

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUILDING A BETTER BELLEVUE; and
FRIENDS OF ENATAI

Plaintiffs,

v.

U.S. DEPARTMENT OF
TRANSPORTATION, FEDERAL TRANSIT
ADMINISTRATION; R.F. KROCHALIS, in
his official capacity as the Regional
Administrator of the FTA, Region X; U.S.
DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION;
and DANIEL M. MATHIS, in his official
capacity as the Division Administrator,
Washington Division, for the Federal Highway
Administration,

Federal Defendants,

and

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY ("SOUND
TRANSIT"),

Interested Party.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF - 1

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I. PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief challenging the Records of Decision (“ROD”) issued by the U.S. Department of Transportation, Federal Transit Administration (“FTA”) and U.S. Department of Transportation, Federal Highways Administration (“FHWA”), finding that the July, 2011, East Link Project Environmental Impact Statement (“FEIS”) satisfied the requirements of the National Environmental Policy Act (“NEPA”) for construction and operation of Sound Transit’s East Link Light Rail Project.

2. This action also challenges the determination by the FTA that the requirements of “Section 4(f)” of the Department of Transportation Act of 1966, 49 U.S.C. § 303(c), have been met. Section 4(f) statute prohibits the FTA from authorizing any project that requires the use of any public parkland, recreational areas, wildlife or waterfowl refuge areas or historic sites unless there are no feasible and prudent alternatives and the proposal has taken all steps to minimize such harm.

3. This action arises under and alleges violations of: (1) the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. (“NEPA”); (2) The Department of Transportation Act, 49 U.S.C. § 303(c); and (3) the Administrative Procedures Act, 5 U.S.C. § 501, et seq. (“APA”), and the implementing regulations of these laws.

4. Plaintiffs seek a declaratory judgment finding that the FTA and FHWA were arbitrary and capricious and failed to comply with federal law by finding that the requirements of NEPA were satisfied by the July, 2011, East Link Project FEIS.

5. Plaintiffs seek a declaratory judgment that the FTA was arbitrary and capricious, abused its discretion and violated its substantive duty under Section 4(f) of the

1 Department of Transportation Act by approving the proposed East Link Project despite
2 there being feasible and prudent alternatives that will not require harm to public parks,
3 recreation areas, wildlife habitat and historic sites.

4 6. Because the FTA and FHWA have not complied with the requirements of
5 Federal Law, plaintiffs seek, temporary, preliminary and permanent injunctions prohibiting
6 commencement of the proposed construction.

7 7. This relief is necessary to preserve the status quo, prevent illegal agency
8 action, and to forestall irreparable injury to the environment and plaintiffs' interests.

9 II. JURISDICTION AND VENUE

10 8. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question);
11 § 2201 (declaratory relief); and § 2202 (injunctive relief).

12 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and § 1391(e).
13 The events or omissions giving rise to these claims occurred in King County, Washington.

14 III. PARTIES

15 10. Plaintiff Building a Better Bellevue is an association of Bellevue
16 homeowners, residents, businesses, and neighborhood groups that are concerned with
17 protecting Bellevue's neighborhoods and the parks and historic resources in Bellevue's
18 neighborhoods.

19 11. Building a Better Bellevue was established in June 2010 to give voice to the
20 views and positions of its members and to represent to political and governmental leaders
21 of the City of Bellevue, and other local, regional, and federal government agencies, the
22 strong concerns of its members that implementation and operation of light rail services in
23 the City of Bellevue does not: (1) diminish the value, livability, and viability of their
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1 homes, neighborhoods, and businesses; (2) damage their neighborhoods' nearby parks and
2 natural environment; (3) diminish their financial resources through excessive taxes and
3 other public financing mechanisms; (4) disrupt or disable the utility, use of, and access to
4 other transportation resources; (5) introduce visual blight, excessive noise and other
5 attributes whose presence will make their homes, neighborhoods and businesses unusable
6 and unsafe; and (6) create unsafe physical and social environments in and around their
7 homes, neighborhoods and businesses.
8

