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No. 87895-1

SUPREME COURT OF THE STATE OF WASHINGTON

BY RONALD R. CARREKER

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FILED
COURT OF APPEALS
STATE OF WASHINGTON

WILL KNEDLIK,

Appellant,

v.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,

Respondent.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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OPENING BRIEF OF APPELLANT

(Corrected)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR & ISSUES RELATED THERETO	
A. Assignments of Error.....	4
B. Issues Pertaining to Assignments of Error.....	4
C. Standard of Review.....	7
III. STATEMENT OF THE CASE	
A. Nature of the Case; Course of Proceedings; and Dispositions Below.....	7
B. Previous Procedural History and Related Matters.....	12
IV. SUMMARY OF ARGUMENT.....	13
V. ARGUMENT.....	16
VI. CONCLUSION.....	36
APPENDIX A.....	A1

TABLE OF AUTHORITIES

CASES

<i>Brown v. Tucker</i> , 20 Wn.2d 740 (1944).....	27
<i>County of Skamania v. State</i> , 102 Wn.2d 127 (1984).....	27
<i>Ervien v. United States</i> , 251 U.S. 41 (1919).....	28
<i>Freeman v. Gregoire</i> , 171 Wn.2d 316 (2011).....	12
<i>Freeman v. State (Freeman II)</i> , Cause No. 87267-8.....	1, 5, 12, 18, 19, 26, 28, 29, 32
<i>In re Juvenile Director</i> , 87 Wn.2d 232 (1976).....	7
<i>King v. State</i> , 84 Wn.2d 239 (1974).....	35
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803).....	7
<i>McCleary v. State</i> , 173 Wn.2d 477 (2012).....	31
<i>Sane Transit v. Sound Transit</i> , 151 Wn.2d 60 (2004).....	11 n. 1, 15, 28
<i>State ex. rel. O'Connell v. Slavin</i> , 75 Wn.2d 554 (1969).....	5, 31, 33
<i>State ex rel. Heavey v. Murphy</i> , 138 Wn.2d 800 (1999).....	34

LEGAL TREATISES

G. Bogert, <i>Trusts and Trustees</i> (2d.ed.).....	28
---	----

CONSTITUTION

Article II, §40 (18th Amendment).....	<i>passim</i>
---------------------------------------	---------------

LEGISLATION & REGULATIONS

RCW 43.21C.110.....	2, 3, 5, 6, 8
RCW 47.80.030.....	3, 5, 6, 26, 31
RCW 81.104.120.....	3, 5, 6, 26, 31
WAC 197-11-440.....	2, 5, 6, 8, 22, 25, 31

Comes now appellant Will Knedlik and presents his Opening Brief:

I. INTRODUCTION

This appeal of dismissal of litigation challenging legal inadequacies **both** of a nominal Final Environmental Impact Statement for exclusive rail use of Interstate 90 highway corridor assets between Bellevue and Seattle, for that nonhighway purpose, during multiple decades likely to extend for the entire duration of the useful lives of pivotal floating bridge facilities, if not beyond the time when physical structures must be replaced, and **also** of nominal compliance with fundamental constitutional foundations inherent within Article II, §40 of the Washington State Constitution, respecting such exclusive use of those crown jewel elements of the state constitutional trust established by the 18th Amendment, and thus regarding payment of a token amount when measured against full-and-fair value thereof, overlaps rather substantially with major constitutional, statutory, administrative and other interrelated legal, fiduciary and equitable issues also central in *Freeman v. State* before this Honorable Court, at present, under its Cause No. 87267-8.

In that appeal, both the state, as legal owner of all relevant highway properties, and also the junior taxing district, as the proponent for diverting high-cost assets guaranteed exclusively for “highway purposes” by a state constitutional trust to nonhighway ends, construct their coordinated bootstrap arguments to allow an end run around our state constitution through

repeated reliance on the nominal FEIS at issue, herein, as purportedly adequate under State Environmental Protection Act and administrative code provisions set forth in WAC 197-11-440 (pursuant to RCW 43.21C.110).

This brief documents major legal defects at the heart of that nominal FEIS and of a thus-attempted end around *via* coordinated bootstrapping by a state thereby violating its demanding fiduciary duties, as trustee for a state constitutional trust, with a junior taxing district seeking to steal core rights and to destroy pivotal interests of all state motorists as trust beneficiaries.

This brief also evidences the junior taxing district's repeated *modus operandi* in piling up frauds, one on another, against this Court, against the trial court below, against a state constitutional officer, against nearly three million state citizens and against a general-purpose government, *inter alia*.

This brief thereby identifies both the immediate inadequacy of that nominal FEIS' failure to meet the explicit legal requirement of WAC 197-11-440(6)(e) mandating analysis of "cost of and effects on public services" (which is the case herein and which appears to be of first impression), and also a larger issue as to deficiencies in legal adequacy for any project-level FEIS for plans with a high probability to prove infeasible, constitutionally herein, physically on multiple bases and fiscally on several grounds, until all fatal defects are resolved (which also appears to be of first impression).

In short, can *hypothetical* projects support a legally adequate FEIS?

This query is neither simply theoretical nor merely rhetorical – even though illogic is patent as to legal adequacy being granted, judicially, for a **final** project-level environmental impact statement **before** a rail-transit plan has been determined constitutional by this Court, has resolved two complex interrelated engineering dilemmas for attaching fixed rails to floating structures **never** before done anywhere in the world and **not** thus far engineered successfully here much less tested even at scale-model levels and can show sufficient fiscal capacity due to the junior taxing district’s negotiated limit on debt leverage, at less than one tenth of the minimum required, pursuant to its statutory contract with Pierce County to obtain **any** taxing authority – since the junior taxing district has spent literally tens of millions of dollars on environmental review, already, through its cart-before-horse processes wholly contrary to its essential but still-unexamined “cost of and effects on public services” obligations under SEPA, as well as violative of separate-but-interrelated statutory duties for two further comparative benefit-cost analyses, for each of its various commuter rail projects to establish cost-effectiveness of each rail transit project for commuters *versus* bus transit projects for commuters, through a to-date-never-performed state “least cost planning methodology” (RCW 47.80.030), and through likewise-unfulfilled “reasonable alternative” comparisons to ensure rail costs “equal to or less than comparable bus” or other rapid transit systems (RCW 81.104.120).

II. ASSIGNMENTS OF ERROR & ISSUES RELATED THERETO

A. Assignments of Error

1. The superior court erred substantively in dismissing challenges to the legal inadequacies **both** of a nominal Final Environmental Impact Statement for exclusive rail usage of Interstate 90 highway corridor assets between Bellevue and Seattle for that nonhighway purpose, which may be subject to an expedited scheduling order for administrative appeals under Superior Court rules, and **also** of nominal compliance with fundamental constitutional foundations inherent in Article II, §40 as to largely exclusive use of crown jewel components of the state constitutional trust established by the 18th Amendment, and thus as to payment of a token amount when measured against the full-and-fair value thereof, which had been excluded from the administrative hearing on the junior taxing district's motion, and which was not appropriately subject to such expedited scheduling legally.

B. Issues Pertaining to Assignments of Error

Issues pertaining to assignments of error devolve from trial court failures to consider constitutional questions, on reconsideration, including:

Do "highway purposes" limitations of the 18th Amendment prevent rail use of Interstate 90 assets, as held in a state constitutional trust created by Article II, §40, and as managed by the state *qua* trustee?

If not, do fiduciary obligations of the state *qua* trustee for highway facilities within said state constitutional trust require compensation for full-and-fair value of each trust asset to be so utilized based on

major appreciation of the trust *corpus* since acquisition, on massive increases in economic value thereof from key recent policy changes by the Washington State Legislature to impose tolls, *seriatim*, upon high-cost roadway assets in urban areas of the statewide highway system, as held and as managed *qua* a state constitutional trust, to generate billions of dollars in new revenues through tolls imposed on current trust assets constituting the *res* funded by state motorists and on other factors identified by thorough investigations thereof (pursuant to the 18th Amendment's explicit protections for specific categories not merely of "all fees collected," nor simply of "all excise taxes collected," but also for a far more expansive grouping of "all other state revenue intended to be used for highway purposes")?

Can the state fulfill its core fiduciary duties as a state constitutional trustee, for the huge state constitutional trust at issue herein, before receipt of the integrated environmental-and-economic analyses that are legally required to establish cost-effectiveness of rail transport, statutorily and administratively, with respect to (at a minimum):

"costs of and effects on public services," including its road assets, under RCW 43.21C.110 and under WAC 197-11-440?

statutory "least cost planning" duties under RCW 47.80.030? and

statutory "reasonable alternative" obligations defined as a demonstration that rail "passenger costs per mile, including costs of trackage, equipment, maintenance, operations, and administration are equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems," under RCW 81.104.120?

Can the junior taxing district fulfill its central fiduciary duties owed to all residents of the agency by expending more-than-\$100 million to fund its East Link rail project, before either seeking or obtaining lawful authority to use highway assets held and operated through a state constitutional trust established by the 18th Amendment, so as to place over \$100 million in limited transit funds at risk should this Court uphold preclusion of rail uses of 18th Amendment highway assets pursuant to *State ex. rel. O'Connell v. Slavin* (in *Freeman v. State* now pending before it, in this appeal or in other litigation)?

In short, can *hypothetical* projects support a legally adequate FEIS?

How does financial prudence operate in positions of public trust?

Can a nominally **final** environmental impact statement for any rail project be found to be a legitimately valid FEIS while it is lacking:

judicial determination of constitutionality for planned use of assets held in a state constitutional trust solely for “highway purposes”?

physical resolution of fundamental engineering problems, such as complex interrelated dilemmas for attaching fixed rails to floating structures **never** before done anywhere in the world, and **not** thus far engineered successfully here much less tested even at a scale-model level (particularly when as yet merely potential solutions in turn would then require analysis for risks of stray electrical current degrading structural rebar *via* that at present unknowable design)?

fiscal capacity to finance the project due to the junior taxing district’s statutory contract with Pierce County limiting its maximum debt leverage to less than one tenth of required agency debt levels?

“costs of and effects on public services,” including its road assets, under RCW 43.21C.110 and under WAC 197-11-440?

statutory “least cost planning” duties under RCW 47.80.030? and

statutory “reasonable alternative” defined by RCW 81.104.120?

Did contracted justice for this SEPA appeal evidence injustice?

Did the trial court abuse its discretion or commit another reversible error in dismissing both the SEPA appeal and also further litigation – notwithstanding fraud on the court at the hearing below on June 29, 2012 outlined in Grounds for Direct Review and hereinafter – with other impositions less severe than dismissal readily available, and with the junior taxing district unable to claim any harm by any alternative less extreme than dismissal, since, as the trial court had been and was informed by filings of record below, its legal counsel were then, and are now, defending a substantially parallel challenge to the legal adequacies of the same nominal FEIS under NEPA (later scheduled for summary judgment filings on January 25, 2013 by Honorable John C. Coughenour in Case No. 2:12-cv-01019-JCC)?

C. Standard of Review

The standard of review for constitutional-and-statutory interpretation at the heart of this appeal is *de novo* as this Court has explicitly noted, as to such foundational analysis, in powerfully stating: “Both history and uncontradicted authority make clear that ‘[i]t is emphatically the province and duty of the judicial department to say what the law is,’” *In re Juvenile Director*, 87 Wn.2d 232, 241 (1976), with indicated quotation of seminal language from *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803).

If any standard other than *de novo* is applicable herein as to any issue, then such other standard must of legal necessity be informed by the *de novo* standard required for core constitutional-and-statutory interpretation.

