

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CITIZENS FOR MOBILITY; STUART
WEISS; DONALD F. PADELFORD;
RICHARD NELSON; RICHARD FIKE;
THOMAS COAD; AND EMORY BUNDY,

Plaintiffs,

v.

NORMAN MINETA, Secretary of
Transportation; JENNA DORN,, Administrator
of the Federal Transit Administration; RICK
KROCHALIK, Regional Director, Federal
Transit Administration, Region X;
U.S. DEPARTMENT OF
TRANSPORTATION; FEDERAL TRANSIT
ADMINISTRATION; AND CENTRAL
PUGET SOUND REGIONAL TRANSIT
AGENCY,

Defendants.

NO. C00-1812Z

SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF - i

[/Amended_Complaint_8.2.02.doc]

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TABLE OF ABBREVIATIONS

Amended ROD	Amended Record of Decision
Central Link Corridor	Refers to Sound Transit's proposed light rail project from Northgate to Sea-Tac Airport (compare: "Preferred Alternative")
DSA	Downtown Seattle Association
DEIS	Draft Environmental Impact Statement, Dec. 1998
DSTT	Downtown Seattle Transit Tunnel
EIS	Environmental Impact Statement

FEIS	Final Environmental Impact Statement, Nov. 1999
FFGA	Full Funding Grant Agreement
FTA	Federal Transit Administration
HOV	High Occupancy Vehicle
MIS	Major Investment Study
MOS	Minimum Operable Segment, N.E. 45 th St. to South Lander Street
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
New Starts Report	Sound Transit's Sept. 3, 1999 "Link Light Rail" New Starts Report submitted to FTA
New Starts Supplement	Supplement to FY 2001 New Starts Report, submitted to FTA by Sound Transit March 22, 2000
Preferred Alternative	Refers to Sound Transit's proposed light rail route from N.E. 45 th Street to Sea-Tac Airport
Project	Refers to Sound Transit's light rail proposal, including all variations (Central Link Corridor, Preferred Alternative, MOS)
PSRC	Puget Sound Regional Council
ROD	Record of Decision issued by FTA January 5, 2000
RTA	Previous abbreviation for Central Puget Sound Regional Transit Agency
SEIS	Supplemental Environmental Impact Statement
SIP	State Implementation Plan

SECOND AMENDED COMPLAINT FOR
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RELIEF - iii

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Sound Move	Documents prepared by RTA in 1996, and published to the voters, including "Sound Move—Launching a Rapid Transit System for the Puget Sound Region—The Ten Year Regional System Plan" (36 pages), and its accompanying "Appendix A: Detailed Description of Facilities and Costs" (pages A-1 through A-12)
Sound Transit or ST	Central Puget Sound Regional Transit Authority
TEA-21	Transportation Equity Act for the 21 st Century
Technical Guidance Memorandum	FTA's "Technical Guidance on Section 5309 New Starts Criteria," issued July 1999
TIP	Transportation Improvement Plan
TSM	Transportation Systems Management
USDOT	United States Department of Transportation
UW MOA	Memorandum of Agreement between Sound Transit and the University of Washington, April 2000
WSDOT	Washington State Department of Transportation

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1. PARTIES

1.1 Plaintiff Citizens for Mobility ("CFM") is an association of concerned citizens dedicated to promoting cost-effective, environmentally friendly, mobility solutions to traffic congestion in the Seattle area.

1.2 Plaintiff Stuart Weiss ("Weiss") is a citizen and resident of Seattle, Washington, and frequently commutes by bus or automobile to downtown Seattle. Living in the Southeast portion of Seattle, Weiss is particularly concerned about impacts of the proposed project in the Rainier Valley area.

1.3 Plaintiff Donald F. Padelford ("Padelford") is a citizen and resident of Seattle, Washington, and frequently commutes by automobile or bus to downtown Seattle, where he works and shops.

1.4 Plaintiff Richard Nelson ("Nelson") is a citizen and resident of Seattle, Washington, and frequently commutes by bus and automobile to the University District, where he works, and to downtown Seattle. Nelson is a past Washington State legislator.

1.5 Plaintiff Richard Fike ("Fike") is a citizen and resident of Seattle, Washington, and frequently commutes by bus or automobile to downtown Seattle and to the "Eastside" communities. Fike conducts business and shops in each of the described areas.

1.6 Plaintiff Thomas Coad ("Coad") is a citizen and resident of Seattle, Washington, and frequently commutes by automobile and bus in and around the downtown and University District areas.

1.7 Plaintiff Emory Bundy ("Bundy") is a citizen and resident of Seattle, Washington, and frequently commutes by bicycle and bus, and occasionally automobile, to

1 downtown Seattle and to the main University of Washington campus. Bundy works and
2 shops in both described areas.
3

4 1.8 Plaintiffs allege in this Complaint that defendants' construction of light rail in
5 the Seattle area would affect negatively their protected interests. Plaintiffs and each of them
6 are concerned about the quality of the air they breathe, about traffic congestion, and about
7 the quality of life in the described areas. They are also concerned about the negative effects
8 on existing transportation systems resulting from the proposal under review.
9
10

11 1.9 Plaintiffs believe and allege that their interests in air quality, the quality of life,
12 environmental quality, and transportation and mobility will be negatively impacted by the
13 proposal under review. Plaintiffs are within the zone of interests intended to be protected by
14 NEPA, the Clean Air Act, and the Administrative Procedure Act. Plaintiffs are and will
15 continue to be aggrieved and adversely affected by the actions of defendants, which actions
16 are degrading and will degrade community character, environmental quality, and the ability to
17 maintain and attract business in downtown Seattle among other areas. Plaintiffs have
18 suffered and will continue to suffer injury in fact due to defendants' failure to comply with the
19 law, and this matter is ripe for judicial decision. Plaintiffs use, enjoy, and derive benefit from
20 communities and amenities threatened by the Project. Their use, enjoyment, and aesthetic
21 appreciation will be threatened and adversely affected by defendants' acts and omissions
22 complained of herein. Plaintiffs, or one or more of them, have communicated opposition
23 toward the Project or aspects thereof through correspondence, meetings, public statements,
24 and other methods.
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42 1.10 Defendant Norman Mineta ("Mineta") is the Secretary of the U.S. Department
43 of Transportation ("USDOT"), and is sued in his official capacity.
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1.11 Defendant Jenna Dorn ("Dorn") is the Administrator of the Federal Transit Administration, and is sued in her official capacity.

1.12 Defendant Rick Krochalik ("Krochalik") is the Regional Director of the Federal Transit Administration, Region X, and is sued in his official capacity.

1.13 Defendant U.S. Department of Transportation is an agency or department of the United States.

1.14 Defendant Federal Transit Administration ("FTA") is a unit or division or sub-department within USDOT.

1.15 Defendant Central Puget Sound Regional Transit Authority ("Sound Transit" or "ST") is a Washington municipal corporation.

2. JURISDICTION AND VENUE

2.1 Jurisdiction is conferred in this Court by the following statutes:

- (a) Administrative Procedure Act, 5 U.S.C. § 702 et seq., including 5 U.S.C. § 706(2)(A) and (2)(E);
- (b) National Environmental Policy Act, 42 U.S.C. § 4321 et seq.;
- (c) Clean Air Act, 42 U.S.C. § 7401 et seq., including § 7604;
- (d) Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202;
- (e) 28 U.S.C. § 1361; and
- (f) 28 U.S.C. § 1331.

2.2 Venue is proper in this Court, inasmuch as all plaintiffs reside in King County, Washington, most of the acts complained of have occurred and are occurring in King County, Washington, and most of the proposed project is located in King County. 28 U.S.C. § 1391.

1 **3. ALLEGATIONS COMMON TO ALL COUNTS**

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3 ***Procedural Background***

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5 3.1 In 1996 the RTA sought and received voter approval for tax increases to
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7 support the following proposal:

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9 **BALLOT TITLE**
10 **Proposition No. 1**
11 **Regional Transportation System**

12
13 To implement a regional rail and express bus system linking Tacoma,
14 Seattle, Bellevue, Everett, other cities, and Seattle-Tacoma
15 International Airport, shall the Regional Transit Authority impose a
16 sales and use tax of up to four-tenths of one percent and a motor
17 vehicle excise tax of three-tenths of one percent to provide the local
18 share of funding towards the \$3.9 billion estimated cost of the system,
19 as provided in Resolution 75 and the "Ten-Year Regional Transit
20 Plan"?

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24 (Regional Transit Authority, Proposition No. 1, Washington State General Election,
25
26 November 5, 1996.)

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28 3.2 Although the Ballot Title makes no express reference to "light rail," the
29
30 accompanying explanatory statement describes a proposed "electric light rail" system from
31
32 Seattle's N.E. 45th Street to Seattle-Tacoma International Airport, with a northward extension
33
34 to Seattle's Northgate if funds allow. (Washington State Voters' Pamphlet, Nov. 5, 1996,
35
36 p. 82.)

37
38 3.3 Further, the Ballot Title refers to the RTA's "Ten-Year Regional Transit Plan."
39
40 That plan is also called "Sound Move," and was adopted on May 31, 1996.