9 12. If the East Link Light Rail Project goes forward as approved in the ROD
10 Building a Better Bellevue's members will be harmed because the project will, at a
11 minimum: (1) take large amounts of private property without good reason, and without
12 proper compensation; (2) permanently expose residential homes and private businesses to
13 high levels of noise, vibration and visual blight; (3) permanently destroy the natural
14 environment of the nearby Mercer Slough Nature Park and other substantial nearby natural
15 areas and parks; (4) destroy historically significant structures such as the Winter House,
16 and architecturally significant structures such as the Mithun residences in Surrey Downs;
17 and (5) displace businesses and other organizations without due consideration of the role
18 that they play in their local communities. A declaratory judgment and / or injunction
19 entered in favor of Building a Better Bellevue would substantially redress these harms.
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22 13. Plaintiff Friends of Enatai is a community association composed of
23 individuals that reside in South Bellevue neighborhoods along Bellevue Way and 112th
24 Avenue SE between Interstate 90 ("I-90") and Main Street along the Mercer Slough Nature
25 Park. Friends of Enatai was formed for the purposes of collecting and disseminating
26 information about Sound Transit's East Link Light Rail Project, organizing and facilitating
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1 community participation during the environmental review process, providing comment on
2 the Draft EIS and Final EIS, and advocating for alignment considerations that would
3 minimize impacts on the Mercer Slough Nature Park and surrounding neighborhoods.

4 14. Friends of Enatai's members enjoy visual and physical access to the Mercer
5 Slough Nature Park and its amenities, including the historic Winters House which is
6 Bellevue's only public building on the National Historic Register and serves as the home
7 of the Bellevue Historical Society and the Mercer Slough Nature Park visitor's center.

8 15. If the East Link Light Rail Project goes forward as approved in the ROD,
9 Friends of Enatai's members will be harmed by, among other things, the loss of physical
10 and visual access to the Mercer Slough Nature Park and Winters House; the permanent
11 loss of several acres of public park property, including hundreds of mature trees, wetland
12 and wildlife habitat; the probable loss through project construction and / or operation of the
13 Winters House; the diminishment of the Mercer Slough's natural ambience through
14 increased noise impacts, significant increases in traffic congestion adjacent to the park, and
15 unmitigated noise, light and glare impacts to the park from the proposed multi-story 1,400
16 stall park-and-ride facility to be constructed on the park's western edge; and the
17 diminishment of the quality of life in South Bellevue's neighborhoods. A declaratory
18 judgment and / or injunction entered in favor of Friends of Enatai would substantially
19 redress these harms.

20 16. The injury suffered by all Plaintiffs is due to the federal defendants'
21 approval of the East Link Project.

22 17. Plaintiffs seek a declaratory judgment that the actions of the federal
23 defendants were arbitrary and capricious. Because the FTA's substantive decision under
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1 Section 4(f) could have been influenced by a legally sufficient review and process,
2 plaintiffs seek declaratory and injunctive relief confirming that the decision approving
3 construction of the East Link Project is null and void and that construction may not
4 proceed. Plaintiffs' injury will be redressed by a favorable decision.

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6 18. Plaintiffs' interests are within the zone of interests protected by NEPA and
7 Section 4(f). NEPA requires that federal agencies take a "hard look" at the environmental
8 impacts of their actions through preparation of an adequate EIS before making decisions.
9 Section 4(f) prohibits harm to publicly owned parks, recreation areas, wildlife areas and
10 historic sites where there are feasible and prudent alternatives.

11
12 19. Plaintiffs have also suffered a procedural injury because the FTA's and
13 FHWA's failure to properly follow NEPA procedures has impaired their distinct and
14 concrete interest in full public environmental review and comment on the proposed project.
15 The requirements of NEPA were expressly enacted to protect citizens and organizations
16 like plaintiffs and their members by ensuring thorough environmental review of a proposed
17 project.

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19 20. Plaintiffs have been involved in the public processes associated with review
20 and comment on the proposed facility and the federal agencies' review of the proposal.

21 21. Plaintiffs have exhausted their administrative remedies.

22 22. Building a Better Bellevue's and Friends of Enatai's individual members
23 would have standing to bring this action, the organizations' purposes relate to the interests
24 sought to be vindicated in this action, and the claims asserted do not require the
25 participation of individual members.

26
27 23. Plaintiffs have standing to bring this action.

25. The proposed East Link Project is a transportation project that is expected to receive federal funding from the FTA. Therefore the FTA was required to document compliance with Section 4(f). The FTA and Krochalis are the agency and agency official that determined that Section 4(f) was satisfied.

27. The East Link Project will require multiple approvals from the FHWA, including an Interchange Justification Report, approval of conversion of highway lanes to high capacity transit, and approval of bridge expansion joint design.

