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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, caused 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 in an  
17 earthquake, but more important it would have foundational vulnerabilities due to the possible  
18 liquefaction of the soil under the Viaduct during an earthquake; two, there were structural  
19 differences between the Cypress Viaduct and the Alaskan Way Viaduct, and therefore its  
20 earthquake-related vulnerability was different than that of the Cypress Viaduct, it was less; and  
21 three, a detailed plan and timetable for retrofitting the Viaduct was created so that the  
22 earthquake-related risks to the Viaduct could be greatly reduced. WSDOT never undertook the  
23 recommended retrofitting of the Viaduct.

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

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

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 drafted 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

1           5. Shortly thereafter the Alaskan Way Viaduct Stakeholders Advisory Committee  
2 (“AWV SAC”) was convened. It consisted of 33 members, handpicked predominately by the  
3 City; it was front loaded with individuals the majority of which favored a tunnel replacement  
4 alternative. At the same time the FHWA and WSDOT segmented the “Alaskan Way Viaduct  
5 and Seawall Replacement *Project*” (“AWVSR Project”), creating an appellation known as the  
6 “Alaskan Way Viaduct and Seawall Replacement *Program*” (“AWVSR Program”) (see attached  
7 Exhibit B).

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

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

22           6. The AWV SAC under the guidance of the City of Seattle Department of  
23 Transportation (“SDOT”) and WSDOT embarked on a yearlong assessment of replacement  
24 options for the Viaduct. At the end of its charter in November, 2008, the AWV SAC released its  
25 findings, that the two viable replacement options for the Viaduct were a “hybrid-elevated  
26 alternative” and a “hybrid-surface alternative”. The AWV SAC could not justify any tunnel  
27 option; and accordingly on December 11, 2008 City of Seattle Mayor Nickels, King County  
28

1 Executive Sims, and Governor Gregoire assembled for a news conference and received the  
2 conclusions of the AWW SAC, that the two hybrid alternatives should move forward and that a  
3 “A bored tunnel was not formally carried forward as a hybrid alternative at this time due to its  
4 high cost”.

5 7. However, both before and after the December 11<sup>th</sup> public release of the AWW SAC’s  
6 preferred alternatives, privately WSDOT personnel and a number of stakeholders were meeting  
7 with tunneling industry representatives in order to invalidate the findings of the AWW SAC and  
8 in order to bring forward the project they had been quietly proceeding with during the AWW  
9 SAC process – the deep bored tunnel alternative. Between mid-November 2008, and December  
10 2008, WSDOT in cooperation with the tunneling industry representatives crafted and submitted  
11 to the Governor a plan for upsetting the findings of the AWW SAC that favored the hybrid  
12 elevated and surface alternatives, and setting in their stead a hastily designed concept for a bored  
13 tunnel, and a highly favorable accompanying budget for the same. The budget was first based on  
14 project cost estimates provided by the tunneling industry figures, and the final figure, \$1.9  
15 Billion for the tunnel, was the final cost for the tunnel project that a WSDOT public relations  
16 consultant had brokered during negotiations between WSDOT executives and the tunnel industry  
17 reps.  
18

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

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

1 the outcome of the environmental reviews in favor of the bored tunnel alternative, and which  
2 ensure that the bored tunnel project is actually moving forward literally as a project.

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

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

17  
18 Since that time, according to the FHWA and WSDOT documents, the H2K project has been 1)  
19 dramatically scaled back - \$100 Million worth of project elements have been eliminated from the  
20 project; 2) the U-shaped undercrossing at Colorado Avenue South has been eliminated, in its  
21 stead an elevated bridge is to be constructed; and the most dramatic change to the project’s scope  
22 are the changes made to the project so that when Phase 2 of H2K is completed the necessary  
23 roadway connections and structures will be in place for the H2K roadway to connect with the  
24 9,200 foot long, 52’ diameter, deep bored tunnel.