41
42 3.4 Sound Move formed the basis for the voters' decision of November 1996, and
43
44 is cited by Sound Transit as the basis for the voters' decision. Sound Move includes a
45
46 proposal to spend \$1.8 billion (1995\$) for defined costs, including operations and
47

1 maintenance costs, on a light rail route from Seattle's N.E. 45th Street to Seattle-Tacoma
2 International Airport, and a smaller light rail route in the City of Tacoma ("the Project"). The
3 voters were told in "Sound Move" in 1996 that ST was "committed to the entire system being
4 completed and operational within 10 years [i.e., by 2006]."
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9 3.5 Following the affirmative vote in November 1996, the RTA commenced
10 making plans for its electric light rail project.
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13 3.6 In May 1997, RTA completed a Major Investment Study (MIS) which
14 recommended implementing light rail.
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17 3.7 In November 1997, defendants provided a notice of intent to prepare an EIS
18 for the Project, and in December 1998 a DEIS was issued.
19

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21 3.8 In July 1999, FTA promulgated its Technical Guidance Memorandum.
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23 3.9 The Technical Guidance Memorandum states at page 1: "The technical
24 guidance provided here is to be applied until a Final Rule is published, at which time the
25 guidance will be revised to reflect the Rule."
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27

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29 3.10 The FTA promulgated a proposed rule in April 1999, Vol. 64 Federal Register
30 pp. 17061 et seq. That proposed rule was not final at the time the ROD was issued for the
31 Project, and indeed has never been made final.
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35 3.11 During 1999 and 2000, federal defendants provided or promised to provide
36 tens of millions of dollars in federal funds for various aspects of the Project.
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39 3.12 On September 3, 1999, Sound Transit submitted to the FTA its New Starts
40 Report for the Project. In this submission, Sound Transit purports to comply with the FTA's
41 Technical Guidance Memorandum of July 1999.
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44
45 3.13 On November 5, 1999, ST and the FTA jointly promulgated the Final
46 Environmental Impact Statement ("FEIS") for the Project.
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1 3.14 On November 18, 1999, the ST Board of Directors approved the "Preferred
2 Alternative" of the light rail project proposal.
3

4 3.15 On January 5, 2000, the FTA issued its Record of Decision ("ROD") on the
5 Project.
6

7 3.16 Sound Transit has asserted that the federal ROD allows it to proceed to final
8 engineering and compete for additional federal funds for the Project. It is presently
9 proceeding with final engineering and solicitation of additional federal funds.
10

11 3.17 On or about March 22, 2000, Sound Transit submitted to the FTA certain
12 information supplemental to its New Starts Report ("New Starts Supplement").
13

14 3.18 During the summer of 2000, defendants prepared a proposed FFGA for the
15 Project. Between September and November 2000, Congress conducted its 60-day review of
16 the proposal.
17

18 3.19 In December 2000 and January 2001, Sound Transit revised the Project
19 proposal to indicate a budget of approximately \$2.6 million (1995\$) for the Preferred
20 Alternative, and a completion date of 2009, not 2006.
21

22 3.20 On January 19, 2001, the FTA approved the FFGA for the Project, and
23 executed the same that evening.
24

25 **4. COUNT ONE—VIOLATION OF THE NATIONAL**
26 **ENVIRONMENTAL POLICY ACT**
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28 4.1 The allegations in paragraphs 1.1 through 3.20 are incorporated here as if set
29 forth fully herein.
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1 ***Light Rail Kills People, a Fact Defendants Have Neither Disclosed nor Discussed in the***
2 ***Environmental Impact Statement.***
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4 4.2 Title 42 U.S.C. § 4332(2)(c) requires preparation of a detailed statement (EIS)
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6 for actions "significantly affecting the human environment," and id. - (2)(c)(ii) requires a
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8 detailed statement of "any adverse environmental effects that cannot be avoided should the
9
10 proposal be implemented."
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12 4.3 Title 49 C.F.R. § 1502.1 requires defendants to provide "full and fair
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14 discussion of significant environmental impacts," which includes discussion of
15
16 environmental consequences that cannot be avoided. Id., - § 1502.16.
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18 4.4 In its environmental documents, when it suits it, Sound Transit has compared
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20 its proposals to the Portland (Oregon) "MAX" project, and the Los Angeles Blue Line
21
22 project.
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24 4.5 In Los Angeles, since 1990, there have been at least 53 deaths caused by light
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26 rail activity.
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28 4.6 In Portland, similarly, deaths caused by light rail activity numbered five in the
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30 last reporting year.
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32 4.7 In the FEIS there is no discussion of likely fatalities or the extent thereof, in
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34 the event of implementation of the Project. Even though large portions of the Project,
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36 between McClellan Street and Sea-Tac, now are proposed to be at grade without full
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38 separation from other modes of traffic (in other words, the light rail right-of-way is not
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40 proposed to be fully segregated), there is no discussion of likely fatalities. See FEIS, Volume
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42 One, pages 3-49 to 3-50, 3-58 to 3-59, and 3-78.
43

44 4.8 Defendants do mention in the FEIS that between January 1994 and December
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46 1996 there were three traffic fatalities along the affected portion of the proposed route, or
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1 approximately one per year. Again, however, there is no discussion of likely light rail
2 fatalities, and no discussion of how Seattle can expect to do better than the average of
3 approximately five fatalities per year suggested by the Portland and Los Angeles experiences.
4 Similarly, the FEIS contains inadequate discussion of ways in which Sound Transit might
5 avoid or minimize the prospect of light rail-related fatalities, e.g., by budgeting more for fully
6 segregated right-of-way, tunneling, or other devices.
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12 4.9 Sound Transit intends to run light rail trains that are greater in length than a
13 football field. Evidence shows that with such trains, relatively higher light rail speeds lead to
14 a greater incidence of light rail-related fatalities. The Los Angeles Blue Line runs at an
15 average of approximately 22.7 MPH, and produces about five fatalities per year. Sound
16 Transit proposes to run at an average of 24 to 28 MPH. All else being equal, this would tend
17 to produce a higher incidence of fatalities. (If Sound Transit contends its trains will not
18 exceed the posted 35 MPH speed limit along Martin Luther King Way South, then it will be
19 physically impossible for it to average the projected 24 to 28 MPH, calling into question ALL
20 of its ridership projections and its income projections as well.)
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30 4.10 It is not insignificant that Sound Transit proposes employing at-grade, non-
31 separated right-of-way primarily in low income areas with a disproportionate number of
32 immigrants and people of color. Defendants have failed to explain in the FEIS why no
33 further efforts can be made or will be made to avoid or mitigate these important human safety
34 impacts. And, in fact, in the New Starts Report, page 9, Template 4.1 (and New Starts
35 Supplement, pages 2-3), Sound Transit has attempted to cover up this important concern by
36 falsely stating that (a) there will be no mixed traffic on the Project and (b) all 23.5 miles of
37 the route will be "exclusive," when in fact at least seven miles of the route will be at-grade,
38 with multiple intersection crossings, primarily in low-income, immigrant, and minority
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1 neighborhoods. Furthermore, defendants have failed to adequately identify and address the
2 number of mixed traffic intersections created by the Project, the queuing time related thereto,
3 the "doubling back" of vehicular traffic to cross the tracks and continue along the other side
4 of Martin Luther King Way South, and related safety and congestion concerns.
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8 4.11 Protection of the human environment, including notably human safety and
9 human lives, goes to the core of NEPA. Defendants have utterly failed to fulfill their duty
10 under NEPA to address adequately in the FEIS the above critical issues.
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14 ***The Light Rail Project Risks "Gridlocking" Downtown Seattle and the University District,
15 and Fouling Air Quality in Those Areas.***
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18 4.12 Defendants have not complied with NEPA in that they have failed to address
19 adequately in the FEIS the impacts on traffic congestion and air quality resulting from the
20 proposed action.
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24 4.13 The proposals will lead to significant adverse traffic impacts both in the
25 University District and downtown Seattle, among other areas along the project route. With
26 the northern terminus of the light rail line in the University District, whether under the MOS
27 or the "Preferred Alternative" (N.E. 45th St. to Sea-Tac proposal), the already crowded
28 University District area will become more crowded with people and vehicles attempting to
29 access light rail stations. Standing and slow moving vehicles will create air quality problems,
30 but this is not adequately addressed in the FEIS.
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34 4.14 Regarding the downtown Seattle area, in the FEIS defendants explain publicly
35 for the first time that the plan is to remove at the outset ALL buses from the Downtown
36 Seattle Transit Tunnel ("DSTT"), and relegate them to the surface. Defendants admit in the
37 FEIS this will cause major downtown congestion concerns, see Volume One, pages 3-12 to
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1 3-20, but fail to adequately address them and fail to show the adequacy of their proposed
2 mitigation plans.
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4 4.15 Evidence of the inadequacy of the proposed mitigation plans in downtown
5 Seattle is found at page 3-15 where defendants offer, without formally promising to include
6 this as a mitigation measure, to include a "light rail shuttle" in the DSTT to help commuters
7 transfer from their cars and buses and move through the downtown area more readily. Yet
8 there is no budget for either the capital or operating costs associated with such a measure, or
9 any assessment of whether such a measure would actually work. The ROD does not include
10 any such shuttle system as a required mitigation step.
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12 4.16 Further, as in the case of the University District, in the downtown Seattle area
13 the prospect of slow moving and standing vehicles raises the prospect of deteriorating air
14 quality, a point not adequately addressed in the FEIS.
15

16 ***Inadequate Discussion of Alternatives***

17 4.17 Title 42 U.S.C. § 4332(2)(c)(iii) requires defendants to discuss reasonable
18 alternatives to the project proposal, and 49 C.F.R. § 1502.14 requires defendants not only to
19 "[r]igorously explore and objectively evaluate all reasonable alternatives," - id. -(a), but also
20 to address reasonable alternatives not within the jurisdiction of the lead agency, id. -(c).
21 These are part and parcel to defendants' duties to make sure environmental disclosure is
22 reasonable and to take a "hard look" at disclosure statements to this end. Defendants have
23 failed to comply with the above requirements.
24

25 4.18 The purpose of, and need for, the Project is stated as being to expand transit
26 capacity, provide a practical alternative to driving a car, support land use and transportation
27 planning, provide environmental benefits, and improve mobility. FEIS, Volume 1, p. 1-1; id.,
28 p. 1-6. (To the extent defendants have tried to narrow the above to suggest the "purpose" is
29

1 to start a light rail system, this is simply an unlawful circumvention of NEPA's requirement
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3 to address all reasonable alternatives.)

