

CITIZEN OPPOSITION TO A SUBURBAN FREEWAY, A SEMI-HYPOTHETICAL SCENARIO: The Seattle Experience

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The following is the result of a study of the 1968 controversy in Seattle, Washington, arising from the designation of a new state highway through developed suburban areas in the metropolitan area. The issues involved are presented in a hypothetical state court opinion. Some factual background into the nature of the controversy, however, is required before an analysis of the issues involved.

I. BACKGROUND

When the glaciers receded from Puget Sound, they left two large lakes, Washington and Sammamish, just east of present-day Seattle. Through the 1940's the interlake area remained much as it had been for years, semi-rural and best known for berries and peat bogs. Later, as the roar of jet aircraft sounded across the Seattle landscape, the interlake area awoke to join Seattle in a period of phenomenal growth.

Between 1946 and 1957, transportation planning in the Seattle area was a multicentered activity.¹ The Seattle Traffic Engineering Division, the City Planning Commission, and the Seattle Transit Commission conducted independent, *ad hoc* studies of the area's transportation needs generated by the post-war transportation boom that threatened to leave Seattle traffic hopelessly snarled in streets and highways designed for pre-war capacities.

Policy considerations as well as conclusions differed with each successive study. Controversy among the three departments over the location of the second Lake Washington bridge (each department

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1. UNIVERSITY OF WASHINGTON, THE PUGET SOUND REGIONAL TRANSPORTATION STUDY at 2T (1961).

presented a unique set of figures and statistics) underscored the need for a fully integrated metropolitan transportation study.²

Although department officials all concurred in the need for such a study and, in fact, committed their respective departments to a pro-rata share of the requisite funds, they could not agree upon the scope of the study. A majority of the officials favored restricting it to the metropolitan Seattle area.³ However, after much debate, they accepted the advice of a consulting firm which stressed the importance of a regional transportation study.⁴ Hence, the study covered not only metropolitan Seattle, but also Snohomish, King, and Pierce Counties.

The Regional Transportation Conference became the policy-making body. It organized the Puget Sound Regional Transportation Study (PSRTS), which ultimately recommended the route called highway 605. This recommendation was identical to that of the State Highway Commission in 1958.⁵

A. The Puget Sound Regional Transportation Study

The general objective of the PSRTS was "to formulate a transportation plan as part of a general development plan for the region."⁶

The basic element in all transportation plans is the pattern of travel in the area to be affected by the plan. Travel patterns do not develop without reason; they are charted by the flow of human activities. The participants in the study felt, therefore, that to design an accurate transportation plan they had to forecast population, economic, and land consumption patterns for the coming years. "The determination and measurement of the relationships between travel and the varied land use activities make possible the forecasting of future travel patterns by prediction of land use."⁷

Criteria used for determination of the forecasts included: (1) historic and present population and its characteristics, (2) past and current economic activities, including kinds and amount of employment, (3) historic growth patterns and factors which have influenced

2. *Id.* at 13-15.

3. *Id.* at 45.

4. *Id.* at 47.

5. WASH. REV. CODE ANN. §§ 47.05.030, 47.05.040 (1963); 1958 REPORT OF STATE HIGHWAY COMMISSION.

6. UNIVERSITY OF WASHINGTON, PUGET SOUND REGIONAL TRANSPORTATION SUMMARY REPORT at 3 (1967) [hereinafter cited as PSRTS Summary].

7. *Id.* at 5.

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them, and (4) physical characteristics of the region, to identify areas where development is feasible.⁸

Population in the Puget Sound region is projected to be two and three-fourths million by 1990.⁹ Lake Hills, a small community within Bellevue, just west of Lake Sammamish, will house three times as many people in 1990 as in 1961.¹⁰ Any decline in the birth rate is expected to be offset by an increase in industrial growth.¹¹

Factors influencing the location of population growth are: (1) the amount of land available for residential development in each particular area of the region, (2) the relative accessibility of each area to places of employment, (3) the income and occupation of the residents of each particular area, (4) the condition of the housing in the area, and (5) the size of the residential lots.¹²

By analyzing the region's employment statistics, the study hoped to discover future trends and centers of job opportunities within the area. This data provided a partial basis for plotting future commuter travel lines.

An analysis of potential land-use patterns and transportation requirements for 1990—an analysis which encompassed the regional predictions of population and employment growth—became the central basis from which the study drew support for its recommendations, including highway 605, the north-south freeway running parallel to state route 405 and bisecting the Lake Hills community. Two alternate patterns of land-use were developed, Plan A and Plan B.

Plan A represented a continuation of the current unplanned spread of residential development into the suburbs.¹³ Absent were any regional open space programs; jurisdictional zoning ordinances remained unchanged.¹⁴ According to Plan A predictions, the 1990 Lake Hills vicinity will be a combination of medium and low density residences with a few scattered employment centers.

What type of a transportation system did the Plan A land-use projection require for the 1990 Seattle area, particularly for the area between Lakes Washington and Sammamish? In attacking this problem the PSRTS asked itself the question posed by Study Director

8. *Id.*

9. *Id.* at 8.

10. *Id.* at 61.

11. *Id.* at 8.

12. *Id.* at 35.

13. *Id.* at 59.

