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SUPREME COURT OF THE STATE OF WASHINGTON

WILL KNEDLIK,

Appellant,

v.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,

Respondent.

REPLY BRIEF

(Corrected)

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Comes now appellant Will Knedlik and presents his Reply Brief:

I. INTRODUCTION

The junior taxing district now styling itself as “Sound Transit” is a rogue governmental agency as shown, beyond reasonable doubt, by matters of public record, as well as by other materials before this Honorable Court.

That rogue agency’s *modus operandi* documents a pattern of serial fraud – unbroken from not later than December 9, 1994 – against general purpose government, against nearly three million state citizens, against appellate-and-trial courts and against the state auditor, *inter alia*, along with its growing pile of cover-ups, as outlined by appellant’s prior submissions.

This pattern of repeated fraud and of recurring concealments, as is evidenced both by public records and also by further demonstration herein, implicates misfeasance or malfeasance that is far and away the largest, the most extended and thus the most egregious in our state’s 123-year history.

Indeed, the rogue agency’s misconduct would include fraud against its own self-selected hearing examiner – for an administrative hearing as to legal inadequacies of a **nominal** Final Environmental Impact Statement for conversion of high-value elements of the Interstate 90 highway corridor to rail that underlies this appeal – were that contractor not also a participant.

However, such fraud would not be the last, given both a state trial court and also this high court having been intentionally misled thereafter.

In fact and in law, counsel's presentations on behalf of that rogue agency, both in the trial court below in open court and also before the nine justices of this Court in its briefing herein, reflect wrongdoing made patent by virtue of our state's overall jurisprudence as long constructed, squarely, on "logic, common sense, justice, policy, and precedent," *King v. State*, 84 Wn.2d 239, 250 (1974), as well as on several variants of this formulation.

Notwithstanding multiple ongoing deceits against all three branches of government, as well as against the People, critical legal inadequacies of the **nominal** project-level FEIS issued nearly two years ago continue ever to expand, including through but not limited to recent actions in this Court.

Hence, the central question is whether a rogue junior taxing district will be allowed to continue its massive frauds not merely upon legislative, executive and judicial branches of government, but also upon state citizens from whom all legitimate public authority derives, as the foremost element of our state's vital Declaration of Rights as specified through Article I, §1 of the Washington State Constitution, namely, that: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights," which incorporates its operative language directly from the Declaration of Independence's central principle (as actuated by the federal Congress in section 4 of the Enabling Act of 1889 to authorize statehood).

II. DISCUSSION

Fundamental defects of enormous import as to basic legal adequacy of a **nominal** project-level FEIS issued on July 15, 2011 – as identified in the initial administrative appeal filed with the junior taxing district shortly thereafter, in the Statement of Grounds for Direct Review filed herein in late 2012 and in appellant’s opening brief filed earlier this year – remain.

More significantly, several such paramount failures have become far worse and now yield greater legal inadequacies as particulars continue to implicate additional areas of quintessential *lacunae* in the junior taxing district’s purported examinations of outsize effects on the built-and-natural environment, within the central Puget Sound region, due to its sleights-of-hand machinations to suppress immense problems in the **nominal** project-level FEIS issued years before **any** sufficient project-level environmental review process is possible, either logically or legally, much less in fact at all feasible, constitutionally, for planned use of actual “crown jewel” assets of the state highway system held and managed as a trustee, in that fiduciary capacity, on behalf of **all** state motorists as beneficiaries of the colossal state constitutional trust created by operation of law through the 18th Amendment to the Washington State Constitution now codified as Article II, §40.

All this has occurred, and continues to evolve, as key factual, legal and unlawful acts and events generate or otherwise yield factual, legal and

constitutional circumstances that in turn exacerbate core problems underlying those major legal inadequacies of the **nominal** FEIS at issue herein.

Thus, substantial complexities devolving from interactions among a complex of administrative, constitutional, fiduciary and legal obligations outlined in prior submissions herein – as overwhelmingly shaped by highly demanding fiduciary duties owed by the state as a trustee for **all** motorists of this state as beneficiaries of the state constitutional trust created by the 18th Amendment – become yet more complex through such exacerbations.

While the simple clarity of trust jurisprudence in this state, both for private trusts and also for public trusts, informs such recent complications, as it has with previous convolutions, and while said robust trust doctrine is dispositive in favor of major interests of **all** state motorists as beneficiaries of the state constitutional trust at issue because “[c]ourts 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), as is reviewed through quotation from leading cases in prior briefing herein, the additional intricacies occurring in recent months merit careful notice, here, since each of them increases legal obligations to protect trust beneficiaries.