4 4.19 Because the purpose and need would reasonably be met by projects involving
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6 modes of transportation other than light rail, NEPA requires discussion of those reasonable
7
8 alternatives. Yet there is no such discussion except for reference to the "no action"
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10 alternative.
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12 4.20 More specifically, there is no discussion of the use of financial resources—
13
14 resources that are proposed for light rail—instead for an enhanced express and local bus
15
16 system as a reasonable, feasible, and prudent alternative. Under realistic scenarios buses
17
18 would provide greater capacity through the DSTT, a critical system link, than would light rail
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20 under the instant proposal. And there is much evidence showing an enhanced bus system
21
22 could be pursued more expeditiously, at a fraction of the cost, and with less environmental
23
24 harm, than the proposed light rail system. Yet in the FEIS there is no discussion of this
25
26 reasonable alternative, or any other reasonable alternative save "no action."
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28 4.21 In the early 1990s the RTA and King County Metro compared a rail proposal
29
30 operating entirely on an exclusive right-of-way with a bus alternative and a light rail
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32 alternative not having 100% segregated right-of-way. At that time the bus alternative was
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34 rejected as was the light rail alternative not possessing 100% segregated right-of-way. Today
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36 Sound Transit proposes the very type of system that had been rejected in the early 1990s—a
37
38 rail project not possessing 100% segregated right-of-way. At the same time, in the FEIS
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40 Sound Transit impermissibly has equated the Transportation Systems Management ("TSM")
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42 alternative with the "no action" alternative. Thus, today, in the FEIS, Sound Transit
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44 compares only a light rail plan earlier rejected with a "no action" alternative. Given the
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1 passage of time and change of circumstances, NEPA does not allow defendants here to
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3 compare the instant proposal only with a "no action" alternative.

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5 4.22 It is particularly important to address different modes, notably buses, as
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7 reasonable alternatives because, by Sound Transit's own calculations, as many as 70% of
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9 projected light rail passengers simply would be former commuter bus riders. Before the
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11 region spends over \$3 billion (in projected year-of-expense) on light rail, the net effect of
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13 which is, in substantial part, simply to put ex-bus riders into rail cars, careful examination of
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15 reasonable alternatives is required. Defendants' refusal to rigorously explore, and their
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17 refusal to objectively evaluate, bus alternatives in both the DEIS and the FEIS is a violation
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19 of NEPA. Equally so, their failure to obtain public and agency comment on such alternatives
20
21 is a violation of NEPA.

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23 4.23 The failure to address all reasonable alternatives is particularly egregious in
24
25 this case given the fact that the voters of the Puget Sound Region have not approved the
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27 proposals now before the FTA. That is to say, they never approved any "MOS" proposal, and
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29 they never approved a Preferred Alternative proposal that now is approximately \$1 billion
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31 over the promised budget, and three years behind schedule.

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33 ***Other Material Deficiencies in the FEIS***

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35 4.24 Defendants have violated NEPA, 42 U.S.C. § 4321 et seq., in at least the
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37 following additional respects:

- 38
39 (a) The FEIS does not contain a reasonably thorough discussion of the significant
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41 aspects of the probable environmental consequences of the proposed action;
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43 (b) In the FEIS, defendants failed to properly or adequately evaluate the likely or
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45 probable impacts of the proposed action on traffic and mobility. As an example,
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47 and without limitation, the FEIS does not address Seattle's plan to create denser

1 residential land uses around proposed light rail stations, thereby leading to a
2 greater number of autos, and greater auto congestion, than at present;
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5 (c) In the FEIS, defendants failed to properly or adequately evaluate the likely or
6 probable impacts of the proposed action on King County's DSTT, on King
7 County's bus fleet and bus operations, and on other bus systems, including,
8 without limitation, Community Transit;
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12 (d) In the FEIS, defendants failed to properly or adequately evaluate the alleged
13 transportation improvements flowing from the proposed action, the DSTT
14 capacity constraints on light rail transit, the light rail and bus speed assumptions,
15 and the effect of those assumptions on analysis of environmental impacts;
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19 (e) In the FEIS, defendants failed to discuss adequately the likelihood or probability
20 of the proposed action foreclosing future options with respect to mobility
21 improvement in the greater Seattle area;
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25 (f) In the FEIS, defendants improperly and unlawfully relied on matters addressed
26 and stated in prior, non-project EIS's, even though the dimensions and nature of
27 the proposed project now have changed, and many of the assumptions and
28 analyses in those prior EIS's are no longer currently correct, valid, or appropriate
29 in relation to the proposed project, current knowledge, and current technology;
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33 (g) Defendants have failed to use proper or accurate scientific analysis, to properly
34 take into account expert agency comments, or to properly take into account public
35 scrutiny in the EIS process, 40 C.F.R. § 1500.1(b);
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39 (h) Defendants have failed to:
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- identify clearly all assumptions (for example, without limitation, defendants have failed to disclose the origin of and basis for assumptions that tunneling under Martin Luther King Way South is not technically feasible);
- explain inconsistencies (for example, without limitation, page 14 of the New Starts submittal assumes peak traffic of 6-minute intervals for 3-car trains for the MOS, whereas FEIS Vol. 1, page M.2-1, assumes 4-minute intervals north and 8-minute intervals south for all technical analysis (Operating Plan A), subsequently modified to 5 minutes north and 10 minutes south (Operating Plan B)--leaving open the critical question of WHAT OPERATING PARAMETERS ARE ACTUALLY PROPOSED for the Project;
- disclose methodologies (for example, without limitation, defendants rejected an FOIA (public disclosure act) request for their modeling assumptions, asserting that the underlying software program was "proprietary" to a Sound Transit vendor);
- rebut contradictory evidence (for example, without limitation, failure to rebut the study of ECONorthwest, choosing instead to rely on a study by Porter & Associates which was "MAI" (made as instructed) to support the Project regardless of the truth, and regardless of best estimates by those knowledgeable in the discipline. As another example, failure to study and discuss evidence that tunneling under Martin Luther King Way South is feasible);
- eliminate guesswork;
- make explicit reference to sources relied upon for conclusions; and

- record in understandable manner the basis for those conclusions, 40 C.F.R. § 1502.24; and

(i) Defendants have failed to evaluate adequately the impacts on urban quality. 40 C.F.R. § 1502.16(g).

New Information and Circumstances Require Preparation of an SEIS or new FEIS.

4.25 Defendants have failed to prepare a Supplemental Environmental Impact Statement ("SEIS") or new FEIS, even though changes in the proposed action will result in significant environmental impacts not evaluated in the FEIS, and new information and circumstances relevant to environmental concerns and bearing on the proposed action or its impacts will result in significant environmental impacts not evaluated in the FEIS. See 23 C.F.R. § 771.130(a); see also 40 C.F.R. § 1502.9(c)(1). Without an SEIS, or new FEIS, other agencies and the public will have no reasonable opportunity to criticize or evaluate the environmental effects of the proposed Project. In particular, and without limitation, recent design changes, the decision to set a northern terminus at the University District rather than Northgate, the decision to exclude all buses from the DSTT from the inception of the project, the impact of Washington Initiative 695 and subsequent state legislative action on public transit systems, and Seattle's recent efforts to create denser residential land uses in areas surrounding proposed light rail stations, all are matters requiring preparation of an SEIS.

4.26 In a recent Memorandum of Agreement reached with the University of Washington ("UW MOA"), Sound Transit has promised to:

- Submit a construction management plan to the UW for review and approval;
- Conduct before- and after-traffic studies in the University District, and mitigate traffic impacts as deemed necessary by the UW;

- Design tunnels so as to reduce vibrations (including construction of a "floating slab" in the University-area tunnel), and to minimize electromagnetic interference (EMI) impacts; and
- Submit plans for rail stations and above-ground facilities to the UW for its review and approval.

4.27 In the UW MOA, Sound Transit has also agreed to:

- abide by conditions "in addition to those required by the ROD" (§ 1.6);
- identify mitigation measures "above and beyond those required by FTA" (§ 2.2);
- compensate the UW for a variety of takings in amounts that will be determined by independent appraisers;
- identify and mitigate future unanticipated impacts;
- cede to the UW the "authority, subject to the principles in this section and Agreement, to determine what level of mitigation any particular impact should receive" (§ 6.1.3);
- cede to the UW the right to stop work;
- cede to the UW "ultimate approval authority" on design plans (§ 7.1);
- cede to the UW "ultimate approval authority" over mitigation and monitoring plans (§ 7.2); and
- post a bond in favor of the UW (§ 13.1).