III. STATEMENT OF THE CASE

A. Nature of the Case; Course of Proceedings; and Dispositions Below

On July 26, 2011, appellant filed objection with the junior taxing district challenging the legal adequacy of its nominally **final** environmental impact statement for conversion of key assets of the Interstate 90 highway corridor to railway purposes, pursuant to that agency’s rules and procedures, with an explicit focus on impacts of the 18th Amendment for environmental review, pursuant to a 14-page document which is attached hereto as Appendix A.

Space limits imposed herein by Rules of Appellate Procedure preclude examination of every issue referenced therein as being shaped necessarily by

our state constitution's paramountcy, for every statutory-and-administrative review of legal adequacy of a nominally **final** EIS for use of a core highway corridor for railway purposes, but that filing makes explicit from its initial paragraph that its primary focus was on the junior taxing district's "violations of the Washington State Environmental Policy Act, RCW 43.21, due to its violations of the Washington State Constitution, Article II, §40, *inter alia*."

Additionally, the appeal filed on July 26, 2011 further clarified the core issue herein by means of the final paragraph set out in closing its first page:

Please be still further advised that the hearing examiner shall be requested to find factually and to conclude legally – based on all evidence admitted at hearing as to all constitutional, legal, administrative and other issues necessary and sufficient to establish – the Final Environmental Impact Statement for the East Link Light Rail Project being appealed, hereby, to be not simply premature and defective from failures to fulfill minimal adequacy obligations for any acceptable FEIS (due to lack of required analyses respecting Segment A mandatory, pursuant to WAC 197-11-440, for "reasonable alternatives" and for "costs of and effects on public services," inclusive of "roads," *inter alia*), but also dishonest and thus corrupting (due to misrepresentations reflecting a standard *modus operandi* under the agency's current Board officers and its present senior management).

Promptly after the junior taxing district had appointed its self-selected hearing officer, its legal counsel insisted to his legal client's said contractor that the key element of the appeal must **not** be heard, and the hearing officer designated and paid by the agency to conduct the hearing and every matter preliminary thereto acceded fully to the district's counsel by precluding any

and all considerations of every kind respecting our state constitution, its legal primacy over statutory-and-administrative law, its effects upon environmental review processes then devolving and, most critically, consequent inability as a public agency to fulfill its central legal duties to analyze impacts to natural-and-built environments as to vital ridership figures, major cost-effectiveness measures and other *sine qua non* matters without thus-precluded analysis of conformance with key strictures on rail uses under Article II, §40, *inter alia*.

The pretext advanced by the junior taxing district's legal counsel to its contracted hearing officer – and then immediately embraced by the agency's contractor – was that because such an adjudicative officer lacks authority to interpret constitutional provisions *sui generis*, unlike trial courts of general jurisdiction and appellate courts, **no** consideration of constitutional law by any hearing officer in respect to environmental reviews can be appropriate.

This facile formula of course effectively means – and in fact meant at every point within the hearing process before the junior taxing district's self-selected contractor after he was thus briefed by its legal counsel and refused thereafter to allow any development of any constitutional issues whatsoever – that the hearing officer could simply disregard, and did affirmatively then preclude, any and all information within that nominal environmental review process, thus distorted pretextually, regarding this Court's clearly articulated jurisprudence governing public-and-private trusts, as long established here,

including a huge-and-valuable state constitutional trust at the heart of its plan to convert pivotal I-90 highway corridor assets to railway purposes (notwithstanding a state constitutional trust dedicated solely to “highway purposes”).

By such machinations, the junior taxing district’s contractor could and did disregard both our state constitution and also this Court’s interpretation thereof, and he in fact precluded a single word respecting same throughout the entire environmental review process, notwithstanding reality that the entire appeal was predicated upon that issue (as stated from its first paragraph).

Following the hearing process thus effectively controlled by the junior taxing district – through its appointment of a hearing officer who would and did bend to its counsel’s insistence that he prevent any consideration of our state constitution on that pretext – its hearing officer found its nominal FEIS adequate (and declined to reconsider following appellant’s timely motion).

Appellant then timely filed a judicial appeal in King County Superior Court, and promptly requested preparation of the administrative record by the hearing officer’s staff as was required for the timely filed judicial appeal.

Requests to the junior taxing district’s selected hearing officer for staff preparation of the administrative record were as unavailing after the hearing process had concluded as repeated requests for due consideration of our state constitution and of this Court’s jurisprudence had been earlier (after its legal counsel had insisted that our state constitution be excluded and precluded).

In consequence of disregard for and defiance toward our state constitution substantively before, at and after the administrative hearing, and of additional procedural irregularities precluding development of the administrative record essential for judicial review, counsel for the junior taxing district were able to and did seek dismissal of the then-pending judicial appeal based upon purported failure to meet the trial court's expedited scheduling order therein.

When appellant proceeded to show both good cause for a delay due to inability to obtain basic cooperation from the junior taxing district's hearing examiner in providing the administrative record and also that no prejudice to the agency could occur because of a pending NEPA appeal and because significant supplementation of the nominal FEIS would be and is required, its replacement counsel falsely claimed to the trial court that efforts had been made to contact appellant, but that it had not been possible to do so, stating falsely in open court that "Mr. Knedlik has never provided us with a phone number" (VRP at 15), as well as a related and apparently false claim that a "number was blocked" (*Ibidem*). The patent falsity of the former claim is, of course, readily documented by the telephone number affixed to every submission both in administrative processes and also in trial court proceedings (which is a phone number that has been in continuous service since 1976).¹

¹Said direct dissembling to the trial court adds to prior misrepresentation, on behalf of the agency, earlier inflicted on this Court in far more important circumstances, and with far greater harm, since *Sane Transit v. Sound Transit*, 151 Wn.2d 60 (2004), turned on it.

The trial court then dismissed appellant's litigation in its entirety, with prejudice, including challenges to the legal inadequacies **both** of a nominally **final** environmental impact statement for exclusive rail usage of remarkably costly elements of the Interstate 90 corridor between Bellevue and Seattle, for that nonhighway purpose, and **also** of nominal compliance with the most fundamental constitutional foundations inherent within Article II, §40.

B. Previous Procedural History and Related Matters

Freeman v. Gregoire, filed in this Court as an original action on July 15, 2009 (under Cause No. 83349-4), involved several constitutional issues that overlap with those identified by appellant in his administrative appeal, but excluded therefrom by the junior taxing district's contractor there, and that are now again at issue in *Freeman v. State* (under Cause No. 87267-8).

Having excluded consideration of every constitutional issue from the administrative hearing process outlined hereinabove, counsel for the junior taxing district now seek to leverage the thus-distorted outcome therein, now on appeal herein, in order to end run our state constitution in *Freeman II*, as well as opposing court consideration of the state constitutional trust outlined in appellant's *amicus* brief offered therein (as well as in this opening brief).

In addition, one day after the Statement of Grounds for Direct Review was submitted, herein, counsel for the junior taxing district filed a series of affirmative misrepresentations to the Court, therein, respecting the extensive

scope of three financing structures that fund the state constitutional trust established on approval of the 18th Amendment by the People, on November 7, 1944, particularly through its very, very expansive “all other state revenue intended to be used for highway purposes” provision within Article II, §40.

This affirmative misrepresentation continues a patent *modus operandi*, which is central to this appeal, and which is thus documented hereinbelow.

IV. SUMMARY OF ARGUMENT

Violations of fiduciary obligations owed to nearly three million citizens of this state, as voters and as taxpayers, by a junior taxing district that acts in every matter relevant herein pursuant to the paramount responsibilities of its directors, officers and senior managers, who each enjoy a position of public trust, are so numerous and so wrongful that its attempted multibillion-dollar theft from all state motorists, as direct beneficiaries of our state’s largest and by-far-most-valuable constitutional trust, is **not** the most critical issue herein.

Indeed, the junior taxing district’s efforts at present to steal two billion dollars or three billion dollars or four billion dollars or five billion dollars – from every motorist across our state as a beneficiary of the enormous-and-valuable state constitutional trust established by the 18th Amendment – has now come into view only because its Board members previously guaranteed Pierce County that the agency would limit its maximum debt leverage to no-more-than \$800 million, in order thereby to obtain any taxing authority as a

subordinate taxing district, pursuant to commitment to an absolute ceiling of \$800 million on its total long-term debt, at least until its entire “Phase I” plan has been completed (“**Maximum Bonding Level:** To ensure that the RTA maintains a reasonable, fiscally prudent debt level, an overall long term debt ceiling of \$800 million shall be established”), and because said county then formally conditioned its authorization of taxes for the junior taxing district on that term of the resulting statutory contract through Pierce County Ordinance No. 94-148 on December 9, 1994 (which, in Section 2 thereof, directly “incorporated herein by reference” and attached the full text of *The Regional Transit System Master Plan* inclusive of the quotation above from its page 3-10), but then cavalierly disregarded this core term of said statutory contract with that county (and has subsequently authorized budgets premised upon it borrowing more-than-\$8 billion to complete its “Phase I” plan); formally guaranteed all state citizens living in the junior taxing district through its tax-ballot title to “conduct an annual comprehensive performance audit through independent audit services” (pursuant to reference to its Resolution No. 75 therein), but then cavalierly disregarded that central term of its statutory contract with the People (and has willfully refused to provide even one “annual comprehensive performance audit through independent audit services” since that tax-authorization election held on November 5, 1996); and then formally guaranteed all nine Justices of this Honorable Court in open court through its

General Counsel Desmond Brown that it would fulfill each and every ballot-title obligation including but not limited to that one (in responding to direct queries put to him by Justice Richard Sanders on June 10, 2003), but thereafter not only cavalierly disregarded that open court undertaking on behalf of his client to this Court from then until its failure to “conduct an annual comprehensive performance audit through independent audit services” was noted directly by our state auditor, on October 4, 2007, in his Report No. 1000005 (through his first Formal Finding that “Sound Transit has not commissioned annual, independent, comprehensive performance audits limiting the ability to identify and address budget, schedule, and scope issues”), but has misrepresented its legal obligations undertaken to all district voters in responding to and criticizing the state auditor for identifying this ballot-title obligation (as well as continuing its clear fraud on this Court for nearly a full decade now).

Thus, the junior taxing district’s below-documented attempt to pull off a multibillion-dollar theft from every state motorist as a direct beneficiary of a paramount state constitutional trust – through the sleight-of-hand of a token payment designed as an end run around the 18th Amendment’s specific “all other revenue intended to be used for highway purposes” provision – is far less serious than its frauds against a general-purpose government to obtain taxing authority (since December 9, 1994), against nearly three million state citizens as voters and as taxpayers also to acquire taxing authority (since No-

vember 5, 1996), against our state's trial-and-appellate courts (since no later than June 10, 2003) and against our state auditor (since no later than October 3, 2007), *inter alia*, yet nonetheless adds to that rouge agency's corruption of essentials for sound public policymaking respecting enormous taxing powers granted to it both by general purpose government and also by the People (due to its corruptive frauds), for reliable and equitable administration of justice (also due to its corruptive frauds), and for reasonable trust by state citizens in those holding positions of public trust (likewise due to its corruptive frauds).

V. ARGUMENT

While the junior taxing district was authorized with good intentions by state legislators in order to resolve highway congestion in the central Puget Sound basin by facilitating high capacity transportation there through a high-occupancy-vehicle lane system, bus rapid transit and multiple commuter rail options, its actions have repeatedly evidenced bad intent, and worse conduct, since the agency formally come into legal existence on September 17, 1993.