28. Interested Party Central Puget Sound Regional Transit Authority (“Sound Transit”) is the project proponent for the East Link Project.

29. Sound Transit proposes to construct and operate an extension of its electric light rail transit system between Seattle and the east side of Lake Washington, including Bellevue. The proposal, known as the “East Side Light Rail Transit Project or “East Link Project” is proposed to cross Lake Washington in the center lanes of U.S. Interstate 90 (“I-90”) in a dedicated right-of-way.

1 30. In 1976 a memorandum agreement was entered between the Cities of
2 Seattle, Mercer Island, and Bellevue; King County; Metro Transit; and the Washington
3 State Highway's Commission that confirmed the configuration of the I-90 roadway and
4 specified that two lanes would be designed for and committed to transit use.
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6 31. While the 1976 memorandum agreement specified that all or part of the
7 transit lanes would be designed so that conversion to "fixed guideway" would be
8 "possible," it did not require transit use of the transit lanes be limited to rail or light rail.

9 32. The 1976 memorandum agreement was not subject to review under NEPA.

10 33. Sound Transit was formed in 1992.

11 34. In 1996 the Sound Transit Board adopted Sound Move, the first phase of
12 regional High-Capacity Transit ("HCT") investments and the Regional Transit Long
13 Range Vision. The Sound Transit Long Range Vision identified the I-90 corridor as a
14 potential future light rail corridor but did not limit HCT to light rail.
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16 35. The 1996 Long Range Vision was not subject to review under NEPA.

17 36. Starting in 1998, the Washington State Department of Transportation
18 ("WSDOT") and Sound Transit served as co-leads on the Trans-Lake Washington Study,
19 which identified a set of potential solutions to improve transportation across and around
20 Lake Washington. The Trans-Lake Washington Study identified the I-90 corridor as the
21 first priority for crossing Lake Washington with high-capacity transit. The Trans-Lake
22 Study did not limit consideration of HCT to light rail.
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24 37. The Trans-Lake Study was not subject to review under NEPA.

25 38. In 2004, the Puget Sound Regional Council ("PSRC") prepared the Central
26 Puget Sound Regional High-Capacity Transit Corridor Assessment. The Assessment
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1 found that the cross-lake corridor connecting Seattle, Bellevue, Overlake and Redmond
2 had the highest potential for development of HCT alternatives. The 2004 Assessment did
3 not limit consideration of HCT to light rail, but instead included bus rapid transit.

4 39. The 2004 Assessment was not subject to review under NEPA.

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6 40. In 2005 Sound Transit adopted an updated Long Range Plan. The 2005
7 Long Range plan limited itself to two alternative high-capacity transit modes on an
8 exclusive right-of-way over the I-90 corridor: light rail transit and “rail-convertible bus
9 rapid transit.” The 2005 Long Range Plan did not consider bus rapid transit that was not
10 convertible to rail.

11 41. On July 13, 2006, the Sound Transit Board identified light rail as the
12 preferred mode of high-capacity transit from Seattle to Bellevue to Redmond over I-90.

13 42. Sound Transit’s decision limiting consideration of high-capacity transit over
14 I-90 to light rail was not subject to review under NEPA.

15 43. The 2005 Long Range Plan includes a rail extension to Issaquah.

16 44. On August 22, 2006 Sound Transit and the FTA published in the Federal
17 Register a Notice of Intent to prepare a NEPA EIS for the East Link Project. Sound
18 Transit and FTA conducted scoping under NEPA in September, 2006, to solicit input on
19 the project purpose, need, alternative alignments, profiles and station alignments. Scoping
20 comments included requests to consider a tunnel alternative between I-90 and downtown
21 Bellevue.

22 45. On December 14, 2006, the Sound Transit Board identified the alternatives
23 to be studied in the EIS. Sound Transit did not consider an alternative tunnel route in
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1 Segments B or C between I-90 and downtown Bellevue. The only alternatives considered
2 for Segments B and C were surface or elevated light rail.

3 46. In November, 2008, prior to publication of the Draft EIS, Sound Transit
4 presented "Sound Transit 2" for public vote. Sound Transit 2 provides for mass transit
5 improvements in the Puget Sound region, including the East Link Project. The plan
6 included a conceptual future extension to Issaquah along the north side of I-90.
7

8 47. Sound Transit 2 includes funding for planning studies that are designed in
9 order to "narrow the range of alternatives, evaluate potential routes and station locations
10 and terminals." The planning studies funded include \$3 million for "Light rail planning
11 study from South Bellevue to Issaquah in the I-90 Corridor."
12

13 48. The Draft EIS for the East Link Project was issued on December 12, 2008.