4.28 These important new features of the Project, summarized in the preceding two paragraphs of this Complaint, have not been addressed in the FEIS. They call into question important environmental issues, including those of traffic congestion, air quality, noise and vibration, construction methods, and safety, which have not been addressed at all, or certainly

1 not adequately, in the FEIS, and therefore should now be addressed in an SEIS. The
2 University of Washington has not prepared an EIS describing the impacts resulting from use
3 of its property for the Project. Assuming without deciding that the UW may cede lead agency
4 responsibilities for EIS preparation to the FTA and Sound Transit, nevertheless defendants
5 have not adequately addressed the UW and University District impacts and their mitigation in
6 the FEIS or ROD—as evidenced by the fact that the UW MOA identifies conditions "in
7 addition to those required by the ROD." Further, defendants appear now to be willing to cut
8 scope from the South end, e.g., by not building out Beacon Hill, Graham, or Royal Brougham
9 Stations, in order to pay for UW impacts. The significant effects of these changes have not
10 been assessed.

11
12 4.29 In downtown Seattle, evicting all buses from the DSTT from the outset of the
13 Project (in violation of earlier promises made to downtown "stakeholders") is likely to create
14 unsatisfactory, congested conditions similar to those encountered before construction of the
15 DSTT allowed subterranean bus travel in the downtown area. An SEIS is needed to provide
16 truly adequate discussion of these concerns.

17
18 4.30 With respect to the effect of Initiative 695 and ensuing state legislative action
19 rolling back MVET (motor vehicle excise tax) revenue for bus systems, these are all events
20 that took place after the FEIS was published. In the FEIS, defendants rely on certain
21 assumptions about bus "feeder" rates to develop their rail ridership forecasts. Those bus
22 "feeder" rate assumptions, in turn, are based in good part on assumptions about the level of
23 bus service that local bus companies will provide and the fares those bus companies will
24 charge. Planned bus service levels have been substantially reduced, and bus fares likely will
25 increase as a result of the initiative and legislative action described above. An SEIS is

1 needed for revised discussion of rail ridership forecasts based on these important new
2 developments.
3

4 4.31 In the New Starts Supplement at page 2, Sound Transit states that it plans to
5 defer construction of the Royal Brougham, Beacon Hill, and Graham Street stations, and in
6 separate Sound Transit documentation dated May 9, 2000, it identifies a plan to *delete* the
7 Graham Street station, and defer construction of the park and ride lot at Boeing Access Road.
8 These Project changes will lead to reductions in ridership forecasts and other impacts that
9 should be addressed in an SEIS. Also, in the May 9, 2000 documentation, Sound Transit
10 proposes, as a cost savings measure, a "cut and cover" construction technique on a portion of
11 the proposed route on Capitol Hill. This would have significant adverse impacts during
12 construction, and those impacts have not been addressed in the FEIS.
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22 4.32 Defendants' failure to prepare an SEIS was and is arbitrary and capricious, an
23 abuse of discretion, and not in accordance with law.
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25

26 4.33 Defendants' decisions to increase the budget for the Preferred Alternative, and
27 to enlarge the Project time from 2006 to 2009, and related actions individually and
28 cumulatively, have significant environmental effects that are not addressed as required in the
29 ROD or the FEIS issued in late 1999.
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34 4.34 In all the above respects, without limitation, defendants have violated NEPA,
35 including, without limitation, 42 U.S.C. § 4332(2)(C) and 42 U.S.C. § 7506(c).
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39 **5. COUNT TWO—VIOLATION OF THE CLEAN AIR ACT**

40 5.1 The allegations in paragraphs 1.1 through 4.34 are incorporated here as if set
41 forth fully herein.
42
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44 5.2. On May 2, 2000, plaintiffs provided a 60-day notice to defendants of their
45 violation of the conformity requirements of the Clean Air Act. See 42 U.S.C. § 7604(b).
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47

1 This notice was filed with the defendants herein, the Administrator of the Environmental
2 Protection Agency, the Washington State Department of Ecology, and the Puget Sound Air
3 Pollution Control Agency. There has been no response to said notice from any federal
4 defendant. Sound Transit responded by requesting additional clarification.
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9 5.3 The proposed action would cause and contribute to new localized CO and PM
10 sub10 violations and increase the frequency or severity of any existing CO or PM sub10
11 nonattainment and maintenance areas. See 40 C.F.R. § 93.116(a).
12
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14
15 5.4 Defendants have failed and refused to conduct either quantitative analysis or
16 qualitative consideration of local factors, including, without limitation, in the University
17 District, downtown Seattle, and the Duwamish corridor. Defendants conducted no PM sub10
18 hotspot analyses in those areas, and made no analysis to determine whether the project would
19 create any localized PM sub10 hotspots. See 40 C.F.R. § 93.123. Additionally, design
20 changes, such as cut and cover techniques, will create new hotspots of CO (e.g., on Capitol
21 Hill), which were not earlier considered.
22
23

24
25 5.5 Defendants are not allowed to proceed with the Project unless positive
26 conformity to the State Implementation Plan ("SIP") has been determined and validated. 42
27 U.S.C. § 6506(c)(2); 40 C.F.R. § 93.102(a)(1)(iii). Because this has not been properly
28 determined or validated, defendants may not proceed with the Project.
29
30

31
32 5.6 Section 176(c) of the Clean Air Act specifies that no federal agency may
33 "engage in, support in any way or provide financial assistance for, license or permit, or
34 approve" any activity that does not conform to the applicable SIP for the implementation,
35 maintenance, and enforcement of national ambient air quality standards. 42 U.S.C.
36 § 7506(c)(1). See also id. § 7506(c)(2); 40 C.F.R. § 93.102(a)(1)(iii). Defendants have
37 violated and are violating the above requirements.
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SECOND AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF - 19

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1 5.7 In order to come from a conforming program, the Project must have been
2
3 included in a conforming Transportation Improvement Plan ("TIP") and the design and scope
4
5 of the Project must have been adequate at the time of the TIP conformity determination to
6
7 determine its contribution to the TIP's regional emissions. 42 U.S.C. § 7506(c)(2)(C)(iii) and
8
9 40 C.F.R. § 93.115(c). Further, defendants are required to determine that the Project's design
10
11 concept and scope have not changed significantly from the Project described in the
12
13 transportation plan, or changed in a manner which would significantly impact the use of the
14
15 facility. 42 U.S.C. § 7506(c)(2)(C)(ii) and 40 C.F.R. § 93.115(b).

16 5.8 The listing of the Project in the TIP is nothing more than a symbolic
17
18 placeholder which cannot be used sufficiently to determine the contribution of the Project to
19
20 the region's emissions. Further, the Project now proposed and approved in the ROD is of
21
22 different design and scope than that listed in the TIP. The changes create new hotspots and
23
24 hotspots in different locations of a character and severity not considered earlier in the SIP
25
26 conformance determination.

27 5.9 All transportation projects proposed in carbon monoxide nonattainment areas
28
29 must reduce the severity and number of carbon monoxide violations in the areas substantially
30
31 affected by the Project. 42 U.S.C. § 7506(c)(3)(B)(ii) and 40 C.F.R. § 93.116(b). The
32
33 Project will result in an increase in severity of the violations of National Ambient Air Quality
34
35 Standard for CO in the area affected by the Project, in violation of the Clean Air Act.

36 5.10 In the above respects, without limitation, defendants have violated the Clean
37
38 Air Act.
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- Adequate "project justification," 49 U.S.C. § 5309(e)(1)(B), and -(e)(3).
See also Technical Guidance Memorandum, sections 1.2.1 (p. 2) and 3.1 (p. 13);
- An "acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system.." 49 U.S.C. § 5309(e)(1)(C). See also id., -(e)(4); Technical Guidance Memorandum, section 1.2.2 (p. 2); and
- A showing of the "reasonable likelihood that the project will continue to meet" the requirements of 49 U.S.C. § 5309. Id., -(e)(6).

6.6 As addressed below, Sound Transit and the Project have not met and do not meet any of the above requirements. Therefore all actions to date by federal defendants approving Sound Transit and the Project for funding, in whole or in part, are arbitrary and capricious, an abuse of discretion, without substantial evidence, and contrary to law.

Inadequate Alternatives Analysis

6.7 The Technical Guidance Memorandum describes the TSM alternative as a "second baseline case." TSM is defined as: "[T]he No Build Alternative *plus* lower cost transportation improvements (i.e., lower cost than the Build Alternative) which represent the *best* that can be done to improve mobility in the corridor without the construction of major new transit facilities." Id. at p. 36. (Emphasis added.) See also id. at section 4.2.2.2 (p. 32). Inside the corridor, the TSM alternative analyzed "should offer approximately the same level of transit service (coverage, route spacing, peak and off-peak headways, etc.) as the Build Alternative or the Project, as defined below." Id.

6.8 Analysis of both a "No Build" alternative and a TSM alternative, as well as analysis of the Project ("Build Alternative"), is required in New Starts and related funding

1 requests. Id., sections 4.2.2.1, 4.2.2.2. (Accord, proposed rule, 64 Federal Register,
2
3 17070-71, Appendix "A.")

4
5 6.9 Defendants have not complied with the above requirements with respect to
6
7 alternatives. Instead, they have unlawfully treated the TSM and "No Build" alternatives as
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9 identical, and mischievously labeled what is really a "No Build" alternative as a "TSM"
10
11 alternative.

12
13 6.10 In a November 6, 1998 letter from Sound Transit to FTA, which is made a
14
15 part of the New Starts Report of September 1999, Sound Transit announces its decision,
16
17 supposedly made in collaboration with FTA, to treat the No-Build and TSM as "equivalent."
18
19 The letter states that the so-called TSM alternative includes "significant increases in bus
20
21 service for all of the region's transit operators, completion of the HOV network, new HOV
22
23 access ramps, as well as Sounder commuter rail and Regional Express bus service; *the No-*
24
25 *Build would have the same services included.*" (Emphasis added.)