25 Any replacement option chosen to replace the Viaduct portion of SR99 must eventually  
26 be connected to the H2K Project roadway, and therefore at some point the H2K roadway must be  
27 constructed to conformity with the replacement alternative chosen – the deep bored tunnel.  
28



## ARGUMENT

The State on behalf of the Defendants has framed its argument that the Defendants are conducting environmental reviews and therefore everything they are engaged in for the AWVSR Program is sacrosanct, and until such time as an EIS is completed there cannot possibly be a final action, and even then that is not a final action.

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

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

### **State Legislature**

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

### **WSDOT**

On December 9, 2009 WSDOT presented its **Alaskan Way Viaduct Quarterly Presentation in Olympia**. As part of its presentation was a report WSDOT had compiled regarding the status of all of the project elements in progress under the AWVSR Program, which includes a project entitled *AWV&SRP - SR99 BORED TUNNEL CENTRAL WATERFRONT VIADUCT REPLACEMENT*, WSDOT Work Identification Number U09936E, which includes multiple directly related projects, including the *SR99 King St to Roy – Viaduct Replacement* project, WSDOT Project Identification Number, 809936E (see attached Exhibit B). The project scope/description for the latter project indicates that “**The existing Alaskan Way Viaduct and**

1 **Battery Street tunnel will be replaced with a deep bore tunnel...The project is comprised of**  
2 **a deep bore tunnel”** [Emphasis added] No such corollary project(s) exist for either of the other  
3 two alternatives, the elevated and surface options, that are allegedly under consideration in the  
4 NEPA environmental review being carried out by WSDOT.

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

#### 10 **H2K and Central Waterfront Project**

#### 11 **WSDOT Central Waterfront South Portal Working Group Presentation: South Portal** 12 **Considerations, May 6, 2009 (see attached Exhibit C):**

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

#### 17 **WSDOT South Portal Working Group Presentation: Preliminary Construction Phasing,** 18 **June 24, 2009 (see attached Exhibit D):**

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

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

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

25 “Public and property safety is a priority **as we prepare to construct the SR 99 bored**  
26 **tunnel.”** [Emphasis added]  
27  
28

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

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

7 **City of Seattle**

8 **Failure to conduct environmental reviews.** The City of Seattle (“City”), which is listed along  
9 with the FHWA and WSDOT as being a co-lead agency for the AWVSR Program, has not  
10 actively engaged in the NEPA mandated environmental review being carried out by WSDOT for  
11 the Central Waterfront Project, the project in the Program that is the bored tunnel project. The  
12 City also has not engaged in any SEPA mandated environmental review related actions for the  
13 Program elements, in particular those that the City is listed by WSDOT as being the lead agency  
14 responsible for conducting the environmental review for the Alaskan Way surface street and  
15 promenade project, the Seawall repair or replacement project, and the Mercer West project (see  
16 attached Exhibit G); this despite the fact that the City has convened an ad hoc redevelopment  
17 agency for the Central Waterfront (see attached Exhibit H), and despite the fact that it has  
18 instituted the planning and design work for both the West Mercer Project and the Seawall  
19 replacement project.  
20

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

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

1 objectives of the Waterfront Concept Plan, and to many adopted City policies”. Accordingly the  
2 City has made a final decision, it has rejected the elevated replacement option, prior to the  
3 completion of either the NEPA or SEPA reviews in this matter.

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

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

21 The City of Seattle’s recently published (December, 2009) “Central City Realm Guide”  
22 (see attached Exhibit N) which it is using as a guide for the redevelopment work that the City  
23 and the Committee are doing, it is consistent with internal and semi-internal WSDOT  
24 documents, the City’s references in this guide regarding the bored tunnel project being  
25 implemented are unqualified – it contains numerous affirmative statements that the bored tunnel  
26 project will be built; one more indication that the City has also weighed in, made a final decision,  
27  
28

1 and is taking final actions to proceed with its responsibilities in the Program which features the  
2 bored tunnel project; and again without any City of Seattle compliance with SEPA.