Indeed, state constitutional trust intersections and interactions with the State Environmental Policy Act, and with implementing Washington Administrative Code regulations, are made yet clearer by the recent events.

Among perhaps a dozen developments since this appeal was filed, thus complicating interrelated factual-and-legal issues herein, three from February 2013 highlight pivotal intersections between (1) minimal requirements for legal adequacy as to any legitimately **final** environmental review process for major public facilities, which are specified explicitly pursuant to RCW 43.21C.110 to include “roads” through WAC 197-11-440(6)(e)’s direct mandate for project proponents to review “the cost of and effects on public services” with therein-stated *foci* on deleterious effects on “utilities, roads, fire, and police protection” (but which have never been examined to this date nearly two full years **after** the **nominal** FEIS was issued), and (2) the state constitutional trust created by the 18th Amendment, for which the state holds and manages our state’s highway system, as a formal fiduciary, on behalf of **all** state motorists as beneficiaries of that trust owed complete loyalty (but for which the state has **not** fulfilled its demanding legal duties in numerous respects, as a fiduciary, in allowing a junior taxing district to distort the FEIS process, even were the state not, itself, a co-conspirator).

First, one quintessential constitutional deficiency centrally at issue in this matter – from initial filing of an administrative appeal in mid 2011, through issue identification within the judicial appeal as filed herein in late 2012 and up to February 20, 2013 – was squared by commitments to pay the full fair market value for any and all use of the Interstate 90 highway

corridor for any and all rail purposes by the junior taxing district's General Counsel, in open court, before all nine justices, during oral argument then, through repeated responses to repeated queries put to that inferior agency by Honorable James Johnson in *Freeman v. State* (Cause No. 87267-8).

While those open court commitments legally bind the junior taxing district to pay the full fair market value for uses of the center roadway and of all other highway assets for its planned East Link rail project – if such a usage is not determined by this Honorable Court to be unconstitutional *per se* for its patent violations of the 18th Amendment as interpreted by *State ex. rel. O'Connell v. Slavin*, 75 Wn.2d 554 (1969), and its legal progeny, for well over four decades – it does **not** establish what such a full-and-fair value would be, given hugely appreciated values of core highway assets at issue as components of the state constitutional trust created by that amendment, and given yet further increased values of said crucial highway facilities through a serial tolling program instituted by recent state legislatures.

However, major defects of the **nominal** project-level FEIS at issue herein could **not** be resolved in a manner sufficient to rectify its core legal inadequacies as to a squarely mandated but entirely unfulfilled obligation, pursuant to WAC 197-11-440(6)(e), for project proponents to review “the cost of and effects on public services” – inclusive of any-and-all adverse effects on “utilities, roads, fire, and police protection” – without establish-

ment of full-and-fair value through a rigorous analysis consistent with the most demanding of valuation methods and of appraisal practices necessary in order for the state to fulfill its likewise demanding fiduciary obligations as legally owed to **all** state motorists, as beneficiaries of the state constitutional trust created by the 18th Amendment, pursuant to black-letter trust jurisprudence in this state as articulated in *Brown v. Tucker*, 20 Wn.2d 740 (1944), and in *County of Skamania v. State*, 102 Wn.2d 127 (1984), and as more fully reviewed within appellant's previous submissions filed herein.

In short, the junior taxing district's open court commitments to full fair market value bind that inferior agency to full-and-fair value, which the trust jurisprudence of this state requires in any case, beyond dispute, even though it had not been so acknowledged by that East Link proponent until February 20, 2013. However, that open court undertaking does **not** in any way meet the requirements of WAC 197-11-440(6)(e) for project proponents to review "the cost of and effects on public services," as inclusive of any-and-all adverse effects on "utilities, roads, fire, and police protection," which is logically and legally impossible without the establishment of full-and-fair value through a valuation process based on all constitutional trust duties that cannot be sidestepped by state legislatures, by this Honorable Court or by any other state governmental entity contrary to the applicable state constitutional trust, as this Court made clear in *Skamania* in finding,

squarely, 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 its coordinate conclusions of law, noticing that "[t]he 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).

Second, a further quintessential constitutional deficiency centrally at issue in this matter, *ab initio*, was additionally squared less than a week later when then-Secretary Paula Hammond released the state Department of Transportation's package of preliminary reports documenting its huge-and-inexcusable violations of its central fiduciary duties owed to all state motorists, as beneficiaries of the state constitutional trust created by the 18th Amendment, including the "SR 520 Pontoon Construction Project Internal Report," which is dated February 26, 2013, as it was "Prepared, compiled and submitted by: John Reilly Associates International, Ltd."