14. *Id.*

John Mladinov: "Which combination of land-use and transportation will do the most for our region and provide the maximum in transportation service, as well as in other community benefits?"¹⁵

With the purpose of determining the transportation system most compatible with Plan A land-use patterns, the study first examined the deficiencies of the existing transportation system. Fifty-five per cent of controlled access facilities was found to have a 1990 Plan A travel demand in excess of the capacity, and fifteen per cent had a demand equal to or greater than twice the practical capacity.¹⁶

In particular, a major corridor deficiency was noticed along 405, the only East Side north-south freeway.¹⁷

<i>Vehicles</i>	<i>Per</i>	<i>Day</i>	<i>Per Cent Change</i>
<i>1950</i>	<i>1961</i>	<i>1965</i>	<i>1950-1965</i>
2,700	16,800	24,400	793.8%

However, the reliability of a corridor deficiency estimate is questionable when it does not consider the unused capacity of alternate routes.¹⁸ For instance, if arterials parallel to 405 were widened and otherwise improved, the travel demand for 405 would probably decrease.

Nevertheless, the relation of travel demand to capacity under Plan A was 1.53; 405 reported a -14 deficiency rating.¹⁹ This corridor deficiency and others convinced the PSRTS that existing facilities and those planned for the early 1970's could not accommodate 1990 Plan A travel. Consequently, it recommended the construction of an additional north-south freeway, 605, to eliminate the deficiency along 405.

The study avoided pinpointing the exact route of the proposed freeway, preferring that state and local officials find a mutually satisfactory location. However, it did suggest a corridor which ran from Kent and Auburn in the south, through the eastern part of Bellevue (the Lake Hills area), and up to Bothell in the north.

Plan B envisioned a planned pattern of cities and corridors. The basic objective of Plan B was "to determine the distribution of land-consuming activities if the region grew according to consistent region-

15. Address by John K. Mladinov, Director of the Puget Sound Regional Transportation Study, *Toward a Balanced Transportation System for the Puget Sound Region*, at 1 (1962).

16. PSRTS Summary at 77.

17. *Id.* at 31.

18. *Id.* at 77.

19. *Id.* at 83.

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wide policies directed toward achieving a desirable development pattern."²⁰

Policy considerations unique to Plan B included:²¹

(1) Open space belts to separate the region's cities and towns, giving each an individual identity;

(2) The spreading of employment centers to large peripheral cities, thus easing the heavy commuter flow into Seattle;

(3) Encircling the suburban employment centers with higher density residential areas in order to lessen the distance to job sites.

What effect would Plan B have on the future of the interlake area? Plan B forecasts nearly twice as many employment centers between Lakes Washington and Sammamish as does Plan A. As a natural consequence of the cities and corridors plan, there was a predicted increase in residential density in areas adjacent to such employment centers. Lake Hills is such an area. The combination of more employment centers and increased residential density persuaded Plan B directors to adopt Plan A's recommendation for an additional north-south freeway.

Plan B experts also found major corridor deficiencies along state route 405. It was hoped that highway 605, drawn along a corridor identical to the one proposed by Plan A, would relieve the congestion on 405 as well as facilitate suburban travel between employment centers. Officials felt that locating highway facilities near employment centers demonstrated efficient planning since high traffic demand is directly served and the often deteriorated areas near employment centers can be acquired for the right-of-way.²² However, as a justification for running 605 through the middle of Lake Hills, this explanation is totally inadequate. Lake Hills is a prosperous, middle class, medium and low density community without any areas suitable for highway taking.

Nevertheless, Plan A and Plan B land-use patterns both recommended route 605 as an additional north-south freeway: Plan A because the overburdened 405 could not handle the projected 1990 traffic demand; Plan B for the same reason, and also because of the traffic demand generated by the increased number of suburban employment centers and the accompanying rise in population.

20. *Id.* at 61.

21. *Id.*

22. *Id.* at 93.

B. Proposal by the State Highway Commission

Acting on the recommendation of PSRTS, the Washington State Highway Commission submitted a proposal for 605 based on the findings of its own study (The White Report),²³ conducted by a consulting firm. It must be understood that the opinions of the PSRTS were advisory only. The power to initiate action for adopting specific plans of new highways is vested in the State Highway Commission.²⁴ However, in the case of 605, the route finally chosen practically traced the one suggested by the PSRTS.

The highway commission's predicted costs for the highway, 34 miles of six-lane roadway and 5.8 miles of eight-lane roadway, were \$151,039,000, or \$3,795,000 per mile.²⁵ The accident and cost savings were estimated over a 20-year period at \$110,000,000.²⁶

The inability of existing highway facilities to meet the expanding travel needs of an area characterized by growth in population²⁷ and employment²⁸ convinced the commission of the need for 605. Since the construction of the two Lake Washington bridges, metropolitan Seattle's growth has rapidly expanded into King County. The proposed freeway is viewed not as a cause of this expansion but as a helpful arm to future development.²⁹

Were there any feasible alternatives to the construction of 605? All of the existing facilities on the east side, with the exception of 405, state route 5 and the Valley Freeway, are two-lane roads. The commission felt that although plans were under way to widen several of the arterials to lighten freeway traffic, additional capacity was still needed.³⁰ Widening and improving the arterials could only temporarily ease the demand for a new north-south freeway; double-decking or widening 405 was considered economically unsound; costs for reconstruction and additional right-of-way would be prohibitive in the densely populated area just east of Lake Washington; so the commission eliminated the alternatives and began to concentrate on 605.