With the junior taxing district's repeated lies, across much of two decades, to general purpose government to obtain taxing authority, to nearly three million state citizens also to obtain taxing authority, to state trial-and-appellate courts to preserve that massive taxing authority and to cover up its revenue-based and other abuses, and to the state auditor as a constitutional officer of the state to cover up prior misrepresentations to public officials and

to almost half of the population of our state, *inter alia*, the rouge agency thus resulting from good objectives and bad actions is *nonpareil* in state history.

Factual and legal circumstances made out by administrative hearing processes thus developed between the junior taxing district's legal counsel and its contractor advance concepts of regulatory capture to a level that is corrupting, at a minimum, and corrupted, more likely, and said corruptive functions have affirmatively prevented any consideration whatsoever of our state's constitution, as interpreted by well established jurisprudence of this Court, through such cooperation by and between a legal advocate for district interests and its only nominally objective administrative hearing officer.

Yet, particulars of these factual and legal circumstances are still more troubling, given appellant's federal-and-state rights to due process, since the entire appeal of major legal inadequacies of the nominally **final** EIS filed on July 26, 2011, in the form attached hereto as Appendix A, was focused from its first paragraph, squarely and repeatedly, on the legal primacy of our state constitution, as the supreme law in and for our state, and as necessarily *sine qua non* structural support informative of every statutory-and-administrative environmental review obligation with respect to the variety of discreet legal issues identified within the 14-page submission to commence that challenge.

Notwithstanding the fast legal footwork by the junior taxing district's counsel to end run our state constitution throughout the entire administrative

hearing process (including the bizarre averment that because its self-selected hearing officer could not determine constitutional issues, *sui generis*, he was legally precluded from accepting information regarding state constitutional issues squarely and thus dispositively resolved by this Honorable Court by means of its well established constitutional jurisprudence respecting major Article II, §40 issues, which was accepted either because such misdirections were misleading to the hearing officer or because its illogic comes within the truism noted by Upton Sinclair that “[i]t's difficult to get a man to understand something if his salary depends on him not understanding it”), and despite other fancy legal footwork at the trial court level thereafter (in affirmatively misrepresenting factual circumstances in open court), one *datum* is certain.

Every major legal question before the junior taxing district's hearing officer, in the trial court on appeal thereof and herein turns on the state constitutional trust created by the 18th Amendment – as is also the constitutional posture in *Freeman v. State* even though no party has framed legal disputes therein pursuant to this Court's controlling-and-dispositive jurisprudence for private-and-public trusts after the close of all party briefing, including misrepresentations by the junior taxing district and misdirections by the state – as appellant has repeatedly indicated at each point since his initial filing with that agency's chief executive officer, on July 26, 2011, through his briefing filed with its contractor during the rest of that year, through his presentations

to the trial court during 2012 and through his Brief of *Amicus Curiae* Will Knedlik submitted on January 22, 2013 with a motion for court leave to file same within *Freeman II* (“in the form attached [t]hereto in order thereby to provide key information to the Court which is essential [t]herein for a fully informed resolution of all Article II, §40 issues under the Washington State Constitution, but which has not been supplied heretofore by any party”).

The junior taxing district disregarded the state constitutional trust initially; its counsel vigorously opposed any consideration of this Court’s explicit jurisprudence governing state constitutional trusts by the agency’s self-selected administrative hearing officer; and its self-appointed contractor then acceded to his paymaster’s importuning to disregard the Washington State Constitution as interpreted by this Court (as did the trial court below).

Yet, it is our state constitution that is the gravitational force that shapes each interrelated factual-and-legal circumstance underlying this appeal, including a pattern of woefully inadequate information, in respect to benefits of rail modalities for commuters, which have been purported repeatedly to be vastly superior to all bus transportation and to all other nonrail forms of high capacity transit by the junior taxing district through its agents based on repeatedly unreliable, self-serving projections of inflated rail ridership that prove to be factually bogus and that it has acknowledged to be greatly overestimated since the nominal FEIS was determined legally adequate in

2011 (based on precisely those bogus numbers relied on therein, squarely, but since refuted by the junior taxing district's own formal documentation).

In particular, the junior taxing district's nominal FEIS issued in mid 2011 rested squarely upon projections for its Link light rail ridership then; was found legally adequate based on those particular ridership projections by its self-selected hearing contractor (who accepted testimony of its expert witnesses and rejected testimony by appellant's expert witness, John Niles, who testified that its ridership figures central to the nominal FEIS' purported documentation were highly suspect based on his mathematical analysis thereof); and thus stands or falls with those ridership projections.

Notwithstanding the junior taxing district's contractor having accepted its principal expert witness' quintessential ridership projections, and having rejected Mr. Niles' testimonial challenges to their reliability, the agency subsequently filed a *Before and After Study* with the Federal Transit Administration, as required by its initial \$500 million Full Funding Grant Agreement, which squarely documented that its light rail ridership had once again failed to meet its much-too-optimistic projections for 2011, which had been for 32,500 average weekday light rail users, in Fall, 2011, in support of an application for exactly half a billion federal dollars then being requested based on that overly optimistic estimate made to the FTA (which has turned out to be bogus and substantially so as identified *infra*).

In reality, the junior taxing district could document just 23,900 such average weekday riders in its *Before and After Study*, issued in July, 2012, and this massive shortfall demonstrates a likewise gigantic overestimation of rail ridership of *circa* 32 percent both to the FTA, which relied thereon to provide \$500 million to the agency, and also to its self-selected hearing officer, who likewise relied thereon in order to uphold its nominal FEIS, notwithstanding Mr. Niles' correct testimony and its expert's inaccuracies.

In the words of the junior taxing district's own report in July, 2012:

For all of 2011, Central Link carried 7.8 million passengers compared to the FFGA prediction of 10.7 million, or about 27% lower than predicted. Average weekend and holiday ridership performed better than expected, resulting in a higher annualization factor (annual ridership / average weekday ridership). The annualization factor for 2011 was 330.8 compared to the prediction of 304.6. It should also be noted that Central Link experiences the most ridership during the summer months, due to an increase of airport travelers during the cruise ship / tourist season, and due to events in downtown and at the stadiums.

Simply put, nearly a third of the daily commuters for whom the Link light rail system has been constructed in Seattle, at immense taxpayer expense, are not using that train; somewhat more tourists and sports fans are riding than had been projected; but even when that unanticipated source of usage is factored in (even though it does **not** represent the commuters for whom the rail system was developed), the numbers utilized to obtain \$500 million from all federal taxpayers still fall more-than-25 percent short of estimates.

This is quintessential herein because systems utilized by the junior taxing district to project rail riders with enormous unreliability in Seattle, as is now self-acknowledged to the federal government through its *Before and After Study* above quoted, are the methods also utilized by its experts to estimate rail usage through the I-90 corridor, *via* expropriation of crown jewel assets of the state constitutional trust established by Article II, §40, based upon the same unreliable technique that has deceived its contractor.

This circumstance is critical for a number of major reasons that extend well beyond the obvious unreliability of major elements of the junior taxing district's nominally **final** EIS, including pivotal matters for all state motorists as direct beneficiaries of the state constitutional trust established by the 18th Amendment that would be documented had that nominal FEIS complied with its specific legal obligation under WAC 197-11-440(6)(e) for mandatory analysis of "cost of and effects on public services," which has not been done, and particularly if such responsibilities had been undertaken pursuant to a gravitational lens yielded by legal rights of every state motorist as a direct beneficiary of a state constitutional trust for highway facilities within a highway system based solely on "highway purposes."

For example, when "cost of and effects on public services" finally are examined through a genuine environmental review process, along with related "least cost planning" and "reasonable alternative" analyses, as all

are informed by the state's demanding trustee obligations as the fiduciary for every trust beneficiary, then the highly negative import of the junior taxing district's plan to take the center roadway of the already overused I-90 highway corridor completely out of service for all state motorists for a seven-year period, while there will also be **no** rail transit available, must be analyzed, along with additional motorist deaths that will occur because of lane narrowing, shoulder narrowing and shoulder eliminations, *inter alia*.

Simply stated, as bogus as the junior taxing district's projections are as to estimated ridership, and as fatal as this defect is for legal adequacy of the nominally **final** and indisputably unreliable EIS accepted as adequate by its self-selected and too-easily-guided contractor prior to the agency's destruction of its core pillar through its own subsequent *Before and After Study* acknowledgement of the massive unreliability of its crucial ridership numbers, other defects are as great or greater, and several of those equally large deficiencies implicate not just taxes, fees and other monies provided by motorists as beneficiaries of the state constitutional trust at issue herein, but rather go to needless losses of their lives as human beings, which have not been analyzed, and unnecessary catastrophic injuries, which likewise have not been examined (and which would have been reviewed in a legally inadequate fashion, in any case, because cost-effectiveness studies under the administrative code and statutory provisions quoted must be informed

by gravitational shaping of time and of space resulting from constitutional obligations of the state as trustee for the state constitutional trust at issue).

Because project-level environmental review for transit programs is highly reliant on ridership projections, and because this circumstance has thereby greatly facilitated the junior taxing district's long-exploited *modus operandi* of misrepresenting pivotal data initially, and of then covering up its misrepresentations of quintessential information upon as-necessary and however-required bases subsequently, intersections of these practices with a state constitutional trust that legally imposes demanding fiduciary duties on its trustee – and likewise substantially greater-than-ordinary standards for the protection of all state motorists, as direct beneficiaries of the state constitutional trust established by the 18th Amendment, pursuant to this Court's long established jurisprudence for all public-and-private trusts operating within and under laws of the state of Washington – afford a crucial opportunity for judicial explication of the fiduciary standards required of government agencies in circumstances where assets owned by our state's by-far-largest and most valuable constitutional trust are to be available for rail or some other non-highway purpose (as informed by state trusteeship).

At every stage to this date, the junior taxing district and its agents have either cavalierly disregarded or else willfully defied the Washington State Constitution in rushing ahead with a nominal environmental review

process so patently premature that significant supplementations would be necessary no matter how this appeal is resolved, including but not limited to the junior taxing district's legally certain obligations to modify both key rail ridership projections, upon which its nominally **final** EIS relied in mid 2011, but as to which it has recently been forced to admit inflated light-rail ridership projections that destroy the central term of its nominally **final** EIS at issue herein and thus implicate increased traffic congestion on I-90 from Bellevue to Seattle (particularly since the Washington State Auditor's recent performance audit of its rail programs documents major unreliability of its ridership projections absolutely pivotal to its entirely premature, but nominally **final**, EIS by noting explicitly that the agency's key practice of overly optimistic ridership estimates, which now supports a nominal FEIS herein with patently unreliable ridership estimates, is "no longer valid," in Performance Audit Report No. 1008277, dated on October 25, 2012, at 4 [<http://www.sao.wa.gov/auditreports/auditreportfiles/ar1008277.pdf>]), and also other central elements thereof due to a realignment of routing that it negotiated with the City of Bellevue after preparation of a nominally **final** EIS (based upon a previous alignment that is simply no longer operative).

These pivotal changes in quintessential information as to ridership and as to alignment will in turn reduce potential cost effectiveness of rail transit between Bellevue and Seattle when WAC 197-11-440(6)(e)'s legal

requirements for assessments of “cost of and effects on public services” are eventually undertaken, belatedly, and when other mandatory benefit-cost analyses are conducted through a to-date-never-performed state “least cost planning methodology” (RCW 47.80.030), and through likewise-unfulfilled “reasonable alternative” inspection to guarantee rail costs “equal to or less than comparable bus” or other rapid transit systems (RCW 81.104.120).