While Mr. Reilly's examination neither acknowledges the *sub rosa* role of the junior taxing district's light-rail program in this multimillion-dollar disaster for the state constitutional trust and for its beneficiaries due to the state's misfeasance or malfeasance through its utter disregard for its

demanding fiduciary duties owed thereto – completely at variance with an unambiguous legal obligation based on “the State’s duty to act prudently” as explicated by this Court in *Skamania* – it directly identifies the defective design “capable of accepting light rail in the future,” at its page 3, among a handful of core purposes yielding the huge fiscal crater that then-Secretary Hammond has suggested could drain \$200 million from state trust funds.¹

Further, Mr. Reilly also directly identifies highly imprudent design processes, wholly incompatible with “the State’s duty to act prudently,” by which the constitutional cart was knowingly placed before the engineering horse, and by which a state constitutional trust has been thereby fleeced.

In particular, Mr. Reilly notes “**Early Procurement of pontoons**” – bolding in his report – “before the preferred alternative for the complete bridge was established” such that “[o]ne goal of the PCP contract was to provide pontoons that could be used in any of the several alternatives that might emerge as the final decision” for the replacement bridge (*Ibidem*).

Greater **im**prudence in a complex project would be hard to conjure.

¹Nor did Mr. Reilly identify that millions and millions of dollars financed with the state constitutional trust funds at issue herein – in order to pay for engineering to design bridge structures “capable of accepting light rail in the future” – squarely violate the holding of this court in *Slavin*, and in more-than-four decades of that *nonpareil* decision’s progeny, and thus required *sub rosa* processes by which the junior taxing district initially acted as a formal “colead” agency in the early environmental review for that highway project as it was being shaped and contoured, apparently without contributing one thin dime to major costs imposed in order to fashion a bridge program “capable of accepting light rail in the future,” and then abandoned that “colead” role once it had thereby affected multimillion-dollar or greater freeloading on the state constitutional trust and on every state motorist.

Clearly, execution of this cart-before-horse design process for the complexities of a floating bridge has failed, not unexpectedly, when state engineers are told to devise pontoons capable of accommodating **multiple** then-as-yet-unspecified bridge deck structures for state motorists – as well as facilitating a still-unspecified rail capacity – but a far greater problem is in the **imprudence** of this minuet (even without *sub rosa* elements in order to foster the junior taxing district’s rail plans to violate both core interests of **all** state motorists as beneficiaries of the state constitutional trust created by the 18th Amendment and also over four decades of clear jurisprudence).

Finally, Mr. Reilly’s entire report outlines substantial problems that are inherent to all ferrocement naval vessels constructed for uses as bridge substructures – whether for a State Route 520 replacement floating bridge, for the Homer M. Hadley floating bridge at issue herein or for any other floating bridge – especially when future rail usage thereof is contemplated.

In particular, Mr. Reilly outlines critical problems at the numerous ferrocement interfaces between massive structural internal steel elements, for each pontoon, placed within exterior concrete, and related problems in various complex interactions as the internal steel necessary for strength is laid out and as concrete is poured on, as combined ferrocement structures are cured, and as tensioning is subsequently applied for multiple purposes discussed in somewhat technical terms in that detailed preliminary report.

The care of this pivotal report in these essential matters highlights immense gaps in the **nominal** FEIS at issue herein so as to evidence huge legal inadequacies, particularly given the state constitutional trust assets relied on, and especially given “the State’s duty to act prudently” to protect the interests of **all** state motorists as beneficiaries of the trust created by operation of law through the People’s approval of the 18th Amendment.

What Mr. Reilly’s report is not called upon to do is to discuss those related ferrocement problems of far-more-gigantic dimensions that follow on those challenges which he appears to have explicated ably – albeit with one *caveat* after another about the preliminary nature of his examinations and the need for additional studies – if and when a bridge design “capable of accepting light rail in the future” in fact encounters massive forces that would be imposed as immensely heavy “light rail” vehicles crash down on and then lift off of floating structures simultaneously pummeled by waves.

Unfortunately, neither the **nominal** FEIS, issued on July 15, 2011, nor the 2013 SEPA Addendum, issued on March 26, 2013, have reviewed any of the quintessential ferrocement problems implicated by that central reality were fixed-rail vehicles to be imposed on floating bridge structures, which has never been done anywhere in the world to date, if that were to prove to be feasible physically, which remains unclear as discussed below.