23. WASHINGTON STATE HIGHWAY COMMISSION, EAST SIDE FREEWAY (1968) [hereinafter cited as WHITE REPORT].

24. WASH. REV. CODE ANN. §§ 47.05.030 *et seq.* (1963).

25. WHITE REPORT at 3.

26. *Id.*

27. *Id.* at 5.

28. *Id.* at 6-7.

29. *Id.* at 11.

30. *Id.* at 12.

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Officials balanced three key factors in considering the selection of the corridor for 605: traffic demand, urban and regional development, and physical configuration of the area. Traffic data, collected by the PSRTS, was the controlling factor. Statistics compiled from origin-destination information and traffic volume assignment studies indicated that the 1990 demand traffic volume in the Lake Hills area would, without the freeway, exceed twice the area's traffic capacity.³¹

The commission considered three alternate routes, each with and without a proposed new crossing of Lake Washington for a total of six.³²

The three basic routes consisted of:³³

- (1) A center route passing through Eastgate;
- (2) A west route diverging from the center route just south of Renton, passing through Factoria and merging with the center route just south of Bellevue; and
- (3) An east route diverging from the center route at Renton, passing through Issaquah, continuing around the east side of Lake Sammamish and merging with the center route south of Bothell. Each corridor was tested by criteria such as capacity of existing and proposed facilities, traffic flow and desire, proposed highway links, traffic generation, and trip lengths and speeds.³⁴

Lake traffic desire eliminated the east route. Average daily traffic volume in the area just south of Issaquah was only 55,000 and decreased to 27,000 near Redmond.³⁵ At the same time a volume of 100,000 average daily trips was shown for Route 405 in the Factoria area.³⁶ Alleging that the proximity of the west route to 405 would cause operational difficulties, the White Report concluded that on the basis of traffic analysis alone, the center route bisecting Lake Hills would best provide for the 1990 forecast on the east side.³⁷ In addition to traffic considerations, the commission felt that factors relating to urban and regional development and geographic configuration of the land should influence corridor determination. The basic issue was: "How can the proposed highway best be integrated with the

31. *Id.*, exhibit 15 at 50-51.

32. *Id.* at 48.

33. *Id.*

34. *Id.*

35. *Id.* at 49.

36. *Id.*

37. *Id.*

development plans, policies or programs of the areas through which it passes?"³⁸

The route avoided the cities of the region with the exception of the Lake Hills area of Bellevue. Since Bellevue stretches across the entire interlake area, there is no way the center route could avoid every section of the city. Residential and community-facility uses in Lake Hills would be displaced by the freeway. The existing Bellevue school districts presented a major planning dilemma for the commission. The proposed center route sliced through established school service areas. The elementary school system was most directly affected:

Ideally, an elementary school service area is a neighborhood with a radius of about a half-mile from the school In a one-mile rectangular grid system, service areas can be formed fairly well. By doing that, the children do not have to cross the major arterials which are located on the section lines.

But, to provide adequate interchange areas and to avoid direct conflict with the local street and arterial system, freeways are located *between* section lines in urban areas. . . . [This] cut[s] school service areas into very small and often impossible sizes, perhaps forcing elementary school children who walk to school to cross major arterials.³⁹

As an answer to this problem, the commission suggested that the children could be bussed to school, thus avoiding the problems of walking across major arterials and of splitting up the districts.

C. Analysis of Highway Commission Proposal

The basic premise accepted by the White Report is sound: the existing freeway, 405, cannot adequately serve the future north-south traffic demands on the east side. However, its plan for improving the interlake traffic network, an additional north-south freeway, is open to criticism.

The White Report never clearly indicates who the users of the proposed 605 will be. Are they Seattle commuters, suburban commuters, or regional travelers? If Seattle commuters will comprise a high percentage of 605 users, then the proposed freeway will not relieve congestion unless the bridge is built over the northern part of Lake Washington. As of this date, plans for the new bridge are suspended; if

38. *Id.* at 13.

39. *Id.* at 25.

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they ultimately fail, 605 could not be justified as a basis for service to Seattle commuter traffic.

While east side employment and population growth projections constitute a stronger reason for construction of 605,⁴⁰ an alternate method of handling this increased demand was too quickly passed over by the White Report.⁴¹ Specifically, consideration of the upgrading and widening of other major arterials such as 140th, 148th, 5, 405 and the Valley Freeway should not be abandoned. While the White Report argued that the high cost of acquiring additional right-of-way and reconstruction prohibited such a plan, it might be asked which cost is higher: the dollar cost of reconstructing an existing highway, or the social cost of destroying the physical integrity of the Lake Hills community? In addition, the White Report made it clear that traffic demand was the predominant, but not the sole factor considered while investigating route alternatives. However, it selected a route based entirely on traffic demand (pure cost-benefit analysis) before considering other factors relating to urban and regional development.⁴²

Finally, the major insufficiency of the White Report as a basis for the route selection of proposed 605 is demonstrated by the question which guided and directed the White Report's planners: "How can the proposed highway best be integrated with the development plans, policies or programs of the areas through which it passes?"⁴³ This question reflects the time-honored policy of deciding to add a highway prior to route location studies. Had the legislature called for a detailed study at an earlier stage in the planning process, the controlling question could have been whether or not a highway in the corridor should be added at all. The use of a detailed study in this context would allow full consideration of other pertinent factors in the route selection process, such as land use, transportation alternatives, and environmental factors, which were either not considered or relegated to inferior status in the White Report. Also, opportunities for citizen participation and contribution could be given considerable emphasis at this stage, rather than only the formal, legally required public hearings at the end of route location studies.