3 In 2009 the City also entered into six memorandums of agreement with WSDOT in order  
4 to implement the individual projects of the AWVSR Program (see attached Exhibit M2):

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

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

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

13 **September 17, 2009**

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

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

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

26 **October 27, 2009**

1 **MOA No. GCA 6366** For the Alaskan Way Viaduct and Seawall Replacement Program Bored  
2 Tunnel Alternative; § 1 thru I 1: **“IT IS MUTUALLY AGREED THAT: Jointly the STATE**  
3 **and CITY intend to: 1. Continue to work collaboratively toward the successful completion**  
4 **of the AWVSR Program; and 2. Endeavor to open the bored tunnel to drivers by the end of**  
5 **2015; and...The STATE will be responsible for the following: 1. The Moving Forward**  
6 **Projects; and 2. A bored tunnel from a point just north of S. Royal Brougham Way to**  
7 **Harrison Street including connections to the city street system and the reconnection of John**  
8 **Street, Thomas Street, and Harrison Street over SR 99”**

9 in order to formalize its collaboration with WSDOT in ensuring that the AWVSR Program  
10 proceeds and is built in accordance with the final decision made by *both* agencies – to build the  
11 bored tunnel alternative. The many references to the bored tunnel element in the MOA’s are  
12 unambiguous and affirm that the tunnel is to be built. The MOA’s are evidence of the City of  
13 Seattle’s final actions in this matter.

14  
15 On December 14, 2009 the City passed Resolution 31174 (see attached Exhibit N2)  
16 affirming its commitments to the MOA’s between it and WSDOT, and specifically affirmed its  
17 commitments in MOA No. GCA 6366, stating, “We support moving forward on the deep-bore  
18 tunnel as the preferred alternative for replacement of the Alaskan Way Viaduct and upholding  
19 the responsibilities set forth in the Viaduct Memorandum of Agreement (Seattle Ord. 123133).  
20 As the project manager for the deep-bore tunnel, the State has the role to implement the project  
21 on time and on budget.”

22 **Contracting and Contracting-Related Activities by WSDOT Demonstrating its Final**  
23 **Decision to Proceed with the Bored Tunnel Project**

24 Additional evidence that indicates that WSDOT has made a final decision to proceed  
25 with the tunnel takes two forms, one, in the form of the contracts it is issuing for work to  
26 implement the bored tunnel project, and in the form of the magnitude of money it is investing to  
27 bring forward the bored tunnel alternative; there is no similar scale of expenditures for either of  
28

1 the other two alternatives that are supposedly under consideration in the NEPA review that  
2 WSDOT is carrying out (see attached Exhibit O and Exhibit P)

3 **General Activities by WSDOT Demonstrating its Final Decision to Proceed with the Bored**  
4 **Tunnel Project**

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

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

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

- 25
- 26 • "John White (WSDOT) and Steve Pearce (SDOT) gave a presentation on the Alaskan  
27 Way Viaduct and Seawall Replacement Program **John:** Suite of projects – selected by  
28

1 tri-agencies (City of Seattle, King County, Washington state), takes broader perspective,  
2 system-wide approach, with safety fundamental to Deep bore tunnel”

3 • “Tunnel specifics - Stacked with 2 lanes in each direction 1 tunnel, saves money, pushes  
4 boundaries of technology Rationale: minimize disruptions, keep economy intact, traffic  
5 flow 9,000 ft, 2 miles long Cut and cover portions at the ends 60-200 ft deep, but  
6 majority 100 ft deep”

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

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

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

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

27 Finally, after Plaintiff filed suit in U.S. District Court, WSDOT made an attempt to make  
28 its documentation appear like WSDOT was seriously considering all alternatives in the NEPA

1 review. It took a document (see attached Exhibit T) that previously unambiguously indicated it  
2 was proceeding with the tunnel, and went back and inserted prospective words in front of every  
3 reference to the tunnel that had previously affirmed the fact of WSDOT's final decision – to  
4 proceed with the bored tunnel alternative.

5 **CONCLUSION**

6  
7 For the foregoing reasons, Plaintiff Elizabeth Campbell requests that the Court deny the  
8 Defendants' motion to dismiss with prejudice.

9  
10 Respectfully submitted this 26th Day of March, 2010.

11  
12  
13  
14 \_\_\_\_\_  
15 Elizabeth A. Campbell  
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20 206-769-8459  
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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

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

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DATED this 26<sup>th</sup> Day of March 2010 in Seattle, Washington.

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

206-769-8459



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

### Confirmation Receipt

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