What is **missing** is thus vital for understanding legal inadequacies.

Central to the rather short useful lives of floating bridges – which are measured in scores of years versus millennia for some roadbeds built by Julius Caesar and still in use two thousand years later – is flexion in the ferrocement-pontoon naval vessels used to support bridge superstructures, whereby critical internal rebar elements are bent relentlessly through wave action ranging from minute to immense, through loading forces likewise ranging from small to great as unceasingly imposed and through unloading forces similarly ranging from the light weight of a single bicycle rider to immense weight of so-called light rail train sets made of multiple gigantic-weight and thus-flexion-causing railroad cars giving the lie to “light rail.”

The starting point for legally adequate analysis of adverse impacts on the built-and-natural environment in this regard – as squarely required by WAC 197-11-440(6)(e) for review of “the cost of and effects on public services,” including negative effects on “utilities, roads, fire, and police protection” – is myriad physical interactions between steel and cement in ferrocement when waves lap gently or crash ferociously and when massive train sets pound down on one end of a bridge and lift off from its other end.

While engineers will have to determine the full range of problems that must ultimately be studied in order to comply with the patent legal requirements imposed by SEPA pursuant to WAC 197-11-440(6)(e) – when this is eventually begun on a highly belated timeline after years of legally

defective review of impacts on the built-and-natural environment in the central Puget Sound basin – the pivotal issue involves the same physical forces that any five year old can employ to break a shiny steel paperclip.

Indeed, the process of bending a paperclip back and forth for some relatively short period of time to create a complete failure of the structural strength of the steel therein – with smaller flexion causing total failure less quickly than greater flexion – is substantially identical to physical realities of heavy trains hammering down on a floating bridge (although the points differ at which degradations inevitably yield an ultimately total collapse).

Ferrocement vessels have their internal structural rebar encased in a concrete mixture, of course, and this means that flexions are modulated far more than direct bending of a paperclip by a child enthused by feeling the steel warm in his or her hands for the first time, through such bending, but it also means that flexions inexorably separate concrete from rebar and thus create a second type of failure that must be studied in order to comply with any logically reasonable and legally adequate analyses of impacts on the built-and-natural environment as squarely required by SEPA pursuant to each component of each mandate imposed by WAC 197-11-440(6)(e).

Whether the physical modality is a tiny steel paperclip twisted in the hands of a five year old or enormous ferrocement pontoons twisted in Lake Washington by the huge forces of wind-driven pounding waves and

by the immense weight of railroad cars, the physical strength of structural steel is inevitably degraded, with each flexion, as bend after bend occurs.

However, wave action can and does greatly **multiply** the severities of flexion in ways that even the most energetic five year old cannot, and in ways that are not knowable and so cannot be known until legally adequate environmental review regarding this additional matter has been conducted, which has never been undertaken by the legally inadequate **nominal** FEIS issued in mid 2011 (even after a 2013 SEPA Addendum added last month).

Among what is not known are just where the point of total physical failure is reached, and what the degree of fiscal impact is due to premature aging of already short-lived floating bridges, because neither has ever to date been studied, and, more critically, because neither can be studied now, nearly two full years **after** issuance of a **nominal** FEIS, since no design as yet exists for any proven transition structure – a so-called “track bridge” – necessary to allow fixed-rail trains to transfer from fixed rails on the land sides of Lake Washington to floating rails somehow affixed to a floating bridge (a feat never engineered anywhere in the world, heretofore, and a task that has defied and continues to defy a proven solution by the junior taxing district, year after year, as one design is replaced by another, and as key testing is repeatedly delayed, year by year, and now planned no earlier than 2014 for a rail project that received its **nominal** FEIS in mid 2011)!

Beyond these severe-but-unstudied ferrocement problems as to the use of state constitutional trust highway assets for an as-yet-**hypothetical** rail purpose – contrary in multiple vital respects to “the State’s duty to act prudently” – constant flexion, as exacerbated by wave action, will separate structural internal steel from the cement in which it is encased, and this too creates inexorable but unexamined physical failure points, as well as huge fiscal issues as to “crown jewel” trust assets due to premature aging of the very valuable but already short-lived floating bridge assets at issue herein.²

Again, Mr. Reilly’s study did not examine these issues because its mandate was narrower,³ and is not to be faulted, but legal inadequacies of the junior taxing district’s **nominal** FEIS and violations of major fiduciary duties by the state through participation in this dishonest process are clear.