40. Transcript from Highway 605 Meeting, Bellevue Public Schools, Bellevue, Washington, at 12 (April 1969).

41. WHITE REPORT at 12.

42. *Id.* at 13.

43. *Id.*

A study instituted at an earlier stage of the planning process and including consideration of factors other than those contained in the traditional cost-benefit analysis, carried on in public view, would represent a valuable, innovative approach to the art and science of planning for public works. Unfortunately, the White Report does not warrant this description.

II. CITIZEN OPPOSITION

On November 28, 1968, the *Bellevue American*, a community newspaper serving the east side, published a report that the east side freeway of the 1958 plan was no longer merely a vague line on regional transportation plans. Labeled as Highway 605, it was actively being suggested. Its projected corridor would pass through the city of Bellevue, bisecting the Lake Hills area. The *Bellevue American* story was confirmed a few days later when the State Legislative Joint Committee on Highways issued the White Report.

Citizen opposition to the proposed corridor of Highway 605 arose first in the affected area of Lake Hills. The opposition crystallized around three points:

(1) The proposed route bisecting the Lake Hills area of Bellevue would destroy a settled upper middle and middle class community, elementary school districts would be split, requiring small children to cross the freeway, and that the land upon which a new school was being constructed would form part of the freeway right-of-way.

(2) The freeway plan called for the construction of an additional Lake Washington bridge. The Seattle metropolitan area is limited and bounded by Puget Sound and the Pacific Ocean on the west and Lakes Washington and Sammamish on the east. Presently the region is served by two bridges crossing Lake Washington and linking the interlake area to downtown Seattle. Citizen opposition to additional crossings of Lake Washington has always been brisk. In 1949, when Seattle was served by only one bridge (that now used by Interstate 90), a total of eleven "adversary" studies were required⁴⁴ before enabling legislation was enacted in 1957 and the Evergreen Bridge opened in 1963.⁴⁵ The east side freeway was opposed by those who

44. *Id.* at 7.

45. *Id.* at 34. WASH. REV. CODE ANN. § 47.52.131 (1965) provides that, when the state highway commission is planning a limited access facility through a city, town, or county, the commission, prior to public hearings, submit to the governing body its plan for the facility and demonstrate that the plan considers the

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saw it as an attempt to force the construction of an additional bridge by presenting the east side freeway as necessary to meet projected 1990 traffic needs, and the bridge as necessary to fully utilize the east side freeway and other supporting highways, which, without an additional bridge, would be under-utilized.

(3) The east side freeway was seen as sounding the death knell for mass rapid transit in the Lake Hills area. Mass transit studies had been conducted in the region by the PSRTS from its formation, with contradictory results. In a 1966 study conducted by the engineering firm of De Leuw, Cather, & Co., mass transit on the east side was considered of low utility.⁴⁶ Subsequently the same firm issued a report favoring some mass transit on the east side.⁴⁷ Supporters of mass transit in the interlake area feared that another freeway would lessen their chances of a connection with a regional mass transit system.

United in their opposition, for whichever reason, citizens on the east side formed the East Side Citizen's League to exert political pressure and serve as a source of expertise to contradict the White Report's conclusions. The League looked to Washington's statutory law to find an appropriate forum to make their disaffection known. Under Washington law, limited access highways are the product of a three-stage planning process: (1) the state highway commission proposes the establishment of such a facility by the state; after holding public hearings on desirability, it reports to the legislature on the need for a particular addition to the state highway system;⁴⁸ (2) the legislature enacts a bill designating the terminal points of the new facility;⁴⁹ (3) the state highway commission determines, after public hearing, the most advantageous routing between the terminal points.⁵⁰ The route

incorporated area's existing land use patterns and planning. For the commission's plan to become final, the governing body must have raised no objections before the public hearing.

The city of Bellevue indicated that it preferred that the highway not go through Bellevue at all. However, since the city realized that this was impossible if the highway were to be to the west of Lake Sammamish, it preferred that the freeway minimize the barrier aspects of the road and accepted the White Report's proposed corridor, bisecting the eastern portion of the city, the Lake Hills area. WHITE REPORT at 34.

46. DE LEUW, CATHER, & CO., A REGIONAL TRANSPORTATION PLAN (1966).

47. DE LEUW, CATHER, & CO., COMPREHENSIVE PUBLIC TRANSPORTATION PLAN FOR THE SEATTLE METROPOLITAN AREA (1967).

48. WASH. REV. CODE ANN. § 47.05.060 (1963), § 47.52.131 (1965).

49. *Id.* § 47.04.010(36) (1961).