14 49. In July 2010, after publication of the Draft EIS but almost a year prior to
15 publication of the Final EIS, the City of Bellevue requested that the Sound Transit Board
16 consider modifications to the "BNSF Alternative" (or "B7") and the "Preferred 110th NE
17 Tunnel Alternative (C9T), including a new South Bellevue Station adjacent to I-90 and a
18 NE 2nd Portal for the Preferred Alternative C9T tunnel. The City initiated and submitted
19 a conceptual design and screening level evaluation of these options or modifications to
20 Alternative B7, referred to as "B7R." The City's B7R alternative was prepared by well
21 qualified consultants that tried to work with Sound Transit to ensure that engineering was
22 consistent with Sound Transit's approach.
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24 50. The City's B7R alternative resulted in significantly less permanent park and
25 wetland impacts. Through use of a traveling gantry crane construction technique, B&R
26 substantially minimizes temporary impacts and leaves only column footprints as
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1 permanent impacts. Other wetland and stream impacts were almost completely avoidable
2 by elevated construction.

3 51. Design drawings prepared for Sound Transit in October, 2010, show design
4 for a "Future Issaquah Junction" near the intersection of Bellevue Way, SE., and SE 30th
5 Street.

6
7 52. The Final EIS was issued in July, 2011.

8 53. The East Link corridor is approximately 18 miles long. For the purpose
9 review in the FEIS, the corridor was broken into five segments along general geographic
10 boundaries: Segment A, I-90 from Seattle to Mercer Island and Bellevue; Segment B,
11 South Bellevue; Segment C, Downtown Bellevue; Segment D, Bel-Red/Overlake; and
12 Segment E, Overlake to Redmond. The FEIS addressed 24 build alternatives over these
13 five segments.

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15 54. The FEIS did not address an alternative tunnel for Segments B and C
16 between I-90 and downtown Bellevue.

17 55. The FEIS did not fully address the City of Bellevue's alternative B7R
18 alignment.

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20 56. The FEIS did not address the future plan to extend light rail to Issaquah.

21 57. The 2011 FEIS did not address any other alternative form of HCT other
22 than light rail.

23 58. The FTA issued its Record of Decision ("ROD") on November 16, 2011.
24 The FTA ROD found that the requirements of NEPA had been satisfied for construction
25 and operation of the East Link Light Rail Project.

1 59. The FTA ROD also concluded that: (1) the project would have more than
2 minor impacts on resources protected under Section 4(f); and (2) “no project alignment
3 alternative provided a prudent and feasible alternative to avoid all protected resources.”
4 The FTA ROD determined, however, that Section 4(f) was satisfied because the FEIS and
5 ROD identified all reasonable measures to minimize or avoid harm to the Section 4(f)
6 resources.
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8 60. The Mercer Slough Nature Park (“Mercer Slough”) is located between
9 Bellevue Way SE and 118th Ave., SE directly north of I-90 and is a 320-acre regional park
10 characterized by wetland systems and upland habitat, the Mercer Slough Blueberry Farm,
11 the Environmental Education Center, the Sweylocken boat launch, and various trails. The
12 Mercer Slough provides wetland habitat, environmental education and awareness,
13 agricultural heritage maintenance, nature observation, views of downtown Bellevue and
14 open space with pedestrian trails, a water trail, benches and interpretive signs. The Mercer
15 Slough is a “Section 4(f)” resource.
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17 61. The Winters House and its surrounding property were listed in the National
18 Registry of Historic Places in 1992 based on its Spanish Eclectic architecture and its
19 association with the bulb-growing and floriculture industry in King County and
20 Washington. The Winters House is part of the Heritage Loop Trail in the Mercer Slough
21 Nature Park. The site includes historical interpretation and facilities for trail users. The
22 Winters House is a “Section 4(f)” resource.
23

24 62. Surrey Downs Park contains athletic fields, play structures, internal trails,
25 open space and remnant stands of heritage filbert trees, as well as the King County District
26 Courthouse and associated parking. In 2009 the City of Bellevue adopted the Surrey
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1 Downs Master Plan for redeveloping the park. Proposed improvements include removing
2 the district courthouse, adding new ballfields, open space and a community garden.
3 Surrey Downs Park is a "Section 4(f)" resource.