26
27 6.11 In other words, Sound Transit has presented a TSM alternative whose
28
29 assumed features are equivalent to the assumed features of a No-Build alternative. Those
30
31 assumed features of the so-called TSM alternative presented by Sound Transit do not address
32
33 or include "the best that can be done to improve transit mobility in the corridor without the
34
35 construction of major new transit facilities," Technical Guidance Memorandum, p. 36, nor do
36
37 those assumed features "offer approximately the same level of service . . . as the Build
38
39 Alternative or the Project," id. at p. 32.

40
41 6.12 Under governing law, the only circumstance under which an applicant may
42
43 treat the TSM and No Build alternatives as equivalent is the following: "[I]f the MPO's
44
45 adopted plan includes transit improvements that truly constitute 'the best that can be done to
46
47

1 improve transit mobility in the corridor without the construction of major new transit
2 facilities.'" Technical Guidance Memorandum, section 4.2.2.2 (p. 32).

3
4 6.13 The single circumstance described in the preceding paragraph is not presented
5 in this case. There is no evidence that the MPO's adopted plan constitutes "the best that can
6 be done . . . without the construction of new facilities." The law requires consideration of a
7 TSM alternative which would add "lower cost transportation capital improvements intended
8 to enhance the performance of the transportation system," e.g., by purchasing and operating
9 more buses, above and beyond what is contemplated in the No Build alternative. See
10 Technical Guidance Memorandum, section 4.2.2.2 (p. 32). Yet it is clear from Sound
11 Transit's New Starts Report, p. 26, that the applicant does not assume "a dramatic increase in
12 the total bus operating hours in King County under *any alternative scenario*." (Emphasis
13 added.)

14
15 6.14 In the early 1990s, the RTA and King County Metro examined an enhanced
16 bus alternative, albeit with badly flawed, unprofessional, and defective analyses and
17 assumptions; yet analysis of an enhanced bus alternative is nowhere to be seen in the DEIS,
18 the FEIS, the New Starts Report, or the ROD. (In the early 1990s RTA and King County
19 Metro also analyzed a light rail alternative possessing some non-segregated right-of-way—an
20 alternative strikingly similar to the instant Project proposal—and rejected that alternative as
21 unfeasible.)

22
23 6.15 Sound Transit has not presented or analyzed, and federal defendants have not
24 required analysis of or analyzed, a genuine TSM alternative to the Build Alternative or the
25 Project. Without this analysis, defendants and the public have never been able, and will
26 continue to be unable, to assess the genuine alternative prospect of deploying a portion of the
27 capital now proposed for light rail, to alternative public transportation investments.

1 6.16 By Sound Transit's own calculations, in all likelihood as many as 70% of the
2 projected light rail riders will simply be ex-bus riders. Defendants have never analyzed a
3 genuine TSM alternative which would entail, in essence, a proposal to add buses or other
4 HOV modes to accommodate the approximately 30% of projected rail riders who currently
5 commute by mode other than buses.
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10 6.17 Thus defendants, and the public, have been unable, and will continue to be
11 unable, to assess whether the Central Puget Sound region might further the goal of increased
12 mobility at least as well, and at less cost, through implementation of a genuine TSM
13 alternative rather than through light rail.
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17

18 6.18 By comparing the instant proposal only to a "No-Build" alternative
19 masquerading as a TSM alternative, defendants failed to provide an adequate alternatives
20 analysis as required by 49 U.S.C. § 5309(e)(1)(A), and thereby have violated and are
21 violating one of the essential provisions, and one of the essential purposes, of the statutory
22 approval requirements.
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29 ***Inadequate Project Justification***
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31 6.19 Title 49 U.S.C. § 5309(e)(1)(C) requires a determination that a proposed
32 Project is "justified based on a comprehensive review of its mobility improvements,
33 environmental benefits, cost effectiveness, and operating efficiencies. . . ." See also id., -
34 (e)(3); Technical Guidance Memorandum, section 1.2.1, p. 2.
35
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38

39 6.20 Project justification analysis also includes consideration of "direct and indirect
40 costs of relevant alternatives," 49 U.S.C. § 5309(e)(3)(A), and the "technical capability of the
41 grant recipient to construct the project," id. -(3)(F).
42
43
44

45 6.21 As discussed below, Sound Transit's proposed light rail project is not justified
46 by any of the above considerations.
47

1 · ***Absence of Mobility Improvements***

2
3 6.22 In Sound Move at page 30, RTA told the voters that when light rail service
4
5 commenced in downtown Seattle, "the number of people using the tunnel [DSTT] will
6
7 triple." Yet in the ROD at page 7, the FTA asserts only that upon opening it "is expected to
8
9 double," and in the FEIS at page 3-22 the information in the table belies even the FTA's
10
11 assertion. In short, the *ridership* assumptions defendants have advertised are fundamentally
12
13 flawed.

14
15 6.23 Correlatively, the Project is not justified from a *capacity* viewpoint.
16
17 Defendants have explained that at year 2010, Sound Transit would operate three car trains
18
19 every six minutes. FEIS, p. 3-7, note 1; New Starts Report, p. 14.

20
21 6.24 With three car trains every six minutes, and at speeds and car capacities
22
23 assumed by Sound Transit, the peak hourly capacity for light rail would be approximately
24
25 8,000 passengers, including standees. This compares with the current *seated only* peak
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27 hourly *bus* capacity in the DSTT of over 9,000. Sound Transit estimates that with an
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29 enhanced fleet, buses could carry at least 18,000 *seated* passengers per hour in the DSTT at
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31 peak. Thus, at present, the DSTT is operating only at approximately 50% of bus capacity.

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33 6.25 Even using Sound Transit's rosy assumptions, at page 10 of its New Starts
34
35 Report, of four-car trains running every five minutes at weekday peak periods, using Sound
36
37 Transit data this produces ridership capacity of approximately 13,000 per hour on light rail
38
39 (12 trains/hour x 4 cars/train x 132 passengers/car x 2 directions = 12,672). Since, as noted
40
41 above, buses could carry at least 18,000 per hour at peak, it is evident that at a minimum the
42
43 bus alternative is relevant, viable, realistic, and worthy of analysis. Yet it was not analyzed
44
45 by defendants in the DEIS, FEIS, New Starts Report, or ROD. Instead, defendants assume
46
47 under the No-Build alternative that DSTT bus boardings would increase only about one

1 percent per year between 1999 and 2010. FEIS, Table 3.2-5 at pp. 3-14. (Defendants'
2 fanciful assertion, in Sound Move at p. 18, and in the FEIS, Vol. I, § 2.1.3, that a two-way
3 light rail line can "carry the same number of people as 12 freeway lanes" is just that—
4 fanciful. It finds no support in fact under any realistic scenario.)
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9 6.26 In sum, the reduced capacity suggested for light rail, compared with a genuine
10 TSM alternative, is not a "mobility improvement." Further, the calculation that 40% or more
11 of peak hour light rail passengers would be standing (FEIS, p. 3-7, Table 3.2-1 n.1) is
12 scarcely a "mobility improvement" compared with no action or other viable alternatives
13 where only a small percentage of riders are standees. And while light rail may speed travel
14 time for a few commuters living near rail stations, many more will experience slower and less
15 reliable service than they experience now. Finally, under the light rail proposal decreased
16 mobility will be experienced by pedestrians and vehicles in the Martin Luther King Way
17 corridor, in the downtown Seattle area (because of buses being moved to the surface), and in
18 the University District area. There is no evidence in this case that the proposed Project will
19 produce mobility improvements, by itself or compared with viable alternatives, and the
20 mobility improvement requirement of 49 U.S.C. § 5309(e)(1)(A) is not met here.
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33 · ***Absence of Environmental Benefit***
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35 6.27 Defendants admit that the Project will not help remove any of the existing
36 traffic volumes from the roads and highways and, at best, merely removes a small fraction
37 (estimated at less than 2%) of the projected *increase* in traffic volumes over the next 10 to 20
38 years.
39
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42 6.28 Defendants also find according to their studies that there is essentially no
43 difference in air quality under either the Build or the No-Build alternatives. FEIS, p. 4-82,
44
45
46
47

1 Table 4.5-2. (Plaintiffs contend air quality in some areas will be *worse* if the Project is
2 implemented.)
3

4 6.29 Quite apart from the absence of substantial environmental benefit from the
5 light rail proposal, there are presented substantial risks of environmental detriment, in the
6 presence of increased congestion and decreased air quality.
7
8
9

10 6.30 With regard to increased congestion, the most notable problem areas are the
11 University District and downtown Seattle.
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13

14 6.31 In the University District, under the Preferred Alternative, with a northern
15 terminus at N.E. 45th Street there will be substantial adverse traffic congestion impacts.
16 Defendants have not adequately acknowledged or analyzed these in the FEIS or ROD, let
17 alone suggested adequate mitigation measures. Only most recently, when pressed to do so by
18 the University of Washington, has Sound Transit agreed to address, and if necessary mitigate,
19 University District congestion impacts. The contours of this recent agreement, however, are
20 not fully defined and have not been analyzed in the FEIS or any SEIS.
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28 6.32 In downtown Seattle, defendants acknowledge the traffic congestion impacts
29 of the Project will be severe, but have not prepared adequate mitigation measures.
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32 6.33 The root of the problem downtown is Sound Transit's present decision to evict
33 all buses from the DSTT and allow only light rail in the tunnel. With all buses once again
34 using surface streets downtown (a return to the unacceptable conditions encountered before
35 construction of the DSTT), peak hourly bus volume on downtown surface streets would be
36 about 600.
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42 6.34 The ROD's Attachment E contains a number of proposed mitigation measures
43 regarding downtown congestion, including to "form a committee," "make recommendations,"
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1 and "seek an interlocal agreement." Id., p. 34, section 2.1.4. None of these assures adequate
2 mitigation.
3