50. *Id.* § 47.52.133 (1965).

hearing, under state law, is also concerned with the engineering-design specifications of the facility.⁵¹

If, after all hearings at the first stage have been held, and a plan adopted, a concerned city, town, or county which does not approve the plan (such approval is required before the plan becomes final) may invoke Washington's unique statutory arbitration board. The board, composed equally of local and highway commission appointees, chooses as its chairman an impartial professional engineer.⁵² After taking evidence, the board makes findings which may approve, disapprove, or modify the commission's plan; such findings are final and binding on both parties.⁵³

III. PUBLIC HEARING AND HIGHWAY COMMISSION FINDINGS

The state highway commission, pursuant to § 47.52.133 of the Washington statutes,⁵⁴ held a public hearing on Highway 605 in Bellevue in December 1968. At that hearing, on whether the east side freeway was necessary and feasible, the League was present. Asserting its right under another section of the statute,⁵⁵ the League introduced statements. To give the reader the flavor of the December hearing, statements which might have been introduced have been summarized, and, where necessary, fictionalized.

Mr. K —: Gentlemen, my name is James K — and it is my privilege to represent the East Side Citizen's League. My group has obtained the signatures of several thousand residents of the east side on a petition which states: "We, the undersigned, express our deep concern and total opposition to the proposed Auburn-Bothell Freeway (605). We are concerned because of the impact this proposed freeway will have on the communities in which we live, the appearance and type of area which will result from such a highway, and the increased taxes this will necessitate to provide governmental services disrupted by this freeway. The health of our children, and the amenities of this suburban area will be severely damaged, if not destroyed. We, therefore, totally oppose the construction of *any* freeway which divides the east side communities."

It is our position that dividing such a narrow section of developed

51. *Id.* § 47.28.025-.026 (1961).

52. *Id.* § 47.52.150 (1961).

53. *Id.* § 47.52.180 (1961).

54. *Id.* § 47.52.133 (1965).

55. *Id.* § 47.52.135 (1965).

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land with a second freeway is untenable. The time has come to consider the people living in the community and not just the cars passing through it. Safety hazards, air pollution, splitting of neighborhoods, and disruption of long-range community and school planning must have primary consideration. Moreover, a freeway which will divide elementary school districts and require our small children to cross a busy freeway is patently absurd, especially one which, at the same time, destroys a new high school.

In addition to the White Report's failure to consider the established nature of the communities which Highway 605 would sever and destroy, the Report is laden with cost discrepancies. The most notable are:

1. 1967 cost indices were used to estimate construction costs of a projected program which would be constructed in the years 1975 to 1985.

2. Right-of-way acquisition costs were too low. The stated acquisition cost in the most highly developed area in the corridor (between S128th Street and the proposed Redmond-Kirkland Freeway) is \$5,382,000. When viewed against the taking of property to satisfy the minimum construction right-of-way requirements, this value is reduced arithmetically to \$11,549 per acre. This value should reflect the taking of properties with houses, businesses and other development upon them, and appears unrealistic considering that open land in the area costs \$10,000 to \$15,000 per acre.

In the east side corridor the current population is made up of stable people who are not prone to migration except within the east side area because of increased or decreased family space requirements. Thus, the current population of the area is expected to remain. In the 1980-1990 period the people will be in the 60-70 year age bracket. It is at this time that public transportation, properly administered, will be of the greatest benefit. High speed bus and rapid transit will be needed for transportation within the urban area.

In summation, the east side freeway embodies in its design all that is undesirable in the construction and location of a freeway, without providing benefits to those through whose homes it travels.

CHAIRMAN: The Commission thanks Mr. K ——— and the East Side Citizen's League. It will now recognize Mr. John M ———, Director of the former Puget Sound Regional Transportation Study, who speaks in favor of Highway 605.

Mr. M ———: Gentlemen, permit me to summarize what we have

found in the Puget Sound region, which is composed of Snohomish, King, Pierce, and Kitsap Counties. By 1990 the population of these counties will make up almost 60 per cent of the total population of the state, compared to only 50 per cent in 1950. By 1990 the population of the urban portion of this region is forecasted to increase by 74 per cent over its 1961 level and jobs are expected to increase by 70 per cent. The total number of trips which will be made by persons by 1990 in the East Side Corridor will increase by 90 per cent. However, since more and more trips will be made by private car rather than by walking or public transit, the number of trips by private vehicles will increase by approximately 95 per cent; and, because on the overall average trips will be longer in the future, the total vehicle miles will increase by more than 150 per cent of the 1965 level. In other words, the vehicle miles of travel on the region's 1990 streets and highways will increase at a rate more than double that of our population and employment: the population and employment will increase by approximately 70 per cent, while travel will increase by 150 per cent.

What effect would a rapid transit system have on the estimated future highway needs? Unfortunately not a great deal on either a regional basis or on the interlake area in particular. The most feasible rapid transit line in the entire region is ten miles long and can be built for approximately \$100,000,000. It has the greatest passenger potential of all the possible lines and it is estimated it would carry as many as 40,000 passengers per day. Were it to attract this amount of usage, it would reduce the vehicle miles of travel in the region by less than one per cent. So even if we visualize an extensive network of rapid transit in the region by 1990, it is evident that we will not materially be altering the overall regional need for streets and highways.