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5 63. Use of a tunnel between in Segments B and C between I-90 and downtown
6 Bellevue would have resulted in no or *de minimus* impacts to Section 4(f) resources
7 including the Mercer Slough Nature Park, Winters House and Surrey Downs Park.

8 64. The FEIS defines the project purpose as "to expand the Sound Transit Link
9 light rail system from Seattle to Mercer Island, Bellevue and Redmond via Interstate 90 (I-
10 90) and to provide a reliable and efficient alternative for moving people throughout the
11 region."

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13 65. By limiting the project to extending light rail across I-90, the purpose
14 statement attempts to preclude review of alternative high-capacity transit including bus
15 rapid transit.

16 66. Using bus rapid transit as an alternative for high-capacity transit would have
17 resulted in no or *de minimus* impacts to Section 4(f) resources including the Mercer Slough
18 Nature Park, Winters House and Surrey Downs Park.

19
20 67. In response to comments, the FEIS and RODs confirm that alternatives to
21 light rail were evaluated and eliminated by Sound Transit's Long Range Planning and
22 Sound Transit 2 development process prior to 2006. These planning and development
23 processes were not subject to NEPA review.

24 68. In response to comments, the FEIS and ROD confirm that the FTA, as lead
25 federal agency, determined that planning level decisions limiting consideration to light rail
26 across the I-90 corridor could be incorporated into the FEIS "purpose and need" statement
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1 and that this would be consistent with 23 CFR Sections 450.212 and 450.318 and
2 Appendix A to Part 450.

3 69. The FEIS recognizes that the preferred alternative B2M will permanently
4 impact several acres of wetlands and public parks, including the Mercer Slough Nature
5 Park. Rather than identify specific mitigation or mitigation sites, the FEIS defers analysis
6 until a later design phase.
7

8 70. Appendix D to the FEIS contains the Section 4(f) Evaluation.

9 71. The Section 4(f) Evaluation considered the “proposed action” as expanding
10 light rail from Seattle to Mercer Island, Bellevue, and Redmond via I-90. The Section 4(f)
11 Evaluation did not consider other high-capacity transit alternatives, including bus rapid
12 transit.
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14 72. The Section 4(f) Evaluation did not consider the cumulative impact of
15 extending light rail to Issaquah along I-90, including the cumulative impact to the Mercer
16 Slough from the extending light rail along both the west and south boundaries of the
17 Slough as would be necessary under the preferred alternative.

18 73. The Section 4(f) Evaluation did not consider construction of a tunnel
19 through Segments B and C from I-90 to downtown Bellevue. A tunnel alignment would
20 have eliminated impacts to Section 4(f) resources, including the Mercer Slough Nature
21 Park, Winters House and Surrey Downs Park.
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23 74. The Section 4(f) Evaluation did not look at the City of Bellevue’s proposed
24 B7R alternative which would eliminate impacts to the historic Winters House and its site,
25 would eliminate impacts to Surrey Downs Park, and would significantly reduce impacts to
26 the Mercer Slough Nature Park, including impacting less than an acre of wetlands and
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1 parks. The B7R Alternative would also provide a large potential mitigation site at the
2 Mercer Slough Nature Park at the location of the former South Bellevue Park and Ride –
3 nearly 12 acres – whereas the FEIS for preferred alternative B2 M states that no wetland or
4 park mitigation site has been identified to-date.

5
6 75. The Section 4(f) Evaluation assumes that all impacts to Mercer Slough
7 Nature Park will be fully mitigated for preferred alternative B2M. Consistent with the
8 FEIS, the Section 4(f) Evaluation but does not identify where, when, or how mitigation will
9 occur.

10
11 76. The Section 4(f) Evaluation assumes that, with mitigation, preferred
12 alternative B2M would produce a net benefit to the Mercer Slough Nature Park.
13 Consistent with the FEIS, the Section 4(f) Evaluation does not identify where, when, or
14 how mitigation will occur.

15
16 77. The Section 4(f) Evaluation assumes that there will be no impacts to the
17 historic Winters House or its grounds based on the assumption that the Winters House will
18 be avoided.

19
20 78. On November 16, 2011, the FTA issued its ROD finding that the
21 requirements of NEPA had been satisfied for the construction and operation of the East
22 Link Light Rail Project.