4 6.35 Sound Transit has considered or is considering substantial measures, such as
5 various bus intercept options, including acquisition and operation of extra light rail "shuttle
6 trains" to take bus and other passengers through the DSTT during peak hours, FEIS, p. 3-15
7 and, on information and belief, transferring Eastside bus commuters to and from light rail at
8 McClellan Station in S.E. Seattle (which would degrade mobility for Eastside transit
9 patrons).
10
11

12 6.36 Yet none of the measures described in the foregoing paragraph is included in
13 the ROD's Appendix E as a required mitigation measure in this case. Therefore, we are faced
14 with a proposed Project suggesting obvious and substantial traffic congestion problems, and
15 no adequate mitigation plan for those problems.
16

17 6.37 Turning to air quality concerns, ROD Attachment E makes it plain that
18 defendants have no plans to address air quality issues at all. Id., p. 15, section 1.6. The two
19 areas on the proposed route with the greatest traffic congestion concerns—the University
20 District and downtown Seattle—correlatively have probably the greatest air quality concerns.
21 Defendants did not analyze air quality concerns in either area. See FEIS, p. 4-83 and
22 Table 4.5-3.
23

24 6.38 We are confronted with a proposed Project that offers no environmental
25 benefit and risks substantial environmental detriment. The environmental benefit
26 requirement of 49 U.S.C. § 5309(e)(1)(B) is not met here.
27
28

29 · ***Lack of Cost Effectiveness***
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31 6.39 Sound Transit's New Starts Report, at pages 45-46, claims that the new light
32 rail plan will lead to increased annualized costs of \$40.1 million for MOS, and
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1 \$185.7 million for Central Link Corridor, as compared with the No Action alternative that
2 Sound Transit masquerades as TSM. In fact, light rail costs will be higher. Sound Transit's
3 analysis is defective for at least the following reasons:
4
5

- 6 • It assumes greater transit ridership than can be expected under any realistic
7 scenario (fewer riders means lower revenue and therefore greater net
8 annualized costs);
9
- 10 • It assumes far less TSM alternative ridership than could be expected given
11 a genuine TSM alternatives analysis;
12
- 13 • It fails to recognize increased operating costs for King County Metro,
14 Community Transit and Pierce County Transit resulting from the Project
15 proposal;
16
- 17 • It assumes a rate of re-deployment of bus service hours to light rail
18 "feeder" service that is not feasible in the wake of I-695 and legislative
19 rollback of MVET revenues; and
20
- 21 • Sound Transit's assumptions regarding capital outlays for MOS, Preferred
22 Alternative and Central Link Corridor are unrealistically low.
23

24 6.40 Sound Transit's cost effectiveness "analysis" is actually just guesswork, is not
25 grounded in fact or in valid assumptions, and does not meet the statutory or regulatory
26 requirements.
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• ***Absence of Operating Efficiencies***

6.41 At pages 43 and 44 of its New Starts Report, Sound Transit projects a decline
in operating costs per passenger mile for both MOS and Central Link Corridor, as compared
with the No Action alternative that Sound Transit masquerades as TSM. This analysis is

1 defective for the reasons set forth above in the "Lack of Cost Effectiveness" discussion, and
2
3 for the following additional reasons:

- 4 • Sound Transit's light rail operating cost estimates are unrealistically low,
5
6 given actual experience in other cities with similar systems;
7
- 8 • Sound Transit's light rail operating cost estimates do not include sufficient
9
10 amounts for initial and ongoing mitigation obligations pertaining to its
11
12 recent agreement with the University of Washington, pertaining to the
13
14 downtown Seattle congestion problems, pertaining to the Rainier Valley
15
16 area, and pertaining to its impending agreement with the City of Tukwila.
17

18 6.42 Of equal or even greater importance, however, is Sound Transit's unlawful
19
20 decision to use different underlying assumptions for different alternatives.
21

22 6.43 Firstly, when examining possible bus solutions many years ago, Sound Transit
23
24 (then RTA) assumed that buses in HOV lanes would go no more than 15 miles per hour
25
26 faster than traffic in adjacent general-purpose lanes. (This assumption conflicts with the
27
28 State DOT policy regarding HOV lane speeds.) This improper assumption had the effect of
29
30 reducing the calculated bus speed and ridership, thereby making the bus alternative appear
31
32 comparatively less favorable.
33

34 6.44 Secondly when, years later, Sound Transit began developing its light rail
35
36 proposal, it quickly realized it would have to rely on bus "feeder" calculations that would get
37
38 as many hypothetical passengers as possible from buses onto the light rail system.
39
40 Accordingly, Sound Transit *abandoned* its previous assumption that buses in HOV lanes
41
42 would be limited to no more than 15 miles per hour faster than adjacent traffic. The effect of
43
44 abandoning that previous assumption is to boost calculated rail ridership, and thereby make
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47

1 Sound Transit's light rail plan look more attractive and become more competitive in the FTA
2 rankings.
3

4 6.45 In a related manipulation, when analyzing alternatives in the 1990s, Sound
5 Transit (then RTA) put a "cap" on the calculated number of buses that could operate through
6 downtown Seattle. Now that Sound Transit has realized it must evict all buses from the
7 DSTT, that assumed constraint or "cap" has been ignored.
8
9

10 6.46 The Technical Guidance Memorandum, § 4.2.1 (pages 29 and 30), requires
11 each applicant to make a certification about assumptions utilized and other matters. In this
12 case, in the New Starts Report at section 2.3, Sound Transit's Executive Director certified
13 falsely to the FTA as follows: "I hereby certify that Sound Transit has followed FTA's
14 Technical Guidance on Section 5309 New Starts Criteria in the preparation of this
15 submission, including: . . . Analyzing the Build, TSM, and No Build Alternatives within the
16 same basic policy setting, i.e., the model assumptions, parameters, and inputs are the same
17 for all alternatives. . . ."
18
19

20 6.47 The truth is this: Sound Transit (then RTA) unlawfully eliminated a genuine
21 bus (TSM) alternative years ago by use of the aforementioned 15 MPH limitation and other
22 devices; Sound Transit thereafter unlawfully failed and refused to analyze a genuine TSM
23 alternative in the context of the proposed Project; Sound Transit, in an unlawful effort to
24 make its rail proposal look more attractive, failed and refused to employ, when presenting the
25 rail forecasting information, the very same 15 MPH limitation it had used to help scuttle the
26 bus alternative earlier; and, similarly, Sound Transit employed a capacity constraint
27 assumption regarding downtown bus service to help scuttle the bus/TSM alternative, and is
28 now ignoring that assumption in its current light rail Project proposal which relegates all
29 buses to the surface.
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1 6.48 While Sound Transit may seek to hide behind technicalities and to obfuscate
2 this issue, the fact remains that it used materially different assumptions for the earlier
3 bus/TSM alternative than it subsequently used for the light rail proposal. This violates
4 49 U.S.C. § 5309(e) and the Technical Guidance Memorandum § 4.2.1, and calls into
5 question the entire proposed Project.
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11 · ***Failure to Address Direct and Indirect Costs of Relevant Alternatives***
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13 6.49 In an April 27, 2000 e-mail, the Executive Director of Sound Transit stated
14 that presently the DSTT is only at one-half of its bus capacity at peak, and that King County
15 Metro could "double" bus trips through the tunnel. Inasmuch as, in the ROD at page 7, the
16 FTA suggests only that at inception of the light rail system usage in the DSTT might
17 "double" (and, as we have shown at paragraph 6.22 above, that even this "doubling"
18 assumption is not valid), even accepting the "doubling" statement as true we are presented
19 with two alternatives, one light rail and one bus, either of which theoretically could double
20 usage in the DSTT. According to the latest formal estimates the Preferred Alternative of
21 light rail (N.E. 45th St. to Sea-Tac Airport) will cost over \$2.6 billion (1995\$) in capital costs.
22 FEIS, p. 5-13; Table 5.2-15.
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32 6.50 Sound Transit has suggested in the April 27, 2000 e-mail that developing the
33 bus alternative would involve spending "a lot of money on new buses and better technology."
34 Yet it has not defined "a lot of money" in comparison to the estimated \$2.6 billion-plus
35 (1995\$) for light rail. Sound Transit has never explained why a portion of the approximately
36 \$1 billion it plans to spend on tunneling alone for light rail ("sunk" costs in more ways than
37 one) could not be better spent on "new buses and better technology" and thereby achieve the
38 same or even better mobility improvements. Neither Sound Transit nor FTA has studied the
39 likely capital costs of this bus alternative; defendants have not "considered the direct and
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1 indirect costs of relevant alternatives" as required by 49 U.S.C. § 5309(e)(3)(A). The failure
2 to do so is arbitrary and capricious, an abuse of discretion, without support in substantial
3 evidence, and contrary to law.
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7 • ***The Grant Recipient Lacks the Technical Capability to Construct the Project.***
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9 6.51 The following material facts, among others, demonstrate Sound Transit does
10 not have the technical capability to construct the Project:
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- 12 • **DSTT**—In Sound Move at page 15, RTA states that "the most significant
13 investment required for the electric light rail system—the downtown
14 Seattle transit tunnel [DSTT] and its five stations—is already in place."
15 Only recently has Sound Transit learned that apparently it must evict all
16 buses, remove the existing train track from the DSTT, adjust station
17 platform elevations, abandon the Convention Place station (one of the five
18 stations referenced in Sound Move as part of "the most significant
19 investment . . . already in place"), and close the DSTT for *at least* two
20 years for this construction, risking downtown gridlock during the
21 construction period and thereafter. The evidence shows that Sound Transit
22 did not address any of these present concerns in the materials submitted to
23 the voters in 1996 (Sound Move), suggesting that the agency has
24 insufficient technical expertise to foresee such fundamentally important
25 issues.
26
- 27 • **Six-Car Trains Do Not Fit in DSTT Stations**—For years Sound Transit
28 (and RTA) apparently assumed they would use six-car trains in the DSTT.
29 Yet at the standard per-car 90-foot length, a train consisting of six standard
30 light rail cars will not fit in the DSTT stations. The stations are not long
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1 enough. Recently discovering its mistake, Sound Transit now asserts it
2 will use no greater than four-car trains in the DSTT (for a total of 360 feet
3 in length). It has seen fit to dissemble on the six-car-train issue by
4 suggesting it was referring earlier to 60-foot cars. However, 60-foot cars
5 are not used for high-capacity light rail systems such as that proposed by
6 Sound Transit. They are used for lower capacity projects such as
7 waterfront tourist trolleys. Sound Transit's conduct on this six-car-train
8 issue is emblematic—this example demonstrates both its lack of technical
9 capability and its lack of candor when confronted with its lack of technical
10 capability. This agency is not capable of handling hundreds of millions of
11 federal dollars on a project of this magnitude and complexity.