Third, the junior taxing district’s “track bridge” misadventures are not as readily accessible as its General Counsel’s open court commitment to payment of full fair market value for usage of “crown jewel” highway

²Design of the junior taxing district’s most recent attempt to engineer a so-called “track bridge” transition from solid ground to floating bridge for its planned East Link light rail project remains too inchoate, after several years of previously and to date failed efforts to do so, to allow essential examination of the level of stray current that will unavoidably be introduced into the ferrocement structures of the “crown jewel” highway assets held and managed as a state constitutional trust and that will to some degree thereby cook the steel rebar therein so as to reduce its structural strength, physically, and its useful life, fiscally. However, these potentially enormous adverse impacts on state constitutional trust assets shall require careful review, when knowable in sufficient detail to allow compliance with “the State’s duty to act prudently,” respecting an inevitable peril that is genuinely lethal.

³The full “SR 520 Pontoon Construction Project Internal Report,” dated February 26, 2013, is now available at <http://www.wsdot.wa.gov/Projects/SR520Bridge/library.htm>.

assets in the Interstate 90 corridor, on February 20, 2013, or as the state Department of Transportation's release of a series of self-critical reports, on February 26, 2013, because the comedy or tragedy of errors in devising and then abandoning one "track bridge" design after another – at a cost of tens of millions of taxpayer dollars – has been systematically covered up.

However, on February 7, 2013, the junior taxing district's Citizen Oversight Panel was given an in-passing update which effectively claimed that all is well, at last, despite testing of the latest iteration of the so-called "track bridge" having been pushed off into the following year, yet again, in keeping with a pattern that has been extending the planned date for crucial testing, on a recurring basis, year after year after year, and despite that in-passing status report being limited to the one slide attached as Exhibit A.

Even putting aside the patent infinite-regress approach to genuine testing of the engineering *sine qua non* for the complete East Link light rail project – which represents and is a physical show-stopper essentially equivalent to the fiscal show-stopper involved in a constitutional challenge to utilization of 18th Amendment highway assets by *Freeman v. State* – a quintessential issue for "the State's duty to act prudently" is raised by the single presentation slide produced for the COP and attached as Exhibit A.

In particular, while that slide does **not** specify that testing actually will occur in 2014, and while oral presentations were rather slippery as to

this major point, what it does make clear is that the planned testing will be conducted at a leading rail-test facility in Colorado, that “[t]wo full scale prototypes” will be involved in that testing, and that “ST vehicles [will be] tested on track bridges” to be constructed there for its long-belated testing.

What is **not** indicated in this extremely sparse presentation slide – nearly a full decade into a snake-bitten design, misdesign, and redesign process – but what is known because of inquiries made by COP members on February 7, 2013, including by an *emeritus* engineering professor from the University of Washington, is that “vehicles tested on track bridges” in Colorado will **not** experience **any** actual wave action because **no** facilities exist there for proving functionality of a final engineered-rail design in the context of wave action that would characterize rail usage of the Homer M. Hadley floating bridge, and that, instead, rails in place in Colorado will be raised and lowered by a static jacking process that can in no way replicate waves absolutely critical with respect to quintessential constitutional-and-legal issues identified in appellant’s earlier submissions and hereinabove.

Simply put, without facilities that allow in-water testing with live wave action, absolutely vital engineering data cannot be generated, much less captured for analysis, and neither legal duties to review “the cost of and effects on public services” can be met, pursuant to WAC 197-11-440, nor constitutional obligations imposing “the State’s duty to act prudently”

can be fulfilled, pursuant to the 18th Amendment approved by the People.

Even if a crime is not made out by such circumstances, and crimes with respect to persons who exercise authority in positions of public trust require careful examination by the Attorney General of this state before a rush to judgment as to whether one or more crimes are being committed, the legal inadequacies of the **nominal** FEIS go far beyond any joke of any kind to a type of mockery of **all** state motorists protected as beneficiaries of the state constitutional trust approved by the People, on amending the Washington State Constitution, to protect themselves from rogue officials, based squarely on previous appropriations of \$10 million to finance public schools from then state statutory trust funds for highway purposes during the greatest depth of the Great Depression, but based prospectively on the fear of still greater misappropriations through misfeasance or malfeasance.

Clearly, beyond reasonable doubt, the junior taxing district, gross legal inadequacies of its **nominal** FEIS and its numerous cover-ups, *inter alia* – in order to steal \$3 billion or \$4 billion or \$5 billion from **all** state motorists as beneficiaries of the state constitutional trust as created by the 18th Amendment to prevent just such a gigantic theft by that rogue agency or by any other such miscreant government body or official – document the total correctness of the People in exercising their sovereign power on and by means of voter approval of the 18th Amendment on November 7, 1944.