What is less obvious – but likely more important – is future tolling and its huge impacts on and key implications for core constitutional duties.

In particular, recent legislative momentum to impose tolls on major assets of the state constitutional trust established by the 18th Amendment – in order thereby to utilize the *corpus* of our state’s most valuable constitutional trust in order to build highway facilities, which would not otherwise be able to be funded, *via* urban tolling practices devised to yield an as-yet-novel subcategory in the “all other state revenue intended to be used for highway purposes” silo pursuant to Article II, §40 – can yield giant sums.

As discussed more systematically within *amicus* briefing submitted in *Freeman II* than is possible herein, already demonstrated fiscal capacity of such tolling still in its infancy to generate \$1 million or more per week for all beneficiaries of the state constitutional trust from tolling the center roadway of the crucial I-90 corridor – based on actual experience from the tolls already being imposed upon the companion Evergreen Point floating

bridge across Lake Washington – thus constitutionally precludes the junior taxing district’s attempt, through explicit misrepresentation to this Court, to obtain complete control for exclusive use thereof for several decades for a token sum (because of long established jurisprudence respecting all trusts).

As this Honorable Court has made entirely clear, both through its jurisprudence for all trusts in general, and also through its jurisprudence for state constitutional trusts in particular, every trustee in this state is required to act, **always**, pursuant to highly demanding fiduciary standards:

It is the duty of a trustee to administer the trust in the interest of the beneficiaries. The trustee must exclude from consideration not only his own advantage or profit, but also that of third parties in dealing with trust properties and in all other matters connected with the administration of the trust estate. No exception can be made to this rule. Courts have fixed a very high and exceptionally strict standard for trustees to follow in the conduct of their trust activities. *Brown v. Tucker*, 20 Wn.2d 740, 768 (1944).

Further, this black letter trust law has been squarely applied by the Court to state constitutional trusts here through its explicit determinations that public trusts “impose upon the State the same fiduciary duties applicable to private trustees” through its key decision in *County of Skamania v. State*, 102 Wn.2d 127, 133 (1984), and it also instructed directly, therein, that such state trusts so substantially constrain the state’s inherent sovereign power, thereby, that even normally “permissible goals” for legislation are legally limited (at 132), in its unanimous decision to uphold the

Clark County Superior Court's core findings of fact, and central conclusions of law, noting that "The trial court in this case applied trust principles to the Act [Forest Products Industry Recovery Act of 1982], and held that the Act violated (1) the State's duty of undivided loyalty to the trust beneficiaries; and (2) the State's duty to act prudently" (at 133-34).

After taking notice that "A trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests," through citation to G. Bogert, *Trusts and Trustees* (2d.ed.), and that "when the State transfers [constitutional] trust assets such as contract rights it must seek full value for the assets" (at 134), this Court immediately then determined that our state, as the trustee for such constitutional trusts, "may not sacrifice this goal to pursue other objectives, no matter how laudable those objectives may be," citing *Ervien V. United States*, 251 U.S. 41 (1919).

Thus, given these circumstances for our state's by-far-most valuable constitutional trust, *res ipsa loquitur* as to the junior taxing district's effort to steal billions of dollars from all state motorists as trust beneficiaries and to misfeasant state cooperation with such machinations violative of pivotal fiduciary duties, particularly when the former relies on the agency's patent misrepresentations to all members of this Court through its Opening Brief in *Freeman II* (while engaged in ongoing fraud on the Court since no-later-than June 10, 2003 underlying *Sane Transit*), and especially when the later

rests on cooperation therein through misdirections (through misfeasance directly contrary to its trustee obligations for a state constitutional trust).

While the adverse import on this state's justice system of the junior taxing district's intentional-and-ongoing frauds against every member of this Court for a very extended period that is now fast approaching one full decade cannot and should not be gainsaid in any way, and while its legal counsel's submission of briefing in *Freeman II* based on additional direct misrepresentations to every current member of the Court compounds the wrongdoing identified factually in *amicus* briefing submitted therein, the Court's defense of our state's legal system from willful frauds against its highest judicial tribunal, however that is ultimately resolved pursuant to its discretion and to its members' oaths of office, is unlikely to resolve rights of all state motorists as beneficiaries of the state constitutional trust to obtain the full-and-fair value of all trust assets, including those crown jewel highway facilities that the junior taxing district seeks to control for exclusive rail use for several decades for a pittance (that could be recovered for trust beneficiaries in three-to-five years through application of current toll levels on a companion floating bridge facility just a few miles northward).

Thus, the junior taxing district's nominally **final** project-level EIS for a hypothetical light rail plan that may or may not be constitutional, *sui generis*, and that would require lease payments several times greater than

the agency has budgeted in order to make all state motorists fully whole as direct beneficiaries for exclusive use of crown jewel elements of the state constitutional trust (including Homer M. Hadley floating bridge and other enormously valuable components of the I-90 highway corridor), becomes more hypothecated when state constitutional, statutory and administrative laws are examined, candidly, rather than sidestepped with averred finalization of incomplete environmental analysis and with outright falsifications.

While this reality is clear enough, factually and legally, all constitutional and other jurisprudential consequences are far less certain today.

Given the enormous value of the state constitutional trust at issue, given its gigantic income-generating capacity for all motorists of the state as direct trust beneficiaries, and given major factual-and-legal interactions arising between “all other state revenue intended to be used for highway purposes” from tolls on the I-90 corridor and demanding fiduciary duties respecting those funds – if a majority of the Court were to determine an overused bridge already experiencing major traffic congestion with cars and trucks backed up for miles upon often-recurring if not everyday bases can be made available, constitutionally, for railway purposes that are non-“highway purposes” – the supplemental environmental review process to be required, as a matter of legal necessity, to replace significantly inflated ridership figures with substantially reduced user numbers, to review the

routing negotiated by the City of Bellevue with the junior taxing district and to ensure full-and-fair value to trust beneficiaries, as well as to-date-unfilled obligations respecting benefit-cost responsibilities pursuant to WAC 197-11-440, RCW 47.80.030 and RCW 81.104.120, will benefit from resolution of the at least two matters of first impression identified hereinabove with directed focus on interactions between cost-effectiveness requirements pursuant to those state laws and constitutional trust duties.

Meaningful discussion of these matters are not likely possible prior to review of the constitutional modality – or modalities – likely required to reverse or otherwise significantly modify more than four full decades of 18th Amendment jurisprudence repeatedly reliant substantially upon *State ex. rel. O'Connell v. Slavin*, 75 Wn.2d 554 (1969), and its legal progeny.

Further complicating this and other core matters of state finance at present are this Honorable Court's retention of jurisdiction in *McCleary v. State*, 173 Wn.2d 477 (2012), and its directions to the co-equal legislative branch to report to it on "the State's compliance with its paramount duty," and its pending resolution of supermajority requirements imposed by state voters on the legislative function by *seriatim* adoptions of state initiatives for therein and otherwise expressed purposes of constraining tax authority.

With our legislature now thus apparently snared between retained jurisdiction over the paramount legislative revenue function by a co-equal

branch of government, on the one hand, and imposition and reimposition of constraints on a series of legislatures by a majority of the People as the ultimate source of sovereign power in our state's democratic system of representative government, on the other hand, constraint on state revenue resources are nearly certain to remain constricted for some period of time.

Thus, a central issue inherent within the present appeal merits clear notice by the Court, since its origins derive from fiduciary obligations that are inherent in all positions of public trust; that become substantially more demanding with respect to state constitutional trusts by operations of law pursuant to the Court's long established jurisprudence for private-and-public trusts applicable herein under terms of the 18th Amendment; and that devolve to environmental review processes central herein due to huge sums of limited public funds that are increasingly being spent thereon in difficult financial times for the state, its general purpose governments and special purpose districts of numerous kinds, including the massive junior taxing district engaged in wrongdoing of myriad types identified herein-above, and in greater detail than allowable herein in a proposed *amicus* brief submitted in *Freeman II*, including documented frauds on the Court as to the triad of pivotal revenue resources protected by Article II, §40.

Because crown jewel highway facilities are at the heart of this appeal, fiduciary requirements are more demanding than would be the case

were a state constitutional trust protecting multibillion-dollar highway assets not involved, and were those quintessential assets at issue herein not themselves carrying a full-and-fair value of at least several billion dollars.

Hence, these circumstances implicate reasonable legal certainty of improvidence respecting many millions of taxpayer dollars that have been spent to this date to develop a nominally **final** EIS years before the junior taxing district has established the basics of constitutionality for its planned use of a state constitutional trust's crown jewel assets, and for its necessity to pay next to nothing to that trust benefitting all state motorists for long-term sole use of high-cost highway facilities that would exclude them for multiple decades from using several of the trust's most vital assets, since its payment of full-and-fair value would bankrupt the proposed rail project as certainly, financially, as granting judgment to Kemper Freeman, legally.

Thus, expenditures of millions of dollars under such circumstances appear to be not far short of complete folly since all rests on spending such immense sums of money while risking that long- and well-established 18th Amendment jurisprudence, as stated in *Slavin* and its progeny, means what is directly indicated therein (or finding out that lawful ability to use center-roadway assets requires payment of full-and-fair value that is also lethal).

Only this Court can belatedly put a stop to such improvident waste (if Mr. Freeman wins his appeal), or equally improvident risks even if right

to convert crown jewel highway assets to railway uses is allowed (subject to payment of full-and-fair value to the state constitutional trust at issue).

As environmental review becomes a business involving hundreds of millions of dollars for transportation projects, as well as for other state constitutional trusts, direction by this Court derives from its own fiduciary duties (especially while retaining jurisdiction over state fiscal functions).

Clearly, allowing a junior taxing district to engage in multimillion-dollar environmental review processes regarding state constitutional trust assets by simply checking boxes and writing millions of dollars in checks to consultants – without sentient regard for whether the boxes checked and all taxpayer funds spent are absurd and thus unconstitutional, violative of statutory responsibilities, and fiscally impossible due to a negotiated \$800 million limit upon its total debt at least for all of “Phase I” – is utter folly.

A more appropriate circumstance and point in time could hardly be contemplated for the Court to apply its common sense jurisprudence once again to the 18th Amendment, in general, and to the junior taxing district’s environmental review process for rail use of the I-90 highway corridor, in particular, beginning with its pithy point respecting rational resolution for all critical legal issues today in view, as properly before it herein, with its succinct conclusion in *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 813 (1999), stating that “we think a quote from Justice Hale puts it best:

‘There is nothing unconstitutional about common sense.’ *State v. Dixon*, 78 Wn.2d 796, 798, 479 P.2d 931 (1971).”

This is particularly so given the huge amounts of money put at risk respecting railway use of highly valuable I-90 highway trust assets, either for complete waste, or else for some close approximation of such total waste, and given that the Court’s very explicit focus on “common sense” underlying constitutional jurisprudence for the 18th Amendment conforms wholly with the Court’s statement of its overall judicial standard based on “logic, common sense, justice, policy, and precedent,” as stated in *King v. State*, 84 Wn.2d 239, 250 (1974), for example, and as reiterated with several variant wordings within several important decisions respecting widely disparate legal situations across multiple decades heretofore.

While actual dimensions are not fully knowable at this time prior to discovery, the junior taxing district’s 2012 Financial Plan shows East Link’s 2010-12 expenses as \$105.5 million with allocation of \$23.7 million to right-of-way and of \$81.8 million to “Other Capital” (which appears to include funds for premature design-and-environmental tasks).