- 12 • **Defective "Headways" Analysis**—Sound Transit has stated publicly it
13 assumes "two-minute headways" in the DSTT after light rail Phase Two is
14 completed (which presumably would include trains from east of Lake
15 Washington). It assumes four-minute headways on North-South trains,
16 and four-minute headways on East-West trains, alternating in the DSTT to
17 produce systemwide headways of two minutes in the DSTT. Yet
18 substantial questions remain as to whether the I-90 floating bridges can be
19 converted efficaciously to light rail use. Without access from the
20 "Eastside," two-minute headways cannot be achieved.
- 21 • **"Blown" Budget and Schedule**—In Sound Move, in 1996, RTA told the
22 voters that it would cost approximately \$1.67 billion (1995\$) to build the
23 light rail line from N.E. 45th Street to Sea-Tac Airport, and it would be
24 complete by 2006. (Appendix "A," at pp. A-5 and A-6.) In the November

1 1999 FEIS at page 5-13, defendants stated the cost will be \$2.066 billion
2 (1995\$) to build the light rail line from N.E. 45th Street to Sea-Tac Airport,
3 again with a 2006 completion date. So, the Project is *at least* \$900 million
4 (1995\$) over original budget and three years late, *before any construction*
5 *commences*. In Sound Move, RTA told the voters at page 31 that its 1996
6 plan at \$1.67 billion (1995\$) was based on "*extremely conservative*
7 *cost . . . assumptions*" and that it would "make *certain* Sound Move stays
8 on schedule and within budget." (Emphasis added.) Yet Sound Transit is
9 now at least \$900 million over the 1996 budget, in constant 1995 dollars,
10 and three years behind schedule, in part because the agency has
11 insufficient technical capability to mount a project of this size and
12 complexity. It is incapable of understanding the technical challenges in its
13 path and of identifying cost effective solutions to those challenges. It is
14 incapable of implementing a project in accordance with its solemn
15 promises, made to the voters and taxpaying public as a means of inducing
16 them to support tax increases for that project.

- 17 • **No Experience With Major Construction Projects**—The proposed
18 Project includes several miles of soft earth tunnel boring, including boring
19 under a navigable body of water and under the Interstate 5 Freeway (at that
20 point 12 lanes wide, including express lanes and elevated structures). This
21 Project would test the expertise of even major federal agencies, such as the
22 Army Corps of Engineers, or of a major state highway department such as
23 California Department of Transportation. Yet Sound Transit has no
24 experience on any construction project of this size, let alone one of this

1 complexity. As an agency, it has no technical experience on any
2 comparable project. King County Metro, which has had substantial prior
3 construction experience and constructed the DSTT in the late 1980s,
4 nevertheless ran into substantial problems, including major earthwork
5 problems, in constructing the DSTT. These problems resulted in
6 substantial cost overruns that the public, in part, is still paying for through
7 bond interest payments. Sound Transit has nothing like the construction
8 experience of even King County Metro, yet its proposed project is far
9 larger and far more complex than even the DSTT project of the late 1980s.

- 10 • **Naï ve Ridership Forecasts**—Sound Transit's Executive Director
11 indicated that in the ten years since it has been opened, the DSTT has
12 reached only 50% of peak hourly bus service capacity. Sound Transit has
13 never shown persuasively how a mere shift in mode, from bus to rail,
14 would dramatically increase DSTT usage and, indeed, has not shown how
15 it would increase DSTT use at all. The rash assumption in Sound Move
16 that usage in the DSTT would "triple" from inception of rail is now
17 discounted even by the FTA, and one is now left with uncertain and
18 conjectural rail ridership forecasts. Correlatively, Sound Transit has never
19 properly compared its light rail ridership forecasts with actual experience
20 in other cities, and has never explained how it expects Seattle to achieve
21 substantially better results with rail than have those other cities. Sound
22 Transit has not demonstrated the necessary commitment to an open
23 forecasting process based on realistic assumptions. Its forecasts are
24 unreliable.

- **The Applicant Has No Rational Plan of Action**—The following points, among others, show the irrational, arbitrary and capricious nature of Sound Transit's decisionmaking:
 - o In 1996 Sound Transit said it would assume no state funding for the Project—now it is aggressively seeking substantial state funding for at least the Northgate and Tukwila portions, if not other portions;
 - o In 1996 Sound Transit stated that sub-area local tax revenues and bonding capacities would be used to benefit each sub-area respectively—that is no longer true under the proposed Project;
 - o In 1996 Sound Transit stated that a two-way light rail line would carry the same number of people as a 12-lane freeway—it is now evident that under any realistic scenario the Project will not come close to that;
 - o In 1996 Sound Transit stated it would have the Convention Place rail station and an Atlantic Street rail station—those stations are now gone from the plan, and replaced by one deferred station (Royal Brougham), two unusable "shell" stations (Lander Street and Beacon Hill), and one station that is deferred or now perhaps deleted (Graham);
 - o In 1996 Sound Transit told the voters it planned to retain Convention Place as a rail station, and still tunnel under Capitol Hill and up to the University District—now it discovers this is not technologically feasible, and that it will have to abandon Convention Place and tunnel much more deeply into the ground, at much added expense and decreased utility compared to 1996 assumptions;

- o Sound Transit has acquiesced to a route change in the Tukwila portion of the Preferred Alternative route, which change will produce an additional substantial increase in Project budget;
- o Sound Transit adopted an alignment calling for extensive tunneling before obtaining necessary data to determine feasibility of the planned tunneling;
- o In 1996 Sound transit stated that it would continue to evaluate alternatives that might achieve system goals more cost-effectively—yet it has never analyzed a genuine TSM alternative since making the 1996 statement;
- o In 1996 it claimed usage in the DSTT "will triple" upon commencement of rail—but now its own FEIS belies, this, pp. 3-22, and even FTA will only say it is "expected" to "double," ROD, p. 7;
- o In 1996 Sound Transit stated that its DSTT operations "may" require "some" buses to be shifted to the surface—now it has discovered that "all" buses "must" be shifted to the surface;
- o Sound Transit has granted to the University of Washington "ultimate approval authority" over construction plans for the Project in the University District area; thus Sound Transit cannot ensure completion of this part of the system;
- o By extending the duration for Project construction from 2006 to 2009, Sound Transit has exposed taxpayers to increased consumption of taxes for the Project in contrast to promises made to the voters in 1996;

- 1 o By all evidence, Sound Transit has abandoned completely its 1996
2 promise to the voters to use "strict management cost control
3 principles."
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6 6.52 The above points show that Sound Transit actually has little or no control over
7 its planning and over the Project. The agency is essentially making things up as it goes along,
8 rather than developing and implementing a plan based on sound assumptions. In its desperate
9 effort to develop some kind of light rail project, regardless of cost and consequences, it has
10 abandoned its original budget and schedule, abandoned solemn promises to the voters,
11 relinquished control of certain portions to other authorities, e.g., the University of
12 Washington, sought "bail out" state funding when it promised not to do so, and dissembled
13 and misled the public when confronted with the facts. All of this has occurred before Project
14 construction even begins. To the extent management control is part of technological
15 capability, it is evident Sound Transit is woefully deficient.
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17 6.53 For all of the above reasons, a decision that the subject Project is "justified" is
18 arbitrary and capricious, an abuse of discretion, without support in substantial evidence, and
19 contrary to law.
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21 · ***There Is No Acceptable Degree of Local Financial Commitment***
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23 6.54 In 1996 the voters authorized:
24

- 25 • Construction of a light rail line from N.E. 45th Street to Sea-Tac Airport
26 for \$1.67 billion in capital costs (1995\$), to be completed by 2006;
27 • Extension to Northgate if funds are available, but not with state funding—
28 indeed no state funding was assumed for any part of the project;
29 • A project that would preserve the DSTT in its current condition;
30 • A project that would allow joint bus-train operations in the DSTT;
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- Preservation of sub-area tax revenues and bonding capacities for each sub-area respectively; and
- A system that would carry as much as 12 lanes of freeway and "triple" the usage in the DSTT upon opening.