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24 79. The FTA's ROD confirmed that it was not able to make a determination,
25 under Section 4(f) that the project would have only minor, or *de minimus*, impacts. Thus,
26 the FTA was required to undergo Section 4(f) evaluation.

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28 80. Based on the Section 4(f) Evaluation included in Appendix D of the FEIS,
the FTA concluded: (1) that there were no feasible and prudent alternatives that do not use

1 a Section 4(f) resource; and (2) that development of the preferred alternative includes all
2 possible planning to minimize such harm that may result from such use. The FTA's ROD
3 concluded that the requirements of Section 4(f) had been met.

4 81. On November 17, 2011, the FHWA issued its ROD adopting the East Link
5 FEIS as it relates to FHWA's decisions.

6 82. As recently as June, 2012, Sound Transit was still considering relocating the
7 Winters House and adding extensive at-grade and elevated sections to the preferred
8 alternative B2M as cost savings measures. These cost-saving measures have not undergone
9 environmental review and would result in additional impacts to the Mercer Slough Nature
10 Park and Winters House, including impairment of physical and visual access to these
11 public resources.
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14 V. FIRST CAUSE OF ACTION:
15 VIOLATION OF NEPA- FAILURE TO ADDRESS REASONABLE ALTERNATIVES

16 83. Paragraphs 1-82 are incorporated herein by reference.

17 84. The discussion of alternatives is generally considered the heart of the EIS.
18 Agencies must rigorously explore and objectively evaluate all reasonable alternatives and
19 explain why any alternatives were eliminated.

20 85. The purpose of the alternatives requirement in NEPA is to ensure that each
21 agency decision maker has before himself or herself, and takes into proper account, all
22 possible approaches to a particular project which would alter the environmental impact and
23 the cost-benefit analysis. Only in that fashion is it likely that the most intelligent,
24 optimally beneficial decision will ultimately be made.
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1 A. The FEIS Failed to Adequately Consider a Tunnel Alternative to Segment B

2 86. A tunnel alignment through Segments B and C between I-90 and downtown
3 Bellevue would eliminate impacts to Section 4(f) resources including the Mercer Slough
4 Nature Park, Surrey Downs Park, and the historic Winters House. A tunnel alignment
5 would have also significantly reduced construction and noise impacts to residents and
6 businesses along Segments B and C and users of the Mercer Slough Nature Park, Surrey
7 Downs Park and the historic Winters House and its grounds.

8 87. A tunnel alignment through Segments B and C between I-90 and downtown
9 Bellevue would have met the FEIS defined “project purpose.”

10 88. The FEIS violates NEPA by failing to consider a tunnel alternative for
11 Segments B and C.

12 B. The FEIS Failed to Adequately Consider the City of Bellevue’s B7R
13 Alternative

14 89. The City of Bellevue’s proposed B7R alternative was designed in order to
15 avoid or minimize impacts to Section 4(f) resources including the Mercer Slough Nature
16 Park, Surrey Downs Park, and the historic Winters House, while also meeting the purpose
17 and need of the project without substantial differences in cost.

18 90. The FEIS violates NEPA by failing to adequately consider the B7R
19 alternative.

20 C. The FEIS Failed to Consider Alternatives to Light Rail

21 91. While the project’s purpose generally dictates the range of reasonable
22 alternatives, NEPA prohibits an agency from defining the objectives of an action in terms
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1 so unreasonably narrow that only one alternative from among the environmentally benign
2 ones fits the purpose.

3 92. FTA's regulations, 23 C.F.R. Part. 450, Appendix A, similarly confirms that
4 "a purpose and need statement that yields only one alternative may indicate a purpose and
5 need that is too narrowly defined."

