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March 4, 2009

Sharon Love
Federal Highway Administration
711 South Capitol Way
Suite 501
Olympia, WA 98501

Re: Southeast Issaquah Bypass Record of Decision, FHWA-WA-EIS-00-1F

Dear Ms. Love:

I am writing on behalf of the Issaquah Environmental Council to request that the January, 2009 Southeast Issaquah Bypass Record of Decision issued by the Federal Highway Administration (FHWA) be published in the Federal Register. It has been brought to my attention that the FHWA does not intend to publish the Record of Decision in the Federal Register, despite that federal regulations require such notice be made.

In the Council for Environmental Quality's (CEQ) "40 Most Asked Questions Concerning CEQ's NEPA Regulation," the answer to question 34 states that, while there is no explicit requirement for publication of the ROD in the Federal Register, it is still required by 40 C.F.R. 1506.6. 46 Fed. Reg. 18026 (Mar. 23, 1981). The CEQ answer explains that the ROD is an "environmental document" and, therefore, must be made available to the public through appropriate public notice as required by 40 C.F.R. § 1506.6. The WSDOT Environmental Procedures Manual also establishes that a ROD is an environmental document. WSDOT Environmental Procedures Manual M31-11.03, § 411.07(10).

40 C.F.R. 1506.6 states:

Agencies shall: . . .

(b) Provide public notice of NEPA related hearings, public meetings, *and the availability of environmental documents* so as to inform those persons and agencies who may be interested or affected.

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... (2) In the case of an action with effects of national concern, *notice shall include publication in the Federal Register*

...

(Emphasis supplied.)

Because the Southeast Issaquah Bypass ROD is considered an "environmental document" per the Council guidance and the WSDOT Manual, it must be published in the Federal Register under 40 C.F.R. § 1506.6(b)(2) quoted above.

The rule does limit publication only to those RODs with "effects on national concern," but there can be no question that the Southeast Issaquah Bypass ROD has effects of national concern. Several federal agencies have been involved in oversight of this project, including the U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency. These national agencies are involved to address effects of national concern. For example, the National Marine Fisheries Service (NMFS) made it clear last year that the studies performed thus far were inadequate because they did not address possible effects to listed species from treated and untreated stormwater from the project and potential effect to listed species from the development overall. Effects of a project on federally listed threatened or endangered species are clearly "effects of national concern."

As a result, the January, 2009 Southeast Issaquah Bypass Record of Decision must be published in the Federal Register pursuant to 40 C.F.R. § 1506.6(b)(2). On behalf of the Issaquah Environmental Council, I respectfully request that the Federal Highway Administration publish the ROD in that manner.

Thank you for your attention to this matter.

Very truly yours,

BRICKLIN NEWMAN DOLD, LLP



Claudia M. Newman

CMN:psc

cc: Issaquah Environmental Council
Wayne Tanaka, Esq., City of Issaquah
Director, Environmental Services, WSDOT, Northwest Region
Pam Fox, City of Issaquah