CHAIRMAN: The Commission will now hear from Mr. William R —, project director for the legislative report [White Report] for the proposed east side freeway.

Mr. R —: Gentlemen, the study substantiates the need for the east side freeway to be built as part of the state highway system. It provides a feasible transportation solution for a rapidly growing area, one suited to the needs of today and the needs of the region by 1990.

The proposed route corridor was selected after carefully considering many factors. Traffic in the region and planning for an orderly urban development played major roles in the corridor selection. In local areas terrain and existing development were determining factors.

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Careful design, utilizing linear parks, rest stops, and appropriate landscaping, will fit the facility to its environment and enhance the corridor. The final recommended corridor is the one believed to best satisfy the combination of all requirements—social, aesthetic, economic, and engineering.

To help determine whether this facility should be on the state system, future trip lengths were examined in detail. It was found that regional or statewide trips will account for 73 per cent of the travel on this facility. Analysis of traffic data indicates that an additional crossing of Lake Washington is necessary. If additional capacity across the lake is not provided, the existing bridges, as well as the highway system east of the lake, will become severely congested. Further, traffic movement south and east of Lake Washington will become restricted far above tolerable limits if the east side freeway is not constructed. Without a freeway, sufficient capacity could not be made available to accommodate 1990 traffic volume.

An outstanding feature of the proposed freeway is its contribution to highway safety. From 1970 to 1990 traffic deaths among persons using the east side freeway will be approximately 320% less than if all traffic is compelled to use other roads. In that same period, there should be approximately 44,600 fewer accidents with the freeway than without it. Translated into dollars, without the freeway, an economic loss due to additional traffic deaths and accidents can be expected to reach \$110 million for the twenty year period 1970 to 1990. This economic loss amounts to approximately 75 per cent of the cost of the facility.

The solution we recommend is a 39.8 mile divided, limited access highway, with appropriate east-west connections. Detailed examination of existing municipal development and traffic data led to three possible corridors to be considered with and without an additional bridge. One corridor would parallel existing Interstate 405. This corridor was rejected for the confusing traffic patterns it would create by operating in close proximity to I-405, and because its additional traffic flow would overload existing and feasible Lake Washington crossings. A second corridor on the east side of Lake Sammamish was considered and rejected. This corridor failed to meet projected traffic needs between the lakes while running into additional construction costs involved in a longer facility built in part over marsh land. A third corridor, the one selected, runs generally northward along a line slightly west of Lake Sammamish. This corridor is far enough east

of I-405 to avoid the overload problems faced by the first corridor, while serving the traffic need between the lakes at the lowest construction and maintenance cost.

CHAIRMAN: Mr. R ———, what, if any, effects of mass transit did you consider in making your conclusions?

Mr. R ———: Mass transit was indeed considered in traffic volume projections. As the director of the PSRTS mentioned, the freeway will be needed, with or without mass transit. Mass transit needs in the interlake area will be for east-west service in the more densely populated corridors. The east side freeway, crossing those corridors, will be a vital unit in the overall transportation system.

CHAIRMAN: We wish to thank all of you for coming here today to present your views.

FINDINGS OF HIGHWAY COMMISSION: After due deliberation, it is the considered opinion of the highway commission that the transportation needs of the Puget Sound region and the state cannot be adequately served by any means other than additional freeway capacity. Further, it is the considered opinion of the commission that among all the proposed corridors, that chosen by the White Report maximizes the public benefit while minimizing the public cost. As such a freeway will be under-utilized without the addition of another Lake Washington crossing, we recommend that such a bridge be constructed. This meeting is adjourned.⁵⁶

The League next petitioned the city of Bellevue to exercise its power under § 47.52.150, of the Washington statutes⁵⁷ to cause the formation of an arbitration board. For political reasons, not relevant to this paper, the League's petition was tabled. The League then sought relief through the courts.

IV. HYPOTHETICAL COURT OPINION

EAST SIDE CITIZEN'S LEAGUE v. STATE HIGHWAY COMM'N (Hypothetical State Court of Review)

This case represents another attempt by a citizens' group to block an urban highway. In their belief that projected injury demands an immediate remedy from the courts, the East Side Citizen's League

56. The state legislature, perhaps feeling the political pressure of the East Side League more acutely than the commission, has not, as of this writing, reported out a bill describing the terminal points for highway 605. The hypothetical case, however, assumes that the legislature had enacted enabling legislation for construction of the highway.

57. WASH. REV. CODE ANN. § 47.52.150 (1961)

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has appeared in federal and state courts protesting the action taken by the state legislature in passing enabling legislation for highway 605, the east side freeway. Let us note at the outset, that the legislative action occurred only after the highway plan had become final. The League would, nevertheless, have this court bar the highway.