No East Link costs are listed before 2010 despite the nominal project-level FEIS issued on July 15, 2011 – for rail usage of the I-90 corridor – identifying several engineering reports dating back to a pro-

grammatic-level Final Environmental Impact Statement issued during March, 1993. Thus, \$105.5 million appears to understate actual costs.

VI. CONCLUSION

All common law systems developed through decisions in cases brought by litigants, who have decided to bring appeals on outcomes in trial courts unsatisfactory to them for a wide variety of reasons, will and do have *lacunae* in their jurisprudence respecting numerous constitutional, legal and administrative constructs necessarily deriving from that process.

These circumstances cry out for resolution herein, and support the reversal hereby requested of this Court by appellant.

DATED on this 31st day of January, 2013, and

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will Knedlik". The signature is written in a cursive, somewhat stylized font.

Will Knedlik, *pro se*

APPENDIX A

Eastside Rail Now!

July 26, 2011

Ms. Joni Earl, Chief Executive Officer
Central Puget Sound Regional Transit
Authority (dba Sound Transit)
Union Station
401 South Jackson Street
Seattle, Washington 98104-2826

Re: Appeal of East Link FEIS; formal request for public hearing; and matters related thereto

Chief Executive Earl:

Please find the \$200 charge that the Central Puget Sound Regional Transit Authority (dba Sound Transit) imposes through Board Resolution No. 7-1, §4.e.3, on each of the agency's more-than-2.7 million taxpayers to appeal its violations of the Washington State Environmental Policy Act, RCW 43.21, due to its violations of the Washington State Constitution, Article II, §40, *inter alia*.

Please be advised that a public hearing is requested, hereby, pursuant to Res. No. 7-1, §4.i, along with prompt fulfillment of every public disclosure request previously made to the agency by the undersigned (including several long unfulfilled by its management as of the filing of this appeal), and together with subpoena powers during pendency of this appeal (*e.g.*, as required in order to compel release of key documents by the agency or to obtain testimony from essential witnesses).

Please be further advised that appellant anticipates that the case in main will take approximately five days for presentation to the hearing examiner to be appointed pursuant to Res. No. 7-1, §4.f, plus such time as necessary to present rebuttal testimony as indicated by agency responses, and that testimony necessary from senior elected officials located both in Olympia, Washington, and also in Washington, D.C., whom appellant shall call to testify, may require scheduling courtesies by said hearing examiner in order to accommodate their respective availabilities due to their very significant responsibilities upon behalf of state residents, on the one hand, and due to their unique knowledge of major irregularities implicating the agency and its East Link project, on the other.

Please be still further advised that the hearing examiner shall be requested to find factually and to conclude legally – based on all evidence admitted at hearing as to all constitutional, legal, administrative and other issues necessary and sufficient to establish – the Final Environmental Impact Statement for the East Link Light Rail Project being appealed, hereby, to be not simply premature and defective from failures to fulfill minimal adequacy obligations for any acceptable FEIS (due to lack of required analyses respecting Segment A mandatory, pursuant to WAC 197-11-440, for “reasonable alternatives” and for “costs of and effects on public services,” inclusive of “roads,” *inter alia*), but also dishonest and thus corrupting (due to misrepresentations reflecting a standard *modus operandi* under the agency's current Board officers and its present senior management).

EastsideRailNow.org

wknedlik@eastsiderailnow.org

Matters evidencing the nominal FEIS as premature and as defective under SEPA

The agency has failed to undertake mandatory examination of “reasonable alternatives” for High Capacity Transportation within the center roadway of the Interstate 90 corridor and for the High Capacity Transit subset thereof within its statutory authority pursuant to RCW 81.104 and RCW 81.112 – identified hereafter as “HCT” in each instance as applicable – and therefore its nominal FEIS is both premature, and also defective, due to its failures to undertake mandatory reviews of “reasonable alternatives” as required by SEPA in several respects through multiple sections of Chapter 197-11, WAC, for the quintessential Segment A of its proposed project legally required in order to extend its federal New Starts light-rail program, as a recipient of \$1.313 billion in federal funds, eastward from its incomplete north-south spine largely within Seattle to Bellevue and beyond (as evidenced by comparing the agency’s one self-styled “I-90 Alternative” for Segment A with dual options for Segment B and with likewise multiple options for Segment C, *inter alia*).

Appellant’s obligation herein is certainly **not** to attempt to repair the agency’s fatally premature and lethally defective failures to undertake mandatory alternatives analyses for Segment A, but this appeal will be more efficiently presented, and decided, if the hearing examiner is fully aware from the outset of his or her services that the central issues requiring attention both involve, and also implicate, a complex that is the essential starting point for all such *sine qua non* assessments.

Initially, any adequate analysis of “reasonable alternatives” for avoidable-and-unavoidable effects on the natural-and-built environments begins, necessarily, with examinations of Article II, §40 of the Washington State Constitution (which has squarely required all components within the I-90 corridor to be utilized “exclusively for highway purposes” since 1944), and of long-established decisional law interpreting that exclusivity (which has been explicitly found by the Washington State Supreme Court to preclude rail uses of highway assets since 1969 through its leading case, *State ex rel. O’Connell v. Slavin*, 75 Wn.2d 554 [1969]), as well as with a similar examination of additional legal requirements imposed on usage of the center roadway of the I-90 Floating Bridge by the United States Department of Transportation in consideration of its partial funding of those improvements (which includes “CONDITIONS” requiring the Washington State Department of Transportation to act to warranty that “use of the center lanes is controlled to the extent necessary to maintain bus and carpool speeds of 45 mph or greater” as imposed on September 20, 1978).

Taken together, any adequate analysis of Segment A for “reasonable alternatives” for HCT must identify **both** that several bus-transit options would yield an undeniably constitutional alternative under the state Constitution capable of fulfilling all further HCT obligations legally imposed by the federal government as a *quid pro quo* for federal funds for the I-90 corridor and **also** that any rail-transit alternative would yield elements that are obviously unconstitutional under Article II, §40, as interpreted by our state Supreme Court for well over four decades, as well as violating the further federal requirement that WSDOT ensure “use of the center lanes is controlled to the extent necessary to maintain bus and carpool speeds of 45 mph or greater” in the I-90 center roadway.

This is important because the Washington State Supreme Court has pivotally defined this state’s jurisprudence to rest on explicit requirements that the judiciary of this state, at all levels of trial-and-appellate courts, must determine “the facts of each case upon mixed considerations of logic, common sense, justice, policy, and precedent,” *King v. State*, 84 Wn.2d 239, 250 (1974), and core defects in the nominal FEIS lack just such logic, common sense and those other pivotal factors.

On information and belief, such an initial review was undertaken by the agency before its current environmental review process was first commenced; was covered up, thereafter, both by its then-officers, and also by its then-senior managers, precisely because they knew from early on that the agency's plans for use of the I-90 corridor devolving over time into its preference for a single "I-90 Alternative" in its nominal FEIS was and is both unconstitutional and also otherwise unlawful; and is continuing to be suppressed, for this same central reason, through intentional malfeasance by its current officers and by its present senior managers, as well as misfeasance in public office at common law by each of the 18 members of its Board of Directors through willful misconduct.

Thus, with one set of HCT options already in place and conforming fully to the state Constitution (and to other federal requirements), and with another set of HCT options requiring billions of tax dollars in order to violate this state's Constitution (as well as other federal requirements), agency actions underlying the nominal FEIS' failure to analyze the former and to select the later, through its singular "I-90 Alternative" for the Segment A section of its East Link proposal, is not simply a casual violation of multiple "reasonable alternatives" requirements, under SEPA, and thus wrong, nor merely bureaucratic obstinacy to a point of wrongheadedness. Rather, defiance for the state Constitution and for federal duties implicates wrongdoing more likely intentional than negligent.

Secondarily, any adequate analysis of "reasonable alternatives" for avoidable-and-unavoidable effects on the natural-and-built environments from decisions to proceed with a rail-transit option for Segment A – notwithstanding a state constitutional prohibition and federal contractual limits – would necessarily require the agency's **identification of every step essential to overcome the 18th Amendment to the state Constitution** by the Washington State Legislature, in early 1944, and by the people of the state, in later 1944, as very prominently interpreted by our state Supreme Court in 1969 through a six-to-three decision, and would thus require agency action to meet that very substantial legal burden **before** undertaking a multimillion-dollar environmental review that would of necessity be and now undeniably is premature and defective (and **before** imposing other multimillion dollar expenses onto the City of Bellevue – needlessly and imprudently – in order to respond to the agency's unconstitutional East Link proposal without any legal authority to cross Lake Washington on what the nominal FEIS styles as its sole "I-90 Alternative" for Segment A).¹

Except for the agency's intervention in *Freeman v. Gregoire* in an unsuccessful effort to obtain a ruling that Article II, §40 and *State ex rel. O'Connell v. Slavin* do not apply respecting its single and thus-still-unconstitutional "I-90 Alternative" for Segment A, and for its intentional failure to identify our state Supreme Court's ruling that it has obtained "nothing to establish a mandatory duty to transfer the center lanes" in its thus-misleading characterization of that case in its nominal FEIS, the agency appears to have done nothing whatsoever to resolve a constitutional prohibition and federal limits as to its bureaucratic defiance for all constitutional-and-contractual constraints.

¹The Washington State Supreme Court found in *Freeman v. Gregoire*, on April 21, 2011, that the agency has obtained "nothing to establish a mandatory duty to transfer the center lanes" – despite its intervention in litigation filed by Kemper Freeman as an original action in that court – as the basis for a divided-court majority's dismissal of that extraordinary writ action, after its pendency there for nearly two full years, so as thereby to necessitate an additional two-to-three-year process to be undertaken before the high court can directly decide whether to overrule its now-42-year-old precedent, in *State ex rel. O'Connell v. Slavin*, as long relied on as definitive, both by the state, and also by its residents, who pay fuel taxes to it. Thus the prematurity of the agency's nominal FEIS is made out, in fact and in law, not only by its failures to comply with requirements for analysis of "reasonable alternatives," but also by its failed intervention from 2009 to 2011.

Certainly, the agency's nominal FEIS does **not** examine the constitutionally available option of constructing agency-owned facilities necessary and sufficient for routing light rail parallel to I-90, including a separate Mt. Baker tunnel, an alignment across Mercer Island, and two bridges necessary to traverse Lake Washington from a third Mt. Baker tunnel in Seattle to Bellevue, even though the total cost of doing so would be substantially **less** than payment of "fair market value" for the I-90 center roadway (for reasons more fully discussed, hereinbelow, in briefly examining the actual market value thereof in the context of requirements imposed by WAC 197-11-440.6.e).

Plainly put, simply stating that the agency's preference is to use assets having an extremely high value, for reasons more fully discussed below, and belonging effectively to every citizen of the State of Washington statewide, since fuel taxes were invested to build the I-90 center lanes from constitutionally protected fuel taxes – as the agency seeks, *sub rosa* and *sub silentio*, for its single "I-90 Alternative" – is attempted theft, not "reasonable alternatives" analysis (especially after the agency's intervention in *Freeman v. Gregoire* informed it directly, **as a party defendant therein**, that it has thus far obtained "nothing to establish a mandatory duty to transfer the center lanes").²

On information and belief, this secondary examination has been undertaken by the agency and is being suppressed both by its current officers and also by its present senior managers because they know it would document the premature-and-defective circumstances of its nominal FEIS, as well as demonstrating multimillion-dollar mismanagement of the underlying process, because the very lengthy delay by our state Supreme Court in concluding the *Freeman* case as an original action on an extraordinary writ, on a narrow procedural basis, after pendency for nearly two years before it, there, implicates strong likelihood that *State ex rel. O'Connell v. Slavin* will **not** be reversed on a return trip to the high court (despite Chief Justice Barbara Madsen's public statement that earlier litigation involving the agency, *Sane Transit v. Sound Transit*, 151 Wn.2d 60 [2004], was decided on political bases, rather than legal grounds, in her pursuit of the 32nd Legislative District Democratic Organization's support, while campaigning for reelection during 2005, in part by squarely taking credit for that political-*versus*-legal outcome which had then favored the agency thereby).

