the State has the role to implement the project on time and on budget.”

17
18 **Contracting and Contracting-Related Activities by WSDOT Demonstrating its Final**
19 **Decision to Proceed with the Bored Tunnel Project**

20 Additional evidence that indicates that WSDOT has made a final decision to proceed
21 with the tunnel takes two forms, one, in the form of the contracts it is issuing for work to
22 implement the bored tunnel project, and in the form of the magnitude of money it is investing to
23 bring forward the bored tunnel alternative; there is no similar scale of expenditures for either of
24 the other two alternatives that are supposedly under consideration in the NEPA review that
25 WSDOT is carrying out (see attached Exhibit O and Exhibit P)

26 **General Activities by WSDOT Demonstrating its Final Decision to Proceed with the Bored**
27 **Tunnel Project**
28

1 Conservatively, during 2009 and to-date (March 25, 2010), WSDOT has put on over 140
2 briefing presentations with at-large community organizations, special interest groups,
3 government agencies, and the public in general. A review of WSDOT's PowerPoint
4 presentations for these meetings shows that only cursory acknowledgement is given to the NEPA
5 review process that is taking place for the Central Waterfront Project portion of the AWVSR
6 Program, that the focus of the presentations is to demonstrate that WSDOT is proceeding with
7 the bored tunnel project.

8 Exhibit Q attached hereto is a representative sample of the type of information that
9 WSDOT conveys about what WSDOT is reviewing for the NEPA process - it indicates that the
10 bored tunnel is being reviewed and a number of "Moving Forward" projects, but there is *no*
11 *mention* of the other two alternatives that are allegedly being reviewed at the same time. The
12 same is true in the Program timeline slides that are typically included in these presentations.
13 Exhibit R attached hereto is a representative sample of the timeline slide; they show that the
14 bored tunnel is the only replacement alternative being considered by WSDOT.

15 Minutes from internal WSDOT meetings related to the implementation of the bored
16 tunnel project clearly indicate that a final decision has been made to proceed with the bored
17 tunnel. Minutes from some of the WSDOT AWVSR Program briefings (see attached Exhibit S)
18 indicate that WSDOT officials affirm to the meeting attendees that WSDOT is proceeding to
19 build the bored tunnel project. On March 11, 2009 at a **Seattle Pedestrian Advisory Board**
20 **Meeting the following notations in the minutes about WSDOT's presentation were made:**

- 21 • "John White (WSDOT) and Steve Pearce (SDOT) gave a presentation on the Alaskan
22 Way Viaduct and Seawall Replacement Program **John:** Suite of projects – selected by
23 tri-agencies (City of Seattle, King County, Washington state), takes broader perspective,
24 system-wide approach, with safety fundamental to Deep bore tunnel"
- 25 • "Tunnel specifics - Stacked with 2 lanes in each direction 1 tunnel, saves money, pushes
26 boundaries of technology Rationale: minimize disruptions, keep economy intact, traffic
27
28

1 flow 9,000 ft, 2 miles long Cut and cover portions at the ends 60-200 ft deep, but
2 majority 100 ft deep”

- 3 • “Randy [meeting attendee]: Holgate to King viaduct replacement? John: Replace with 3
4 lanes side by side; still a structure to get over railroad; Royal Brougham to King will be
5 reconfigured with bore tunnel, very complicated to match up, will be detours for some
6 time but trying to minimize, lots of pressure in stadium district”

7 “Randy: Impact of deep boring? John: Boring machine under 1st Avenue will cause
8 vibrations, noise; will need public outreach program to prepare people”

9 Since January, 2009, only token acknowledgement in the WSDOT presentations is given
10 to the environmental review process for the Central Waterfront Project; while individually these
11 examples may not seem to be substantive evidence of WSDOT’s final actions, collectively they
12 go to the credibility of the claim by Plaintiff, that WSDOT in fact is proceeding to implement the
13 bored tunnel project. These WSDOT presentations are also top heavy with information about the
14 tunnel project, and portray it as proceeding to construction. The same treatment is being given to
15 all of the associated projects in the AWVSR Program. WSDOT presents them in its
16 presentations that these projects are being designed and in some cases constructed so that they
17 are consistent with the bored tunnel choice that has been made. A representative sample of a
18 WSDOT presentation shows the situation:
19

- 20 • WSDOT Presentation to: Central Waterfront South Portal Working Group: South Portal
21 Considerations, May 6, 2009; 26 pages out of 35 pages devoted to considerations about
22 the tunnel; zero pages devoted to other two options.

23 Finally, after Plaintiff filed suit in U.S. District Court, WSDOT made an attempt to make
24 its documentation appear like WSDOT was seriously considering all alternatives in the NEPA
25 review. It took a document (see attached Exhibit T) that previously unambiguously indicated it
26 was proceeding with the tunnel, and went back and inserted prospective words in front of every
27 reference to the tunnel that had previously affirmed the fact of WSDOT’s final decision – to
28 proceed with the bored tunnel alternative.

CONCLUSION

For the foregoing reasons, Plaintiff Elizabeth Campbell requests that the Court deny the Defendants’ motion to dismiss with prejudice.

Respectfully submitted this 26th Day of March, 2010.

/s/

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DECLARATION OF SERVICE

I declare that a true and correct copy of the following documents:

1. Plaintiff's Response in Opposition to Defendants' Motion to Dismiss.
2. Declaration of Service.

were served on the following as indicated below:

Amanda Phily, Attorney General's Office
Deborah Cade, Attorney General's Office
State of Washington
7141 Clearwater Drive SW
Tumwater WA 98501

Via Electronic Filing and Email Deliver

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th Day of March 2010 in Seattle, Washington.

/s/

Elizabeth A. Campbell, Plaintiff
Pro Se
3826 24th Avenue W.
Seattle, WA 98199

206-769-8459



Thank you. Your document(s) has been received by the Clerk.

Confirmation Receipt

Case Number:	09-2-36276-9	Case Designation:	SEA
Case Title:	SEATTLE CITIZENS AGAINST THE TUNNEL ET ANO VS WA STATE TRANSPORTATION E		
Filed By:	Elizabeth Campbell	Submitted Date/Time:	3/26/2010 4:31:36 PM
		Received Date/Time:	3/29/2010 8:30:00 AM
User ID:	bethatuw	WSBA #:	

Document Type	File Name	Attachment(s)	Cost
ANSWER OF PLAINTIFF RE OPPOSITION TO M2DISMISS	EACResponse2MotiontoDismissFinalAcro5Ver.pdf		0.00