These three recent developments do not purport to be an exhaustive list of all major evidence recently devolving as to major legal inadequacies in the **nominal** project-level FEIS, but each is of actual illustrative import.

Such gargantuan failures as to minimally adequate examinations of the built-and-natural environment with respect to a specific rail project, in the greater Seattle area, all derive in one fashion or another from the junior taxing district's remarkably casual treatment of its **nominal** project-level FEIS as if it were nothing more than an initial programmatic-level FEIS, and thus from gigantic failures to review the specifics of key project-level impacts *vis-à-vis* explicit statutory, administrative and constitutional law, such that crucial adverse impacts on state constitutional trust assets have **not** received short shrift in analysis, but **NO** examination whatsoever, even though key trust assets are at the heart of the **nominal** project-level FEIS.⁴

⁴While the state's role in development of the **nominal** project-level FEIS at issue would appear to have been secondary to the lead taken by the junior taxing district, consistently, in advancing a completely premature and highly defective environmental review process, even if the state is innocent of aiding and abetting that inferior agency's *modus operandi*, based on repeated fraud and cover-ups, the state's participation does not and cannot meet the minimal level of fiduciary obligations it owes to trust beneficiaries respecting factual-and-legal inadequacies regarding proposed uses of trust assets, for a token payment, with apparently **no** analysis of the full-and-fair market value required of a trustee charged with "the duty of a trustee to administer the trust in the interest of the beneficiaries," such that 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," and such that "[n]o exception can be made to this rule," *Brown v. Tucker*, 20 Wn.2d 740, 768 (1944), particularly in circumstances of a state constitutional trust, such as the applicable 18th Amendment trust at issue herein, after this Court squarely so determined through its pivotal decision in *County of Skamania v. State*, 102 Wn.2d 127 (1984), that the Forest Products Industry Recovery Act of 1982

The most generous interpretation of gigantic legal inadequacies in the **nominal** project-level FEIS promulgated by the junior taxing district in July, 2011 is, likely, that major adverse environmental impacts are not yet known, which is certainly the case in several instances, because some are still unknowable, which is clearly the case with the crucial full-and-fair market value question, with multiple flexion issues, and with stray current.

However, given the indisputable necessity of information adequate to inform both **all** relevant state policymakers regarding “crown jewel” assets of the state constitutional trust created by the 18th Amendment and also **all** state motorists as beneficiaries of that valuable state constitutional trust respecting those “crown jewel” highway holdings, and given patently inadequate information as to the full-and-fair value of those “crown jewel” highway properties, as to shortening of useful lives of core floating bridge structures from all degradation and from stray current both physically and fiscally, and as to destructive impacts of stray current, *inter alia*, the core

had “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), because every “trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests” (at 134), and that “when the State transfers [constitutional] trust assets such as contract rights it must seek full value for the assets” (*Ibidem*), because 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,” through citation to *Ervien v. United States*, 251 U.S. 41 (1919).

Simply put, given our state’s highly demanding fiduciary obligations, as owed to **all** state motorists as beneficiaries of the state constitutional trust created by the 18th Amendment, it need not be involved in the junior taxing district’s fraud, cover-ups or wholly defective environmental review gambits to fall far, far short of “the State’s duty to act prudently.”

“common sense” component of our state’s overarching legal jurisprudence makes entirely clear that completely inadequate information is available, nearly two years **after** the junior taxing district issued its **nominal** FEIS, to comply with absolutely pivotal obligations to examine “cost of and effects on public services,” inclusive of all “roads,” under SEPA pursuant to RCW 43.21C, as directly mandated by WAC 197-11-440(6)(e), and as clearly identified by the administrative appeal filed by appellant in July, 2011.⁵

The issuance of a **nominal** FEIS is thus completely premature in circumstances wherein truly pivotal matters are simply **not** yet knowable.

As this Court has noted repeatedly: “There is nothing unconstitutional about common sense.” *State v. Dixon*, 78 Wn.2d 796, 798 (1971).

Gargantuan adverse impacts on the built-and-natural environment – particularly on the highway-and-road system of the state as called out specifically in WAC 197-11-440(6)(e) – have never been dealt with by the

⁵As earlier submissions by appellant have identified, heretofore, economic analysis thus indisputably required for public infrastructure, including roads, as elements of the built-and-natural environment – and equally undeniably **never** undertaken by the junior taxing, by the state or by any other proponent of the **nominal** FEIS up to and including this day – is but one of three separate-but-interrelated examinations of benefits and of costs required explicitly as statutory duties mandating 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 thus-far-never-performed state “least cost planning methodology” (RCW 47.80.030), and through likewise-unfulfilled “reasonable alternative” comparisons in order to ensure rail costs *qua* “equal to or less than comparable bus” or other rapid transit systems (RCW 81.104.120).