Further, on information and belief, the agency made such a secondary analysis before its current environmental review process was first undertaken and it has since been suppressed both by its then-and-future officers and also by its then-and-future senior managers because they knew from early on that agency rail-use plans are not among "reasonable alternatives" for the I-90 corridor.

Tertiarily, any adequate analysis of "reasonable alternatives" for the avoidable-and-unavoidable effects on the natural-and-built environments from a decision to proceed with a rail-transit option for Segment A – notwithstanding a state constitutional prohibition and federal contractual limits – necessarily includes the agency's clear identification of those multibillion dollar financial costs that are yielded by all steps required to prevail over the 18th Amendment to the state Constitution.

²As the nominal FEIS indicates, Mr. Freeman and other Washington fuel taxpayers, including major freight companies headquartered in Eastern Washington and highly reliant on the I-90 corridor to haul large quantities of products to the Port of Seattle, filed litigation in Kittitas County Superior Court (assigned Cause No. 11-2-00195-7), in May, 2011, due to Ellensburg's location near the geographical-and-commercial center of that key interstate corridor, and due to the large percentage of the agency's Board who are King County elected officials with direct influence over budgets affecting the King County Superior Court. The agency is not a named defendant therein and, over two months later, it has not attempted to intervene according those records available for inspection as of the date on which this appeal was prepared.

While SEPA explicitly exempts environmental reviews through WAC 197-11-450 from ordinary cost-benefit calculations standard in a wide variety of public-policy contexts, and otherwise generally limits normal practices for balancing of projected expenses against expected outcomes *via* the normal calculus of state-and-local finances, SEPA mandates that “Significant impacts on both the natural environment and the built environment must be analyzed, if relevant (WAC 197-11-444),” and further requires careful explanation of its thus-codified terminology that “Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal” (WAC 197-11-440.6.e).

This mandatory cost discussion *vis-à-vis* public-service infrastructure omitted from the agency’s nominal FEIS is not just largely *sui generis* for “reasonable alternatives” analysis within the core environmental review process at issue pursuant to this administrative appeal, but also critical for state residents who pay fuel taxes, statewide, and who would lose several billions of dollars from the agency’s bogus “I-90 Alternative,” as preferred by it, as a part of its thus-implicated intention to cover up total fees owed by the agency for use of the I-90 corridor, if legal, at their full market value calculated to fulfill the state’s duty to obtain the greatly appreciated value of I-90 facilities from the agency as required constitutionally (and who would lose a substantial multiple of those several billions of dollars as the gain in fair market value since its environmental process began).

In basic overview, right of way for transportation infrastructure has experienced rather enormous appreciation in value, during recent decades, due to scarcity factors, assembly expenses and other cost drivers, and the physical improvements of the interstate highway system have likewise been appreciating at a substantially faster rate than associated annual depreciation due to the aging of its component parts. In circumstances where a city and its residents, such as Seattle and persons living there, adamantly obstruct expansion of existing highway infrastructure to reflect growth in regional population, asset appreciation experienced generally is multiplied several times over and can be raised by an order of magnitude, or even more, with decisions to limit roadway additions.

Thus, normal appreciation of transportation infrastructure values, together with the extraordinary increases in such values generated by decisions made by the City of Seattle, indicates a baseline of \$8-to-\$12 billion for the I-90 center lanes in the corridor from Bellevue westward to Seattle.

Further, during extended environmental processes at issue herein, senior managers for the Puget Sound Regional Council have developed a plan to finance regional transportation infrastructure by tolling of essentially all key existing roadways within its four-county region at quite high rates.

Elected officials who can accept or reject PSRC’s staff-initiated fiscal plans endorsed this vision, overwhelmingly, by their formal adoption of its *Transportation 2040* document on May 20, 2010.

Further, during this period, the state Secretary of Transportation Paula Hammond and managers on her staff have been developing plans for funding major transportation infrastructure – starting with a pilot project on State Route 167 that has been recently extended by her – by placing tolls on existing highways, including extension of such tolling to the current Evergreen Point Floating Bridge scheduled to commence in April, 2011 (and repeatedly rescheduled since to start, shortly, to be followed in current planning by Interstate 405 and possibly by Interstate 5). This modality of tolling existing infrastructure, for purposes of revenue generation, differs from traditional toll practices, in this state, to impose tolls on new structures but to remove them promptly when bond

financing has been repaid (as in view *vis-à-vis* two bridges that span the Tacoma Narrows where the 1950s structure remains toll free but where passage over the currently bonded facility opened in 2007 is available, in the opposite direction, only by paying \$2.75 charged as a fixed-toll rate).

The state legislature has embraced tolling an existing structure for tolls to be imposed imminently on the established Evergreen Point Floating Bridge, in the State Route 520 corridor that connects Seattle with Bellevue, at rates far higher, in both directions, than the toll being charged Tacoma area residents, in only one direction, and majorities in both houses of the legislature have partially embraced this novel revenue-generation model during the last session – so as to add a 75-cents-per-mile toll to I-405 operations – by approving tolls on existing infrastructure (subject to interim studies to develop additional data, for final review, in the legislature’s 60-day session in 2012).

Thus, what is currently known and knowable from the PRSC’s formal actions, from the WSDOT Secretary’s recent extension of the tolling pilot project on SR 167 and from the state legislature’s *seriatim* tolling actions in recent sessions, as to SR 520, and its additional partial step forward on tolling for I-405, taken together, is that tolls are being actively promoted as a major **new** revenue resource for state-and-interstate highways in a fashion that is not only revolutionizing traditional financing for roads, highways, bridges and ancillary transportation infrastructure, here, but that is, in this specific process of toll-based financing, enormously increasing the market value of key highway corridors (so that each is not simply an ultimate beneficiary of most state fuel taxes, but also a primary vehicle for generating a substantial to still-greater percentage of future revenues).

Under these circumstances, discussion required by – but nonexistent in – the nominal FEIS is not feasible in complete detail, yet, but the general outline could not be clearer (unless intentionally omitted, despite WAC 197-11-440.6.e’s specific requirements quoted hereinabove, as was done in this instance in order to cover up the gigantic size of this **gift** of state-owned property on which nonexistent analysis of the agency’s “I-90 Alternative” as its sole “preferred” option is premised).

In addition to the baseline value of \$8-to-\$12 billion for the I-90 center lanes in the corridor from Bellevue westward to I-5 – due substantially to enormous scarcity value created by nothing short of vehement obstructionism to any expansions of highway infrastructure into and out of Seattle’s boundaries on its east, north and south for at least several decades – a further increment in actual value, from between \$12-to-\$16-to-\$20 billion, arises due to most likely potentials from tolling (with the lower end of an additional \$12 billion in full value indicated with “fixed tolls” set at \$1 below the “average” of tolls to be collected for use of the SR 520 bridge to start in the next few weeks based on \$3.50 each way during peak-use periods, with the midpoint of an additional \$16 billion in value indicated with “variable tolls” set at the level of tolls to be collected shortly for use of that bridge with its nominal balancing of congestion management *versus* cash generation, and with the higher end of an additional \$20 billion in value indicated with “variable tolls” set at \$1 beyond the “average” of tolls to be commenced soon for usage of that bridge with a thereby-lesser functional weighting of congestion-reduction means against revenue-maximization ends).

Taken together, at this relatively early stage during the transformation of core state transportation infrastructure into a cash machine of multibillion-dollar proportions, the initially indicated value of the I-90 center lanes from market pricing is between \$20 billion and \$32 billion, with both such numbers and all figures in between defensible with recognized cost approaches to value and with

ordinary income-based methodologies for property valuation today applicable, with reasonable accuracy, given the revenue stream generated by the Narrows Bridge now (and to be yielded by the Evergreen Point Floating Bridge), and given prices being paid by corporate toll farmers (for purchasing and for leasing tolled facilities, in recent years, in this nation and internationally).

Whether the agency must pay \$20 billion for use of the I-90 center roadway, \$32 billion, or some number in between depending on other factors above indicated (and on structuring of its payment flows), the nominal FEIS is defective for total omission of \$20-to-\$32 billion, and supplemental environmental impact analyses are required to comply with WAC 197-11-440.6.e's very specific requirements quoted hereinabove – pursuant to provisions of WAC 197-11-620 – particularly at a time when this state is unable to replace deteriorating transportation infrastructure, statewide, including crumbling roadways and dangerous bridges that trigger additional requirements for its analyses, under SEPA, to be proven at the formal hearing requested hereinabove, and especially when failure to pay those many billions of dollars due to the agency's cover up would be another unconstitutional act or omission, *i.e.* a **gift** of state assets owned by all taxpayers, statewide, to an agency benefitting only parts of three counties contrary to this state's supreme law as established by the Washington State Constitution since 1889 and as interpreted by our state Supreme Court.³

A slow-motion collapse of vital highway infrastructure that is going on currently, throughout the state, also factually and legally degrades the vast majority of the agency's own transit operations, since more-than-56 percent of its total ridership, each day, is served by buses which are operated largely on state highways, including use of much of the state's High Occupancy Vehicle system, locally, as key parts of this state's HCT facilities for buses and for other transit elements of HCT.

On information and belief, elements of such analyses were undertaken by the agency prior to its present environmental review process being first undertaken, and have been since suppressed, both by its then-and-current officers and also by its then-and-present senior managers, precisely because they knew early on, and continuously since, that the agency's plans for rail usage are not among "reasonable alternatives" for I-90 lanes for a variety of reasons, including but not limited to the reality that the thus-implicated violation of Article II, §40 cannot be mitigated in any way.

Additionally, on information and belief, the agency has actively lobbied the state legislature, year in and year out, for a series of actions intended to obtain a multibillion-dollar **gift** of state-owned right of way, highway infrastructure and related assets within the commercially pivotal Interstate 90 corridor – which are all protected for **every** fuel-tax taxpayer statewide by Article II, §40 – in order to deny all taxpayers, statewide, major benefits from \$20 billion to \$32 billion due to actual malfeasance by current officers and present senior managers, as well as by misfeasance in public office by all, or virtually all, current-and-past members of the agency's Board of Directors (with a notable exception in Hon. Don Davidson, as Mayor of the City of Bellevue during prior service and currently, and in Hon. Rob McKenna, as a King County Councilman when a Board member).

³Initiative 1125, if adopted by the people, and if able to prevail in nearly certain legal attacks on what are likely to be a substantial number of bases, would preclude both variable tolls (and thus lower the upper-end for a market-value range), and also agency use of the I-90 center lanes (so as moot several other Segment A issues). While appellant will request a supplemental environmental analysis to ascertain the full market value of the I-90 center roadway as an element of relief pursuant to the hearing previously requested hereinabove, this component of relief should not be granted by the hearing examiner so as to impose more needless costs upon regional taxpayers before the General Election on November 8, 2011.