6.55 Today, Sound Transit is utterly incapable of fulfilling *any* of the promises or doing *any* of the things listed in the preceding paragraph. Sound Transit has failed to show that under governing law it has any authority with respect to any local financial commitment it may claim.

6.56 Sound Transit recently sought a 0.1% increase in the sales tax through King County Metro, with Sound Transit's use of Metro's bonding capacity as a financing mechanism. Sound Transit proposed such a measure because the current local tax is inadequate given revised plans with increased cost estimates. The King County Council recently rejected the 0.1% proposal. Even if it had been placed on the ballot, there is no assurance the voters would pass any such tax increase measure, or, if passed, that the additional revenue would permit Sound Transit to complete the system as promised.

6.57 A statewide initiative campaign is underway to remove Sound Transit's local authorization for the Project. Although it has no assurance of passing, if it does pass Sound Transit thereafter likely would have little assurance of any local financial commitment.

6.58 Sound Transit has presented an MOS proposal to FTA. New Starts Report, p. 7. That MOS proposal was neither presented to, nor voted upon, by the voters in 1996. There is accordingly no local authority to pursue the MOS proposal or provide any financing for the same.

6.59 The Sound Transit Board of Directors has not authorized the Central Link Corridor Project (Northgate to Sea-Tac Airport) because it knows that it has insufficient

1 funding for the Central Link Corridor. Yet the University of Washington, to which Sound
2 Transit has relinquished control over important portions of the Project, has made it plain that
3 it will unlikely permit construction merely of the Preferred Alternative (N.E. 45th Street to
4 Sea-Tac Airport). Likewise, the Downtown Seattle Association ("DSA") has now publicly
5 opposed the Project, in part because of Sound Transit's inability to complete the Project to
6 Northgate. Accordingly, it appears Sound Transit has and will have insufficient local
7 authority to build a Preferred Alternative it *might* be able to finance, and insufficient local
8 financial commitment to build the Central Link Corridor Project for which local
9 authorization *might* be provided. In a word, Sound Transit is stuck. Major federal funding in
10 the face of such local uncertainty is folly.

20 6.60 The Sound Transit revenue projections applied to the light rail project assume
21 the same rate of growth in tax revenue for both North and South King County (FEIS p. 5-15
22 to 5-16, and Table 5.3-3 note), even though Sound Transit knows the growth rate in North
23 King County is slower (FEIS, p. 5-15). Use of these improper projections is contrary to sub-
24 area equity requirements in binding Sound Transit Board resolutions. It now appears that
25 increased projected costs of completion of light rail Phase One, supposedly a "starter" system,
26 will impinge on Sound Transit's bonding capacity and imperil or even preclude the
27 opportunity for additional phases in the future. See FEIS, pp. 5-17 to 5-18. Further, Sound
28 Transit assumes a level of federal funding that is (a) far greater than other local jurisdictions
29 have received in comparable circumstances, and (b) more than twice the level that Sound
30 Transit's own consultant advised was appropriate to assume.

42 6.61 The local financial commitment is shaky. The word "acceptable" does not
43 reasonably apply to the current state of Sound Transit's local financial situation.

1 · *Little or No Likelihood the Project Will Continue to Meet Any of the*
2 *Requirements of 49 U.S.C. § 5309*
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4 6.62 The facts set forth above in this Count Three suggest little or no likelihood the
5
6 Project will continue to meet statutory requirements.
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8 6.63 Recent evidence suggests the continuing and ongoing failure of Sound Transit
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10 with respect to the Project. Examples are:

- 11 • FEIS, p. 5-4 (Nov. 1999), states that there will be modifications to station
12 platform heights in the DSTT, but in an April 27, 2000 communication
13 Sound Transit indicates it "will not have to change platform levels."
14 Which is right, and why the sudden change over the course of just five
15 months?
16 Which is right, and why the sudden change over the course of just five
17 months?
18 months?
- 19 • Recent agreement with City of Tukwila causes Sound Transit to seek
20 additional state funding, after telling voters in 1996 it would not do so;
21 • Recent relinquishment to the University of Washington of "ultimate
22 authority" to make decisions regarding critical aspects of the Project calls
23 into question Sound Transit's ability to control the Project;
24 • University of Washington agreement describes detailed project revisions
25 and mitigation plans with ongoing and uncertain, and in some cases open-
26 ended, financial consequences to the Project; and
27 • Recently one major design/build bidder announced its decision to
28 withdraw from bidding, stating Sound Transit's proposed construction
29 plans and schedule were "unrealistic."

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44 Given the facts of this case, no evidence suggests that Sound Transit could comply with
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46 federal requirements in the future on this Project.
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1 6.64 For all of the above reasons, any decision which has accepted or would accept
2 any portion of the proposed Project for federal funding, is and would be arbitrary and
3 capricious, an abuse of discretion, without support in substantial evidence, and not in
4 accordance with law, in violation of 49 U.S.C. § 5309 and the FTA's Technical Guidance
5 Memorandum.
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10 6.65 The FTA's ROD and FFGA are arbitrary, capricious, an abuse of discretion
11 and not in accordance with law, 5 U.S.C. § 706(2)(A), and are not supported by substantial
12 evidence, id. -(2)(E).
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16 6.66 All other actions by federal defendants taken, or to be taken, in favor of
17 federal funding applications by Sound Transit for electric light rail are or would be arbitrary,
18 capricious, an abuse of discretion, and not in accordance with law, 5 U.S.C. § 706(2)(A), and
19 are not supported by substantial evidence, id. – (2)(E).
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23 6.67 In all of the above respects, without limitation, defendants have violated the
24 Administrative Procedure Act.
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28 **7. COUNT FOUR—INITIAL SEGMENT PLAN VIOLATES THE**
29 **NATIONAL ENVIRONMENTAL POLICY ACT AND**
30 **ADMINISTRATIVE PROCEDURE ACT**
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32
33 7.1 The allegations in paragraphs 1.1 through 6.67 are incorporated as if set forth
34 fully herein.
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37 7.2 During the year 2001, Sound Transit determined it could not afford to build
38 the Project identified as the preferred alternative in the 1999 Final EIS.
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41 7.3 In approximately September 2001, Sound Transit identified an "Initial
42 Segment" light rail project, extending from a northern terminus in the DSTT southward 14
43 miles to a southern terminus at S. 154th Street in Tukwila (hereinafter "Initial Segment").
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1 7.4 Initial Segment was not identified as an alternative in the 1999 Final EIS.
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3 Initial Segment has never been compared with any other alternatives in any EIS or SEIS.

4 7.5 The Initial Segment plan includes proposed mixed bus-train use of the DSTT.
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6 Such mixed bus-train use of the DSTT was rejected summarily in the 1999 Final EIS.

7 7.6 In October 2001, Sound Transit submitted a "New Starts" report to the FTA,
8
9 identifying "Initial Segment" as the project for which it sought federal funding.

10 7.7 In February 2002, defendants published an "Environmental Assessment" for
11
12 the Initial Segment project.

13 7.8 In May 2002, FTA published its "Amended Record of Decision" ("Amended
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15 ROD") for the Initial Segment project. In the Amended ROD, FTA found that no EIS or
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17 SEIS would be required for the Initial Segment project.

18 7.9 Defendants have violated NEPA, 42 U.S.C. § 4332(2)(c), the NEPA
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20 regulations, 40 C.F.R. Part 1500 and 23 C.F.R Part 771, and FTA's own regulations, 49
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22 C.F.R. Part 611, by failing and refusing to prepare an EIS or SEIS for Initial Segment. The
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24 FTA's Amended ROD is arbitrary and capricious, an abuse of discretion, and not in
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26 accordance with law, in violation of 5 U.S.C. § 706(2)(A), and is not supported by substantial
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28 evidence, id. -(2)(E).

32 33 34 35 36 37 **8. INJUNCTIVE RELIEF**

38 8.1 The allegations in paragraphs 1.1 through 7.9 are incorporated as if set forth
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40 fully herein.

1 8.2 Plaintiffs herein will or may suffer irreparable injury if judicial relief is not
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3 granted; the public interest favors the granting of injunctive relief; and the balance of
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5 hardships tips, or tips sharply, in favor of plaintiffs with respect to injunctive relief.
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7 8.3 Defendants have already been expending, and in all likelihood will continue to
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9 expend in the next several months substantial federal and local funds on the Project unless
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11 enjoined.
12

13 9. PRAYER FOR RELIEF

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17 Wherefore, having set forth their claims, plaintiffs respectfully pray for the following
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19 relief:
20

- 21 (a) a temporary restraining order, preliminary injunction, and injunction prohibiting
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23 defendants from taking further action on the proposed project or Initial Segment
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25 project except as specified by the court;
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27 (b) a declaration that the FEIS is inadequate;
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29 (c) a declaration that defendants should prepare an SEIS or new FEIS;
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31 (d) an order prohibiting expenditure of federal or local funds on the proposed project
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33 or Initial Segment project, including without limitation funds for planning, design,
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35 engineering, or construction, except as such expenditures may be necessary solely
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37 for purposes of preparing an SEIS or new FEIS;
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39 (e) an order specifying that any party seeking relief from any injunction give all other
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41 parties at least 60 days' prior notice of such application;
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43 (f) an order dispensing with the security requirement for injunction under
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45 F.R.C.P. 65(c);
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47

1 (g) award of attorneys' fees, costs, and expenses to plaintiffs as may be authorized by
2 law; and
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4 (h) such other and further relief, whether legal, declaratory or equitable, as the court
5 may deem just and proper.
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8 Respectfully submitted this ____ day of August, 2002.
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