Neither of these two additional required studies has been undertaken by the junior taxing district, to this date. even though it has spent literally tens of millions of taxpayer dollars, already, through its repeatedly cart-before-horse environmental review sleights-of-hand.

junior taxing district's draft, supplemental and **nominally** final review of adverse effects on the built-and-natural environment within greater Seattle, nor in a lengthy 2013 SEPA Addendum issued by the junior taxing district on March 26, 2013 without provisions of any opportunity for any input by any state citizens or of any process for any opposition to legal inadequacies in continuing to fail to deal either with core issues identified in appellant's prior submissions, or with further critical defects discussed hereinabove.⁶

Submissions presented by legal counsel on behalf of the rogue junior taxing district seek by various and sundry means to avoid **both** the core SEPA obligation of the agency to review adverse impacts on the built-and-natural environment in the central Puget Sound region, including critically "the cost of and effects on public services" required by WAC 197-11-440 that cannot be met through the legally inadequate **nominal** FEIS *vis-à-vis* the variety of essential defects identified hereinabove as crucial examples of many more deficiencies, and **also**, far more importantly, constitutional infirmities implicated by planned use of "crown jewel" highway assets for the East Link light rail project that trigger the **far higher level of scrutiny** that is required as to "the State's duty to act prudently," together with the host of additional demanding fiduciary duties owed to **all** state motorists

⁶This extended but incomplete 2013 SEPA Addendum appears to be available online at: [http://www.soundtransit.org/Documents/pdf/projects/eastlink/SEPA%20addendum%20013/201303_East_Link_Addendum_SEPA\(0\).pdf](http://www.soundtransit.org/Documents/pdf/projects/eastlink/SEPA%20addendum%20013/201303_East_Link_Addendum_SEPA(0).pdf).

as beneficiaries of the state constitutional trust created by operation of law when the People of this state exercised their sovereign power, and will, to amend the Washington State Constitution to transform a series of previous state statutory trusts to protect highway assets into one constitutional trust.

This exercise of sovereign power by the People imposes far higher and far more demanding duties than can be met by the legal inadequacies of the **nominal** FEIS that is so defective that, frankly, it could not be found to have fulfilled SEPA requirements, even absent constitutional demands, since the entire exercise is built upon inflated ridership projections that the rogue agency has been forced to acknowledge to the federal government to have been grossly exaggerated, in its highly revealing *Before and After Study*, as has been discussed more fully within appellant's opening brief.

The "common sense" jurisprudence of this Honorable Court allows it to recognize when *res ipsa loquitur*, and this is clearly such an instance.

Likewise, as discussed in appellant's earlier submissions, the trial court erred in failing to divide elements as to purely administrative issues from those involving underlying constitutional rights that were excluded by the junior taxing district's self-selected hearing examiner, and in also failing to impose a sanction less severe than dismissal at least as to central constitutional questions that could not be extinguished in a challenge to an administrative function by a hearing officer within a superior court appeal.

III. CONCLUSION

As appellant's previous submissions have noted, all common law systems that develop through decisions in cases brought by litigants, who have decided to bring appeals on outcomes in trial courts unsatisfactory to them for any number of reasons, will and do evidence *lacunae* within such jurisprudence respecting various administrative, constitutional, fiduciary and legal constructs necessarily thus deriving from that decisional process.

Here, these circumstances involve constitutional rights that thereby cry out for resolution today, and that therefore support reversal of the trial court below hereby requested of this Honorable Court by appellant again.