6 93. FTA's regulations, 23 CFR § 450.212 and Part 450, Appendix. A., purport
7 to allow a purpose and need statement to be shaped by a local transportation planning
8 process in a manner that narrows the range of alternatives to be considered down to the
9 "general mode (e.g., highway, transit, or highway/transit combination)." The FEIS,
10 however, relies on a local transportation planning process that limited the range of
11 alternatives to a specific type of transit, light rail, rather than the "general mode" – transit.
12 This overly narrow scope violates the intent of 23 CFR § 450.212 and violates NEPA.
13

14 94. The local transportation planning process relied upon to limit the purpose of
15 the project to light rail pre-dates, and is therefore inconsistent with the process outlined in
16 23 CFR § 450.212 and Part 450, Appendix. A.
17

18 95. The local transportation planning process relied upon to limit the purpose of
19 the project to light rail across I-90 failed to document the relative environmental impacts,
20 including impacts to Section 4(f) resources, of alternative types of high capacity transit
21 including bus rapid transit, in violation of NEPA and Section 4(f).
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23 96. By limiting the project purpose to extending light rail across I-90, the
24 purpose statement precludes review of reasonable alternative high-capacity transit options,
25 including bus rapid transit.
26

VI. SECOND CAUSE OF ACTION:
VIOLATION OF NEPA- FAILURE TO CONSIDER THE CUMULATIVE IMPACT OF
EXTENDING LIGHT RAIL TO ISSAQUAH

99. Cumulative actions are defined as actions which when viewed with other actions have cumulatively significant impacts and therefore should be discussed in the same EIS. Further, an EIS must include a useful analysis of cumulative impacts of present, and future projects. This includes a discussion of how future projects together with the proposed project will affect the environment. The EIS must analyze the combined effect of the actions in sufficient detail to be useful to the decision maker in determining whether, or how, to alter the program to lessen cumulative impacts.

101. By failing to consider future extension to Issaquah along the I-90 corridor, the FTA's Section 4(f) analysis assumes that the preferred B2M alternative will impact the western boundary of Mercer Slough Nature Park but will have *no* impacts along the southern boundary of the Nature Park adjacent to I-90. This assumption is incorrect because the expected future extension to Issaquah will add impacts to south boundary of the Mercer Slough Nature Park parallel to I-90. Cumulatively the project, including the proposed B2M route combined with future extension to Issaquah, will result in impacts to

1 both the west side and south side of Mercer Slough Nature Park as well as other Section
2 4(f) resources including the historic Winters House and Surrey Downs Park.

3 102. The B7 or B7R alternatives will impact Mercer Slough Nature Park only
4 along the southern boundary adjacent to I-90. This is the same impact that will be required
5 for a future extension of light rail to Issaquah. And for B7R these impacts are largely
6 temporary since only the rail bridge column footprints (less than 0.2 acres) will remain
7 post-construction. Furthermore, the impacts can be fully mitigated with the conversion of
8 the existing South Bellevue Park and Ride lot (almost 12 acres) to park and wetland status
9 whereas with the B2M alternative this is not possible.

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11 103. Cumulatively, therefore, adoption of a combined B7 or B7R route along
12 with the future expansion to Issaquah, will result only in impacts along the south side of
13 the Mercer Slough Nature Park parallel to I-90. The B7 and B7R route, combined with
14 future extension to Issaquah will not cause impacts to the west side of the Mercer Slough
15 Nature Park, nor other Section 4(f) resources including the historic Winters House and
16 Surrey Downs Park.

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18 104. The FEIS violates NEPA by failing to analyze the cumulative impact of
19 extending light rail to Issaquah.

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21 VII. THIRD CAUSE OF ACTION:
22 VIOLATION OF NEPA—FAILURE TO ADEQUATELY CONSIDER IMPACTS OF
23 CONSTRUCTION ON TRAFFIC ON ALONG SOUTH BELLEVUE WAY, THE
24 ENATAI NEIGHBORHOOD AND DOWNTOWN BELLEVUE

25 105. Paragraphs 1-104 are incorporated herein by reference.

1 106. NEPA requires that an Environmental Impact Statement take a hard look at
2 the environmental impacts of a proposal so that the EIS fosters informed government
3 decision-making and informed public participation.

4 107. The FEIS fails to reasonably consider and discuss the short and long term
5 impacts of construction on traffic along Bellevue Way, 112th Avenue SE, and Downtown
6 Bellevue.
7

8 VII. FOURTH CAUSE OF ACTION:
9 VIOLATION OF NEPA—FAILURE TO ADEQUATELY ASSESS LONG TERM
10 PROJECT INDUCED TRAFFIC IMPACTS ON BELLEVUE WAY, 112th AVE., SE,
11 AND THE BELLEVUE CENTRAL BUSINESS DISTRICT

12 108. Paragraphs 1-107 are incorporated herein by reference.

13 109. NEPA requires that an Environmental Impact Statement take a hard look at
14 the environmental impacts of a proposal so that the EIS fosters informed government
15 decision-making and informed public participation.