Before instituting the present action, the plaintiffs sought an injunction from the Federal District Court for the District of Washington, alleging that the proposed location of highway 605 was not made in compliance with the requisites of the due process clause of the fifth amendment, as applied to the states by the fourteenth amendment. The gravamen of this complaint, which the district court dismissed for lack of federal jurisdiction over an insubstantial federal question, *Bell v. Hood*, 327 U.S. 678 (1946), was whether the thrust of recent federal legislation required that interested persons be given an opportunity to object when a state highway location decision is made, and whether, in the absence of such opportunity, the declaration of the proposed route deprives them of property in the immediate decrease in the value of their property following that declaration. Plaintiffs argue that since highway 605 is designed in compliance with federal interstate highway design standards, and may therefore be placed upon the interstate system after completion, the state should not be able to avoid federal regulations designed to provide citizen participation in corridor selection. Specifically, they sought, and here seek, the procedural safeguards of 23 U.S.C. § 128 (a) (Supp. IV 1969), which requires that public hearings take into account the proposed highway's "consistency with the goals and objectives of such urban planning as has been promulgated by the community." Inconsistent with this criteria, they assert, is the proposed corridor for highway 605 which, if constructed, would destroy compact and contiguous school districts and take land under prior public use as a high school. At appellant's request, we take judicial notice of the difficulty in restoring compact and contiguous school districts and the cost of the recently constructed public high school.

Even if highway 605 were a part of the interstate system, the failure to grant the hearing required by 28 U.S.C. § 128 (a) may be subsequently raised in a state court proceeding. *Hoffman v. Stevens*, 177 F. Supp. 898 (M.D. Pa. 1959). Federal regulations with respect to interstate highways must, however, be complied with in order for a state to receive federal funds. Such requirements do not, however, limit or affect the authority of a state highway commission to select locations

and construct or maintain state facilities within the state. *Futch v. Greer*, 353 S.W.2d 896 (Tex. Civ. App. 1962), *cert. denied*, 372 U.S. 913 (1963)

Appellants have followed the advice of the *Hoffman* case and have sought an injunction in the court below, alleging several violations of state law, and, in the alternative, have petitioned the court to issue mandamus to the city of Bellevue ordering it to present the objections of the League to the state, and to invoke the formation of a local appeals board to arbitrate the dispute. The court below sustained the state highway commission's demurrer to the first count and held the second count to involve the decision of a political question beyond juridical competence.

The questions presented to this court for review are, whether, as a result of the Washington statutory provision requiring that the state comply fully with federal requirements on any highway constructed for eventual inclusion in the interstate system,⁵⁸ the state highway commission must comply with those federal requirements when it constructs a limited access highway which is planned to comply with federal design standards? And, assuming the plaintiffs have standing to raise this issue, may the state courts review the actions of the state highway commission as to its corridor location decision and draw an inference of impropriety from the commission's failure to consider alternatives to the suggested route?

I

The question of standing to sue for the review of the exercise of administrative discretion in determining the state highway route location may require reconsideration, in light of several recent federal cases construing language of the Federal Administrative Procedure Act (FAPA) identical to our own.

It is accepted law that a deprivation of a personal constitutional right is sufficient to confer standing to the party aggrieved. *School Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Zorach v. Clausen*, 343 U.S. 306 (1952). However, the named plaintiffs not only seek to enjoin the proposed placement of highway 605 for its disruption to homes lying in its path and to recover for incidental damages to adjacent homes and communities, but also sue in the capacity of representatives of the class of all objectors to any

58. *Id.* § 47.04.070 (1961) [hereafter cited as W.R.C.A. in text].

east side highway. The plaintiffs' allegations of the irreparable damages caused by the proposed placement of highway 605 include noise and incidental damages to property adjacent to the right-of-way, the condemnation of a tract of land presently used as a public high school, and the destruction of compact and contiguous neighborhood school districts. It is well settled in this jurisdiction that a plaintiff may object to a proposed condemnation of his own property; it is unsettled, however, whether he may object to the condemnation of his neighbor's. Insofar as plaintiffs sue on their own behalf to enjoin condemnation or damage to their own property, they have standing to raise the propriety of the administrative action of which they complain.

The plaintiffs, however, also sue as representatives of all interested parties. In several recent cases, petitioners in circumstances similar to the present plaintiffs have been allowed to present the claims of constitutional invalidity of agency action on their own behalf as well as on behalf of a class of interested persons too numerous to join. *D.C. Federation of Civic Associations v. Volpe*, 308 F. Supp. 425 (D.D.C. 1970); *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966). The impact of the *Scenic Hudson* line of cases has been to construe the "persons aggrieved" language of federal statutes to include persons without an economic interest in the outcome of the litigation and thus to expand the concept of standing to a test of adversariness. In *Scenic Hudson*, the court construed the language of 16 U.S.C. § 825(1)(b):

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission [FPC] in such proceeding may obtain a review of such order [issued by the Commission] in the United States Court of Appeals for any circuit wherein the licensee or public utility to which the order relates is located

In construing the meaning, scope, and effect of this language the *Scenic Hudson* court stated:

[T]he Commission takes a narrow view of the meaning of "aggrieved party" under the act. The Supreme Court has observed that the law of standing is a "complicated specialty of federal jurisdiction, the solution of whose problems is in any event more or less determined by the specific circumstances of individual situations . . ." Although a "case" or "controversy" which is otherwise lacking can not be created by statute, a statute may create new interests or rights and thus give standing to one who would otherwise be barred by the lack of a "case" or "controversy." The case or controversy requirement of Article III, § 2 of the Con-

stitution does not require that an "aggrieved" or "adversely affected" party have a personal economic interest. Even in cases involving original standing to sue, the Supreme Court has not made economic injury a prerequisite where the plaintiffs have shown a direct personal interest.