DATED on this 22nd day of April, 2013, and

Respectfully submitted,



Will Knedlik, *pro se*

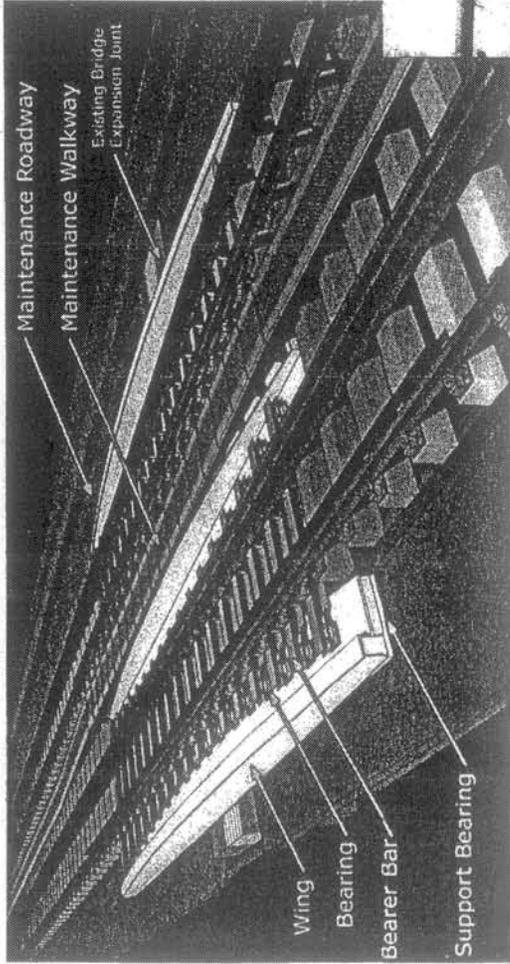
EXHIBIT A

Citizen Oversight Panel

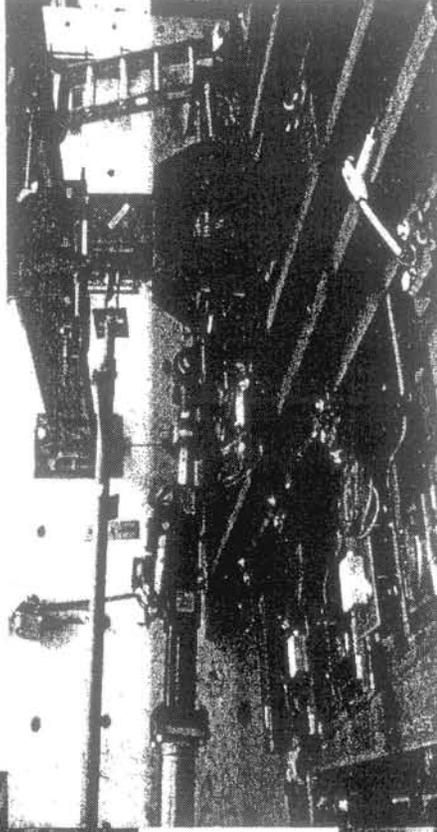
East Link Extension

February 7, 2013

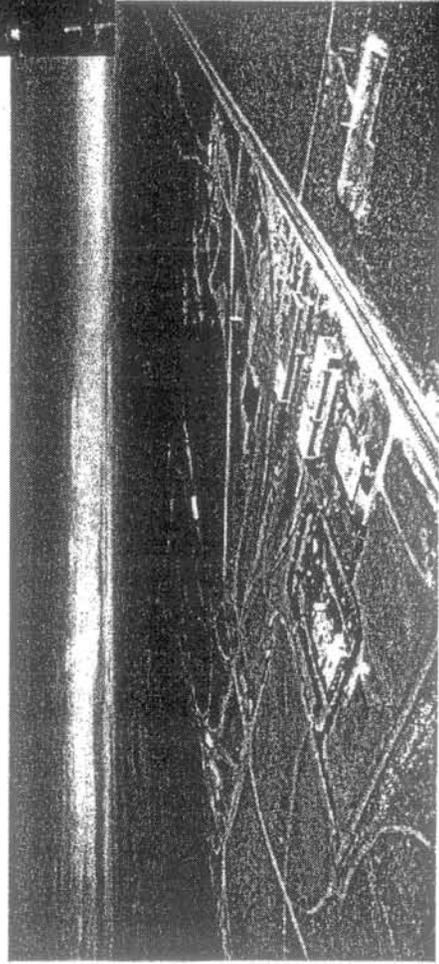
Track Bridge



Concept
computer modeling
vehicle testing



US Test Facility
testing movements
measuring stresses



Full Scale Test in Colorado
Two full scale prototypes
ST vehicles tested on track bridges



RIDE THE WAVE

CERTIFICATE OF SERVICE

The undersigned Appellant Will Knedlik hereby certifies on his oath, through his signature below, that his Reply Brief (Corrected) in this matter was filed with Division I of the Court of Appeals on April 22, 2013, for transmittal to the Supreme Court thereby, and was also delivered by hand on this day to legal counsel for Respondent Sound Transit as previously identified by name and by address in the Notice of Appeal.

DATED this 22nd day of April, 2013.



Will Knedlik, *pro se*