Taken together, both our state Supreme Court's determination that the agency has obtained "nothing to establish a mandatory duty to transfer the center lanes" to it, and also each of the further information demonstrating prematurity and defectiveness of the agency's nominal FEIS, provide documentation of the obvious reality that at least one SEIS is required – and, perhaps, multiple supplemental reviews – rather than the agency's bums-rush to conclude its nominal FEIS several years in advance of any legal right to implement it, unless *Slavin* is overturned, and unless I-1125 is either defeated at the polls or else defeated before our state Supreme Court, particularly when the core of prematurity and of defectiveness derives from defiance for the state Constitution both as to exclusive fuel-tax facilities and also as to **prohibited gifting away** of fuel-tax-based assets.

Simply put, the SEIS indisputably essential pursuant to WAC 197-11-620 requires analysis of the investments needed in the I-90 corridor and whether \$20-to-\$32 billion would be adequate for all or most unfunded needs of the now deteriorating interstate highway from I-5 to the Idaho border.

Additional prematurity and defectiveness evidenced by the nominal FEIS under SEPA

Ancillary to a preliminary outline of initial, secondary and tertiary issues hereinabove are a large range of gaps within analyses of major issues implicating further prematurity and defectiveness.

The nominal FEIS does not provide adequate review of the constitutionally lawful option of bus rapid transit as an alternative to light rail, its superiority both through greater utilization of I-90's valuable roadway with carpools and vanpools over light rail or other rail modalities as indicated more fully by Appendix A hereto, and also in terms of HCT for communities to be served in the agency's East King County subarea in light of their developed suburban character, as well as its superiority in terms of lesser greenhouse gas emissions as documented by Appendix B hereto.⁴

Don Padelford's discussion of buses, carpools and vanpools as optimizing use of center lanes on I-90, in Appendix A, also draws into question the agency's assertions of higher person throughput than various bus options so as to require, at a minimum, additional analysis through an SEIS process.

Similarly, the agency's assertion that "Light rail would support increased density in Bellevue and Redmond," in a fashion "consistent with regional land use plans," does not appear to square with the nominal FEIS' numbers showing East Link would serve only 0.4 of one percent of downtown Bellevue's transit-access needs by 2030, and thus appears to reflect either the agency's ignorance of statistical insignificance,⁵ or another element of its recurring cover-up practices in the nominal FEIS. In either instance, further review is essential through an SEIS process to clarify said *lacunae*.

⁴In additional, the nominal FEIS does not appear to fulfill FHWA requirements for permitting access changes to and from I-90 required for light-rail operations without thorough consideration of a TSM alternative involving deployment of additional express buses using I-90 together with carpools and vanpools consistent with the current lane configuration (as a pivotal alternative repeatedly blown off by agency staff, since before the agency's formal creation in late 1993, as a key element, on information and belief, of a staff-initiated program to torpedo honest analyses, repeatedly, through omissions of bus options as "reasonable alternatives," and through creation of needlessly expensive artifices such as rail-convertible bus lanes in order to sabotage cost-effectiveness of bus-rapid-transit consistent with constitutional use of the I-90 corridor.

⁵*Cf.* page 7: "The East Link project would reduce vehicle miles travelled (VMT) and vehicle hours travelled (VHilyT) in the region as described in Section 3.3.3 of Chapter 3 because greater than 10,000 new transit riders would use the light rail system every day with the project." That figure represents less than 0.1% of the region's daily 16.5 million trips.

The agency's nominal FEIS does not adequately examine that 90-to-95 percent of East Link riders are projected to come from buses, carpools and vanpools currently using the state's high occupancy lanes, and thus already participating in the state's HCT program, with less-than-10 percent to come from current drivers of single occupancy vehicles.⁶ This in turn requires an SEIS in order to review this reality on selection of the constitutionally permissible HCT system already operating in the I-90 center lanes *versus* a constitutionally prohibited HCT *non*option that the agency strongly prefers, as well as on evaluation of ascertaining whether the constitutionally permissible HCT system already operating provides greater utility for developed communities with strongly suburban characters than the constitutionally prohibited HCT alternative that the agency is promoting, without this vital analysis, so as to cover up relevant factors essential to review constitutional-*versus*-unconstitutional HCT systems for the I-90 corridor, as well as for the Eastside communities nominally to be served.

The agency's inadequate analysis also requires an SEIS because it fails to examine the factual-and-legal reality that East Link would not maintain the same number of traffic lanes, including oversized lanes currently, since it would reduce 10 lanes pursuant to the R&A project to only eight lanes, and since those lanes would all be substandard in size whereas the 10 lanes include two oversized lanes.

In addition, the agency's nominal FEIS fails to examine both facts and also law whereby the current Record of Decision for I-405 specifies fully constitutional HCT for I-90's corridor from I-5 to I-405, in the form of bus rapid transit, which can serve Bellevue community college's large commuting population, rather than unconstitutional rail transit, which cannot serve its large commuter campus.

A further omission that is both more complex, and that also runs closer to outright dishonesty and to a corrupting influence, is a lack of essential review of inherent inadequacy of light rail for effective service using proposed East Link routing from an eastern terminus through the I-90 corridor to the University of Washington, as a major destination for commuters from the East King County subarea, as well as to other locations further north of the Downtown Seattle Transit Tunnel, because such an alignment is too lengthy to provide reasonable transit service with the agency's light-rail modality, as has been specifically documented by Ron Tober, Deputy Chief Executive Officer, in his report of critical inadequacies of the light-rail program, **at your direction**, just before he retired in late 2010 (as either provided to the agency's current officers and its present Board members, so as to implicate them in your cover up of these facts, or else withheld from them, in order to conceal this information from them, as well as from more-than-2.7 million district residents, as citizens, and as taxpayers).

Mr. Tober reported to the agency's Citizen Oversight Panel, shortly before his retirement, that he was tasked by you to prepare this key study for you, as well as identifying and discussing, then, **why** Link's length is well in excess of a reasonable distance for efficient use of light rail as a modality, here, due to an excessive number of stops rendering it unable to compete with express buses using HOV lanes (which are both faster, and also have cheaper fares, while affording effective reliability).

⁶WSDOT's Puget Sound Region Vanpool Market Assessment (Technical Memorandum 2) documents much larger potential throughput in major corridors through greater use of vanpools as a currently underutilized element of the state's HCT system, including in the I-90 corridor, and the nominal FEIS fails to incorporate this data because it fails to analyze anything other than its rail preference for the quintessential Segment A. An earlier-circulated draft of WSDOT's van study prepared by John Shadoff stated that vanpool use can be increased 19 times beyond then-current levels, *i.e.* with adequate investment in marketing vans' convenience, so as to generate HCT usage greater than **total** East Link ridership projections at essentially **no** cost to local taxpayers (since vans operate as an effective "profit center" for transit agencies).

These very serious problems with the Link light-rail system which Mr. Tober has outlined for you – and which you have either reported to Secretary Hammond and to the other 17 Board members or else withheld from them – is even more relevant to East Link than for Link’s north-south operations (given both the convoluted routing for East Link requiring passengers in the East King County subarea to go south in order to go north, and given also the communities’ clear suburban character).

In addition, thorough examination needs to be made of the I-90 routing, since the Evergreen Point Floating Bridge creates a much-more-direct and much-faster alternative to any I-90 routing, so that forcing nine out of ten potential East Link riders out of more-efficient, less-expensive and already-operating HCT modes, using buses, carpools and vanpools, and into far-less-efficient, much-more-expensive and constitutionally prohibited light rail, hardly benefits Eastside residents in any obvious way, and since a bastardized-and-convoluted routing is not only unlikely to benefit them as HCT users but results from the agency’s intent to violate its core subarea equity principles by awarding its East King County subarea taxpayers’ substantial subarea equity interest in the DSTT to residents of the Seattle/North King County subarea, both *sub rosa* and also *sub silentio*, at least until examined fully by the supplemental environmental analyses required to ascertain if there could be **any** benefit that is actually positive, since most of the nominal benefits appear to be substantially negative, after an initial preliminary review prior to the public-hearing process as hereinabove formally requested.

While heading south to go north can perhaps sometimes afford a logical and common sense method for transport, it appears more consistent with brief tactical retreat than with long-term transit systems.

Initial, secondary, tertiary and further issues indicate need for supplemental analyses

Taken together, then, the agency is required either to select a mode of HCT that can use highway facilities in a manner lawfully consistent, **constitutionally**, with Article II, §40 (including buses, bus rapid transit, carpools and vanpools, *inter alia*, but not rail-based transit), or to select an HCT mode that cannot utilize highway facilities in a manner legally consistent, **constitutionally**, with Article II, §40 (including commuter rail, light rail, trolleys and any other rail modalities) and then to construct all essential facilities, at its own expense, while paying full market value for any and all state assets (*e.g.*, highway rights of way and school-trust interests in lake surfaces, *inter alia*).

What the agency cannot do is simply to assume that the state Constitution does not apply to it and that it can exploit constitutionally protected highway assets contrary both to the state Constitution in Article II, §40 and also to over four decades of precedent directly on point through *Slavin*, and that it can pass off a major cover up of several pivotal matters in its nominal FEIS as adequate, as above indicated, so as thus to move from prematurity and defectiveness to flagrant dishonesty in that FEIS, as it has been and is corrupting the entire system of transportation in the central Puget Sound region (as it now eats up 32 percent of total state-collected transport taxes here currently).

Matters evidencing the nominal FEIS as both dishonest and as also corrupting

As previously indicated, the agency must provide supplemental environmental analyses both due to immense changes to critical financial circumstances during the pendency of its premature-and-defective environmental review, and also due to the agency having failed to undertake any of the pivotal fiscal examinations of the center lanes essential and required *vis-à-vis* impacts not just on I-90’s center lanes but also on overall functioning of the total HCT system operated by WSDOT.

Beyond all of this evidence of logical prematurity and of gross defectiveness, circumstances also manifest wrongdoing through dishonesty in the nominal FEIS and, thus, by way of the agency's misconduct that is corrupting of governance, regionally and statewide, since major elements of the foregoing discussion strongly implicate not merely shortcomings but also its recurring efforts to conceal information essential both for policymakers, as representatives of citizens, and also for the people of this state, as the ultimate source of all legitimate power here pursuant to our state Constitution's Article I, §1 (which derives directly from self-evident truths of the Declaration of Independence pursuant to the Enabling Act of 1889's provisions as to said Declaration therein).

On one key level, utter defiance for the state Constitution is *sui generis*, and wrongdoing deriving from resulting malfeasance by the agency's prior-and-present officers and by its past-and-current senior managers – as well as from misfeasance in public office at common law by virtually every Board member with only very few identifiable exceptions – is the ultimate form of abomination in a democratic system premised on basic honesty by elected representatives in meeting fiduciary duties, and even worse than dismissal of our state Supreme Court even if its present Chief Justice meant precisely what she said to the 32nd Legislative Democratic Organization when she publicly informed members of that overtly partisan group operating mainly in the agency's Seattle/North King County subarea that previous determinations made in favor of the agency, in *Sane Transit v. Sound Transit*, resulted from political, rather than jurisprudential, decisionmaking (as proffered as an appropriate political basis, for partisan support, thus requested, and thereby obtained in 2005).

However, in the context of an administrative appeal herein, egregious misrepresentation made by the agency as to central elements within its nominal FEIS, based on patent dishonesty, rises to a very high level of wrongdoing, indeed, even if not coming within several orders of magnitude *vis-à-vis* open defiance for the state Constitution and one-or-more orders of magnitude for dismissal of the high court's long established interpretation of Article II, §40, in *Slavin*, since early 1969.

