

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

9 **ELIZABETH A. CAMPBELL**, a single
10 woman, and **SEATTLE CITIZENS**
11 **AGAINST THE TUNNEL**, a Washington
12 State Non-profit corporation; **HARVEY**
13 **FRIEDMAN**, a single man, and **SHARON J.**
14 **PRICE**, a married woman,

14 Plaintiffs,

15 v.

16 **PETER JILIK**, in his official capacity as Urban
17 Area Engineer of the **FEDERAL HIGHWAY**
18 **ADMINISTRATION**, an agency of the United
19 States; **WASHINGTON STATE DEPART-**
20 **MENT OF TRANSPORTATION**, an agency
21 of the State of Washington,

20 Defendants.

CIV. NO. **C09-1305** JCC

**COMPLAINT FOR DECLARATORY
RELIEF AND INJUNCTION**

(National Environmental Policy Act and
Washington State Environmental
Procedure Act)

21
22 **I. INTRODUCTION**

23 1. This is an action for a declaratory judgment and injunctive relief. Plaintiffs challenge the
24 decision of Peter Jilik, Urban Area Engineer of the Federal Highway Administration (FHWA),
25 and the Washington State Department of Transportation. Defendants seek to segment the Alas-
26 kan Way Viaduct and Seawall Replacement Project without first preparing an environmental
27 impact statement (EIS) as required by the National Environmental policy Act (NEPA) and the

28 **COPY**

1 State of Washington Environmental Policy Act [SEPA].

2 2. This action arises under and alleges violations of the National Environmental Policy
3 Act, 42 U.S.C. §§ 4321 et seq., the Administrative Procedure Act (APA), 5 U.S.C. 5 701 - 706,
4 and Title 43.21C of the Revised Code of Washington [SEPA].

5 3. Plaintiffs seek a declaration by this court that the decision to proceed with the SR 99
6 South Holgate Street to South King Street Viaduct Replacement Project, accounting for more
7 than 40% of the entire project, represents improper segmentation of the project under both NEPA
8 and SEPA. The FHWA Finding of No Significant Impact ["FONSI"] dated February 11, 2009,
9 apparently adopted by WSDOT as a SEPA Declaration of Non Significance [DNS], is violative
10 of NEPA and SEPA.

11 4. Though the State's "Moving Forward" initiative to immediately begin rebuilding the
12 southern portion of the viaduct has the laudable goal of improving the ability of freight to move
13 on and off SR99, while maintaining existing capacity, important aspects of he project have not
14 been adequately addressed. Because FHWA's Environmental Assessment [EA] raises more
15 questions than it answered, Plaintiffs object to the Defendants foreclosing environmental review.

16 **II. JURISDICTION AND VENUE**

17 5. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 5 U.S.C. § 552.

18 6. Venue is properly vested in this Court because the cause of action arises within the
19 Western District of Washington .

20 **III. PARTIES**

21 7. Plaintiff Elizabeth Campbell is a concerned citizen seeking answers for the Defendants,
22 answers that have been withheld from the public at large.

23 8 Plaintiff Seattle Citizens Against The Tunnel [SCAT] is a citizens group concerned with
24 transportation choices, environmental issues, and fiscal issues posed by this large public project.

25 9. Plaintiffs Harvey Friedman and Dr. Sharon Price are also concerned citizens seeking
26 answers for the Defendants, answers that have been withheld from the public at large.

27 10. Defendant Jilik works for the Federal Highway Administration, he signed the FONSI,
28

1 and is the person responsible for the decision to proceed with the project without issuing an EIS.

2 11. Defendant Federal Highway Administration is an agency of the Department of Transpor-
3 tation, an agency of the United States.

4 12. Defendant Washington State Department of Transportation is the action agency of the
5 State of Washington that has the obligation of abiding by SEPA [RCW 43.21C]

6 **IV. STATEMENT OF THE CASE**

7 13. On February 11, 2009, Defendant FHWA issued its FONSI. That document found that
8 this major multi-billion dollar project, taking up miles of the Seattle waterfront and south, has no
9 environmental impacts whatsoever.

10 14. Plaintiff's had communicated and objected to both FHWA and to WSDOT but were
11 ignored.

12 15. The Environmental Assessment (EA) was explicitly published by FHWA to comply with
13 NEPA, but comments had to be submitted to the WSDOT and not to FHWA. There is no refer-
14 ence in FHWA's EA to project compliance with the Washington State Environmental Policy Act
15 (SEPA). While WSDOT is identified as the SEPA lead agency (EA fact sheet and p.18), there is
16 no indication of compliance with SEPA such as publication of an environmental checklist.

17 16. The EA is intended to inform the Federal Highway Administration's decision whether or
18 not to prepare a NEPA EIS for the project. At the same time, WSDOT needs to publish this EA
19 as a (or prepare a separate) SEPA checklist to inform its own threshold decision whether or not
20 to prepare a SEPA EIS. Under NEPA and SEPA, a single EIS may be prepared for both, as was
21 done with a 2004 DEIS and 2006 SDEIS, however the FONSI provides no indication how state
22 and local agencies plan to comply with SEPA for their participation in this very large public
23 works project.