16 110. The FEIS fails to reasonably assess the long term project induced traffic
17 impacts on Bellevue Way, 112th Ave., SE, and the Bellevue Central Business District.

18 111. This includes an intentional understatement of traffic impacts that will result from
19 tripling the size of the South Bellevue Park and Ride lot

20 VIII. FIFTH CAUSE OF ACTION:
21 VIOLATION OF NEPA—FAILURE TO ADEQUATELY CONSIDER IMPACTS AND
22 IDENTIFY MITIGATION FOR HISTORIC WINTERS HOUSE AND PROPERTY

23 112. Paragraphs 1-111 are incorporated herein by reference.

24 113. NEPA requires that an Environmental Impact Statement take a hard look at
25 the environmental impacts of a proposal so that the EIS fosters informed government
26 decision-making and informed public participation.
27

114. The FEIS fails to reasonably consider and discuss the short and long-term impacts of the proposal on the historic Winters House and its grounds, including potential mitigation.

IX. SIXTH CAUSE OF ACTION:
VIOLATION OF NEPA- FAILURE TO ADEQUATELY IDENTIFY MITIGATION
FOR IMPACTED WETLANDS AND BUFFERS

115. Paragraphs 1-114 are incorporated herein by reference.

116. NEPA requires that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. A “mere listing” of mitigating measures, without supporting analytical data, also is inadequate.

117. Understanding wetland impacts, including the ability to mitigate those impacts, is a topic of major importance to the decision maker (FTA) in making the Section 4(f) analysis. In its Section 4(f) analysis the FTA assumed that all impacts to the Mercer Slough Nature Park would be fully mitigated and that indeed there would be a net benefit to the Mercer Slough.

118. The Failure of the FEIS to identify appropriate wetland mitigation, including locations for wetland mitigation violates NEPA.

X. SEVENTH CAUSE OF ACTION:
VIOLATION OF SECTION 4(f)

119. Paragraphs 1-118 are incorporated herein by reference.

120. Section 4(f) was enacted in 1966 as part of the U.S. Department of Transportation Act. Section 4(f) protects publically owned parks, recreation areas, and wildlife refuges, as well as significant historic sites.

1 121. Pursuant to 49 U.S.C. §303, the FTA may approve a transportation program
2 or project requiring the use of publicly owned land of a public park, recreation area, or
3 wildlife and waterfowl refuge of national, State, or local significance, or land of a historic
4 site of national, State, or local significance only if: (1) there is no prudent and feasible
5 alternative to using that land; and (2) the program or project includes all possible planning
6 to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site
7 resulting from the use.

9 122. By failing to take a hard look at a bus rapid transit alternative for high-
10 capacity transit over I-90 the FTA failed to consider a feasible and prudent alternative that
11 would avoid impacts to Section 4(f) resources.

12 123. By failing to take a hard look at the cumulative future action of extending
13 light rail to Issaquah along the I-90 corridor, the FTA's Section 4(f) "least harm analysis"
14 ignored cumulative impacts to the Mercer Slough and biased the analysis in favor of the
15 preferred alternative and against the less-impactful alternatives B7 and B7R.

16 124. By failing to take a hard look at the City of Bellevue's proposed B7R, the
17 FTA's Section 4(f) "least harm analysis" failed to consider an alternative that would further
18 minimize harm to Section 4(f) resources, provide a large potential wetland and park
19 mitigation site at the location of the current South Bellevue Park and Ride, while also
20 meeting the project purpose.

21 125. By failing to take a hard look at a B and C segment tunnel option from I-90
22 to downtown Bellevue, the FTA's Section 4(f) "least harm analysis" failed to consider an
23 alternative that would further minimize or eliminate harm to Section 4(f) resources while
24 also meeting the project purpose.

127. The FTA's determination that Section 4(f) was satisfied was arbitrary and capricious.

WHEREFORE, plaintiffs respectfully request that this court:

- COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF - 24

1 7. Issue a temporary restraining order, preliminary injunction, and/or
2 permanent injunction halting all construction activities by Sound Transit subject to the EIS,
3 Section 4(f) review.

4 8. Award plaintiffs their costs of litigation, including reasonable attorneys'
5 fees and expert witness fees incurred in bringing this action.

6 9. Grant any further relief as the Court deems just and proper.

7 DATED this 12th day of June, 2012.

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