For example, the agency's utter dishonesty in its nominal FEIS with respect to all highly adverse impacts on freight mobility to and from the Port of Seattle is particularly gross not only because its lies are patently intentional, but also because a substantial percentage of agricultural products shipped from Eastern Washington are either high-value products that are highly perishable and at great risks from substantial delays to result from any unconstitutional use of the I-90 center lanes or else bulky products that are placed at huge risk by reducing the dimensions of lanes that are at present oversized in terms of federal requirements without unconstitutional use of the center roadway but that would be reduced to substantially undersized lanes requiring federal waivers granted over concerns as to certain increases, in accidents, and in readily projected unnecessary deaths of human beings (as expressed in anxiety of the FHWA's local representatives located in Olympia).

The agency's explicit claim that "the East Link Project would have an overall beneficial impact on trucks traveling on I-90" is both an intentional falsification of WSDOT data sets, and also an obvious attack on the "mixed considerations of logic, common sense, justice, policy, and precedent," including pivotally *Slavin*, as mandated for the jurisprudence of this state by our state Supreme court in *King* for more than 35 years before the agency attempted to subvert those values.

As Appendix C identifies with WSDOT data sets – each taken from its 2006 center-lanes study – freight mobility would be greatly degraded by East Link, as logic and common sense do indicate, but as the agency falsely denies, and misrepresents, in its fraudulent crafting of its nominal FEIS.

As Appendix D documents, the agency's misrepresentations respecting freight mobility are **not** limited to its generic misrepresentations, but have been expanded in its falsified answers to the Port of Seattle's substantial concerns about freight access to its waterfront-and-airport facilities.

As WSDOT Secretary Hammond – a misfeasant agency Board member – was informed before a large audience on May 10, 2001 by the practical-and-pithy owner of a leading freight company located in Ellensburg, Washington (in response to a question posed by James MacIsaac, P.E., as to actual effects on freight mobility over I-90, *versus* the nominal FEIS' above-quoted fairy tale, with his inquiries into adverse impacts from narrowing I-90 lanes for trucks hauling agricultural goods and other products from eastern Washington to the Port of Seattle if WSDOT permits I-90 roadway to be squeezed down by 44 feet whereby now-oversized lanes would be thereby shrunken to thereafter-substandard width, essential shoulders would be reduced or eliminated, and truck speeds presently achievable within that crucial freight corridor would be significantly slowed):

Yeah, I think narrowing the corridor would be an outstanding initiative if we want to narrow down trade in the state. So I think, let's ... [interrupted by audience laughter and murmurs in response to that seemingly ironic statement]

I mean that's, that's honestly what it is ... because that's our corridor ... [audience applause]

So if you want less water to go through, get a smaller pipe. I'm not a plumber, but that's, that's how that would work ... and we would have less trade because that is our corridor to a world market ... Period ... That, that, the data there shows it.⁷

On information and belief, major political pressure was placed on FHWA officials by Hon. Patty Murray or by her staff to compel the granting of waivers for substantially **substandard highway lanes to accommodate unconstitutional use** of I-90's center lanes in a fashion that indisputably will increase motor vehicle accidents – and beyond denial result in loss of human lives – despite explicit objections raised by local FHWA officials before that political pressure applied through requests made by Ric Ilgenfritz, as a former staff member to Sen. Murray, as well as by you (directly or through staff). Nonetheless, the FHWA office's local Division Administrator, Daniel M. Mathis, P.E., noted on “Sound Transit – I-90 East Link Project Final Interchange Justification Report,” on June 22, 2011, his ongoing concerns that the “WB I-90 HOV lane is a safety issue.”

This and all other wrongdoing by the agency derives, substantially, from its efforts to suppress both its own direct cost-effectiveness obligations pursuant to RCW 81.104 and to RCW 81.112, and also its related participatory obligations to make its major resource allocations between bus-and-rail operations based on a “least cost planning methodology” pursuant to RCW 47.80.030, in the course of the agency's constant distortions of its duties to advance its rail-*uber-alles* agenda.

This dishonest and corrupting wrongdoing should begin to be rectified in supplemental analysis required as an initial element of the relief to be requested pursuant to this administrative appeal (as well as through litigation needed to obtain full market value for any I-90 corridor assets used).

⁷ A video file of Mr. MacIsaac's above-referenced question and Mark Anderson's above-quoted answer is available at <http://www.washingtonpolicy.org/events/details/2011-transportation-policy-conference> (starting at *circa* Minute 50).

Identification of appellant's specific interest in this appeal as required by Res. 7-1, §4.a-k

As ordinary applications of logic and of common sense indicate to every normal person – who is **not** paid by the agency to misunderstand through its quite generous use of local, state and federal dollars provided by citizens as local, state and federal taxpayers – a nominal FEIS that is not only premature and defective, but also dishonest and corrupting, adversely affects every citizen forced first to pay for a purported environmental analysis that is intended to obscure, and does so, while mouthing the agency's *faux* claims of transparency, and then to pay further in order to appeal its wrongdoing due to its patent failures to supply "reasonable alternatives" analysis, *inter alia*. The undersigned falls into that category squarely and must be and is thereby harmed, *sui generis*, with all of the agency's more-than-2.7 million taxpayers living within its jurisdictional boundaries, as well as with millions more not living therein, but shopping therein so as to pay transit taxes to it, together with every Washingtonian, statewide, harmed by its enormous waste of public tax funds that cannot be fully understood prior to supplemental reviews required by WAC 197-11-620 and by WAC 197-11-440.6.e, *inter alia*, and greatly needed for logical and common sense reasons.

When no analysis is made in circumstances wherein one alternative costs far less, does far more, and works far better with carpools, vanpools and emerging vanshare HCT modes, as well as also being fully constitutional, and wherein another alternative costs far more, does far less and works far less well with other HCT modalities, as well as being unconstitutional, all taxpayers are justly aggrieved, particularly when such nonsense is pursued through an obscenely expensive planning process conducted years, if not decades, in advance of obtaining any legal right for use of a route needed in order to achieve far-less-useful transit services at far greater cost, and especially when that very suboptimal financial outcome would also add to green house gases and other pollution.

Also, because the undersigned is a regular transit user and an occasional driver in and through the I-90 corridor, he suffers specific injuries, in fact, through great harm from the agency's failure to develop constitutionally authorized transit service there as fully and as promptly as possible with huge financial resources available (but for its pursuit of an unconstitutional option), and he would be further harmed in the future by the agency's intentional misconduct so as to increase dangers to the human lives of drivers in and through the I-90 corridor (including that of the undersigned).

Further, as a taxpayer to the district, the undersigned has already been harmed by its multimillion misallocations of limited tax resources to develop its premature-and-defective nominal FEIS, and he will be further harmed by its plans to undermine economic development and financial vitality as implicated by false claims to the Port of Seattle's key concerns stated in regard to degradation of freight mobility essential for prosperity (as is more fully indicated within Appendix D hereto).

Still further, the undersigned would be additionally harmed, both as a transit taxpayer and also as a fuel taxpayer, by institutionalization of underutilization of extremely valuable I-90 center lanes so to as to ensure long-term economic and financial outcomes that would create suboptimal uses of bridge roadbed by buses, carpools, vanpools and emerging vanshare modalities, together with imposition of greater environmental harms locally to air, water and other core elements of nature.

As president of Eastside Rail Now! – a grassroots environmental and rail advocacy organization – the undersigned has also been harmed because funds available for over 30 miles of north-south

rail service on the Eastside immediately, through adoption of a constitutional option for the I-90 corridor, is continuing to be delayed by machinations to facilitate an unconstitutional *nonoption*.

Until the agency stops withholding documents requested by the undersigned, added particularity as to the agency's specific errors, falsifications and other wrongdoing is not possible; corrective actions indicated and to be requested cannot be more fully stated; and reasons for major changes needed, and indeed mandatory, cannot be more explicitly indicated until such stonewalling ends.

Other specific harms are set forth as to initial, secondary, tertiary and additional matters stated more fully hereinabove, including but not limited to specific elements provided as examples of defects requiring supplementation in some instances and withdrawals of dishonest averment also essential in other instances, again, all provided while the agency intentionally withholds essential information in keeping with its longstanding misfeasant *modus operandi* with all of its taxpayers.

Notice as to reservation of rights

The undersigned hereby reserves all rights, including his right to amend this Appeal and to add to its documentation as additional information becomes available from materials long withheld from him by the agency's failures to provide documents requested pursuant to its central public disclosure obligations, as it has previously been found to do by the King County Superior Court.

Notice as to a scheduling *datum*

Since the undersigned is flying to the east coast today, going abroad tomorrow, and thereafter returning to the east coast in order to meet with congressional and agency staff in Washington D.C. before returning from that city to Kirkland on approximately August 10, 2011, request is formally hereby made that no actions be undertaken by the agency requiring any response by him until at least 10 days thereafter.

Respectfully submitted,



Will Knedlik
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425-822-1342

cc: Sound Transit Board of Directors

(*Nota been*: typographical and other errors, in the original filing, were corrected August 8, 2011)

Eastside Rail Now!

August 8, 2011

Ms. Joni Earl, Chief Executive Officer
Central Puget Sound Regional Transit
Authority (dba Sound Transit)
Union Station
401 South Jackson Street
Seattle, Washington 98104-2826

Re: Appeal of East Link FEIS; formal request for public hearing; and matters related thereto

Chief Executive Earl:

Attached please find a copy of my SEPA appeal of the agency's East Link FEIS – together with its attachments – which has been corrected to resolve an unseemly number of typographical and other mechanical errors, in the original submission, due to my need to file these materials before flying to the east coast, on August 26, 2011, upon rather short notice prior to an unexpected trip.

Nothing of substance has been altered in this editing process, even though the final line of text on the bottom of page 12 appears to have been omitted in printing, in the original filing, due to some glitch within the Word® program in capitalization of parenthetical materials earlier on that page 12. While I cannot explain this word process error, I do regret it, and I do hereby apologize for it.

Also, since my copy of the submitted materials included duplicate copies of one appendix and none of another, when I read them in Toronto, I assume that a mirror image of this error likely occurred in the submission made to you, and this too has now been corrected in the attached.

Request is hereby made that this corrected SEPA appeal be proved to the hearing examiner for his or her use, upon appointment, as well as to Board members by a copy to Marcia Walker.

I would appreciate an opportunity to begin reviewing all materials previously requested through unfulfilled public-disclosure requests during the agency's business hours, starting on August 15, 2011 and continuing daily until completed, commencing with the most recent pending request, and then continuing in reverse chronological order until all have been examined. To the extent that some materials have been transferred to the state archivist, then identification of documents in that category will be satisfactory since that office is much easier to work with than the agency.

Respectfully submitted,



Will Knedlik

cc: Marcia Walker

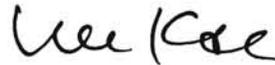
EastsideRailNow.org

wknedlik@eastsiderailnow.org

CERTIFICATE OF SERVICE

The undersigned appellant Will Knedlik hereby certifies upon his oath, through his signature below, that his Opening Brief of Appellant (Corrected), together with his motion for leave to substitute same for his timely filed Opening Brief of Appellant, was filed with Division I of the Court of Appeals, on February 7, 2013, for its transmittal to the Supreme Court thereby, and was also delivered by hand on this date to legal counsel for respondent Sound Transit as previously identified by name and by address in the Notice of Appeal.

DATED this 7th day of February, 2013.



Will Knedlik, *pro se*

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