24 17. Most fundamentally, Plaintiffs are concerned that FHWA's EA is for just "one of the six
25 projects... as part of the larger Alaskan Way Viaduct and Seawall Replacement Program." EA
26 p. 2. By reviewing a small, portion of the larger project, the agencies are moving toward imper-
27 missibly segmented NEPA review. The purpose of an environmental assessment under NEPA
28

1 (and a checklist and threshold determination under SEPA) is to determine if a full Environmental
2 Impact Statement [EIS] is needed. In fact, seven years ago, the agencies determined that an EIS
3 (NEPA and SEPA) would be prepared for this entire project down to Spokane Street. That
4 decision has now apparently been reversed without any public explanation or notice.

5 18. Plaintiffs are concerned by the Defendants' stated intent to develop a proposal for the
6 most difficult, central waterfront portion of the project before the end of this year, 2009. If any
7 alternative for the central portion is selected other than a stacked, elevated structure configured
8 similarly to the existing viaduct, it will require modification of the south portion in the Railroad
9 Way area, if not further south. Some alternatives, such as a surface or buried roadway, would
10 require considerable tearing out of the south portion newly built as proposed in the EA and the
11 FONSI.

12 19. The question arises why begin demolition of the southern portion before anyone knows
13 what will be done along the central waterfront? Proceeding in such a fashion could waste con-
14 siderable resources and possibly prejudice consideration of reasonable alternatives for the larger
15 project.

16 20. Another major problem with this approach is the avoidance of consideration of cumula-
17 tive impacts. A project as large as the viaduct has ramifications through a broad area of the City
18 of Seattle, in a number of impact areas. These impacts were explored to some extent in the
19 FHWA DEIS, which is now four years old. That process should not be abandoned at the risk of
20 causing unintended and cumulative adverse impacts up and down the SR 99 corridor and be-
21 yond. The large scope of this project and its potential impacts is acknowledged by the agencies
22 in the recent "Central Waterfront - 07/08" flyer.

23 21. A fundamental purpose of NEPA (and SEPA) is to develop appropriate mitigation mea-
24 sures for identified impacts. If the project will have significant impact that would otherwise
25 require preparation of an EIS, they may, by means of required mitigation, reduce the impacts
26 below the EIS threshold. If the agencies plan to use this method to avoid an EIS, they must use
27 properly vetted and enforceable mitigation plans.

1 Similarly, once it has been determined that an EIS is required (as should be done here, for the
2 project as a whole), a key point of the process is to develop mitigation for identified impacts.
3 Plaintiffs are concerned that comprehensive and enforceable mitigation for impacts will be lost
4 in a segmented review process.

5 22. An EIS would require evaluation and comparison of a more complete range of alterna-
6 tives. The agencies published a draft EIS (2004) and a supplemental draft EIS (2006) , but never
7 completed either process. Worse, while the range of alternatives was fairly broad in 2004, even
8 including an alternative that approaches a full retrofit, it became very restrictive in the SDEIS.
9 Now, FHWA has an EA for the south portion that only considers only “build” and “no build”
10 alternatives. EA, p.2. These are NOT viable alternatives under NEPA or SEPA. The review
11 process is going in the wrong direction; until reasonable alternatives have been evaluated, they
12 should not be excluded from consideration.

13 23. In regard to the range of alternatives, Plaintiffs object that a fair and comprehensive
14 evaluation of all alternative has yet to be completed. A valid EIS for the Viaduct project must
15 include consideration of all reasonable alternatives. Plaintiffs disagree with the conclusory
16 statements in the FONSI and the EA.

17
18 **FIRST CLAIM FOR RELIEF**
19 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**
20 **AND THE STATE ENVIRONMENTAL POLICY ACT**

21 24. Plaintiffs reallege paragraphs 1 - 23.

22 25. The decision by Defendants to proceed with SR 99 project after impermissible segmenta-
23 tion of environmental review is violative of NEPA and SEPA and is arbitrary, capricious, an
24 abuse of discretion, and otherwise not in accordance with law.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs respectfully request that the Court:

27 A. Declare that Defendants’ decision to proceed with the construction, reconstruction and/or
28

1 repair of the SR 99 project with segmentation of review violates both NEPA and SEPA.

2 B. Enter an order enjoining Defendants from proceeding with any further action to advertise,
3 award, construct, or otherwise commit resources to the SR 99 reconstruction project

4 C. Award Plaintiffs their reasonable attorney fees and costs for this litigation pursuant to the
5 Equal Access to Justice Act, 28 U.S.C. § 2412(d), and the Freedom of Information Act, 5 U.S.C.
6 §552 (a)(4)(E);

7 D. Pursuant to Rule 54 (d) of the Federal Rules. of Civil Procedure, allow Plaintiffs their
8 costs herein; and

9 E. Grant such other and further relief as the Court may deem just and proper.

10 DATED this 14th day of September 2009.

11
12 

13 _____
14 ELIZABETH A. CAMPBELL
15 Pro se Plaintiff
16 3213 West Wheeler Street #271
17 Seattle, WA 98199
18 206-283-4900
19
20
21
22
23
24
25
26
27
28