The court then ruled:

In order to insure that the Federal Power Commission will adequately protect the public interest in the aesthetic, conservational, and recreational aspects of power development, those who by their activities and conduct have exhibited a special interest in such areas, must be held to be included in the class of "aggrieved" parties under § 313 (b).

While *Scenic Hudson* construed the Federal Power Act, its rationale has been applied to the FAPA, *Road Review League v. Boyd*, 270 F. Supp. 650 (S.D.N.Y. 1967). *Boyd* construed Section 702 of Title 5 of the United States Code, which provides that "[A] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof."

Boyd took *Scenic Hudson* to establish four propositions which were applicable when considering standing to object in a highway location case: (1) that standing does not necessarily fail in the absence of economic injury to these particular plaintiffs; (2) that representation of common interests by an organization like *Scenic Hudson* serves to limit the number of those who might otherwise apply for intervention; (3) that there are factors other than economic or engineering which must be given adequate consideration in the decisional process and which the court will review to determine if there has been an abuse of administrative discretion; and (4) that the existence of a more desirable alternative may be considered as one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity.

While the federal cases discussed previously construe language which is identical in force and effect to the Washington Administration Procedures Act (WAPA),⁵⁹ they are only persuasive. It is argued that the construction of the FAPA is held in a preferred position by the federal courts. *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

59. *Id.* § 34.04.040 (1959).

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In *Abbott* the Supreme Court stated that the FAPA review provision should receive a "hospitable" interpretation. We agree that a party aggrieved's right to judicial review under the WAPA should, in a proper case, be liberally construed. We think the League has here presented such a proper case.

W.R.C.A. § 34.04.010 (3) defines a contested case as a "proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." W.R.C.A. § 34.04.020 provides for judicial review of all contested cases.

In *State ex rel. Dawes v. State Highway Comm'n*, 63 Wash. 2d 34, 385 P.2d 376 (1963), the Supreme Court of Washington held that the highway commission, not being specifically excluded from the ambit of the administrative procedure act, is within its coverage. The issue of the League's standing thus reduces itself to whether the League is asserting a legal right which is required by law, or a constitutional right which is to be determined after an agency hearing. We hold that the highway corridor hearings required by statute are not to be denied; and a material issue to be determined thereby may be the subject of a "contested case" and, therefore, the proper subject of judicial inquiry.

It is sufficient to confer standing that the parties have sufficient interest in the outcome of the proceeding to guarantee an adversary presentation for judicial inquiry. The League has demonstrated that the class it represents has a real and substantial interest in the outcome of the litigation.

II

Having determined that a court of this jurisdiction may review the location and placement of highway 605, we must next consider what the scope and extent of review shall be. As a general proposition the courts of this state will not review decisions of "necessity," *i.e.*, which among competing interests or needs should be selected. This is either a legislative function reserved by the legislature itself, or delegated to an administrative agency. *City of Tacoma v. Welcker*, 65 Wash. 2d 677, 399 P.2d 330 (1965).

In *Welcker* the court confined the standard of judicial review to "arbitrary and capricious conduct." Such conduct, the court said, is

willful and unreasoning action, without consideration and regard for facts or circumstances [citing cases]. Action, when exercised honestly, fairly, and upon due consideration, is not arbitrary and capricious, even though there be room for a difference of opinion upon the course to follow, or a belief by the reviewing authority that an erroneous conclusion has been reached.

To apply the standard thus espoused, the courts of this state have developed criteria which are: Did the agency proceed in accordance with, and pursuant to, the Constitution and its statutory powers? Were the agency's motives honest and intended to benefit the public? Were they honestly arrived at, free from influences of fraud and deceit? Were they free from any purpose to oppress or injure, even though injury and damage to some extent may be inherent in accomplishing the particular public benefit? Did the agency give notice, where notice is due, and hear evidence where hearings are indicated? Did the agency make its decision on the facts and the evidence? Were its actions in the last analysis rational—that is, based on a reasonable choice supported by the facts and evidence? If the answers to all of these are affirmative, the decision cannot be held to be arbitrary and capricious.

We hold that whether or not a highway is to be constructed is a political decision vested in the legislative branch. However, once that decision is made, a court may inquire into why an administrative agency chose a specific corridor, in order to ascertain if that agency has abused its discretion. As we have previously noted, there are factors other than economic or engineering which must be given adequate consideration in the decisional process and which this court will review. The court below is entrusted with the duty to determine whether any of the alternatives suggested by the League are workable, and to inquire into the cost discrepancies to which the League pointed at the commission's hearing in December 1968.

The appellant's principal challenge to the proposed placement of highway 605 was that an alternative corridor, passing to the east of Lake Sammamish, would yield the same user benefits with the same or only slightly higher construction and maintenance costs. This, they argue, results from the trade-offs of greater length of an easterly corridor against the higher social and environmental costs of the proposed corridor. Couched in the language of the science of economics, the appellant has argued that the highway commission's decisional matrices should include, in its computation of road cost, items other than

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physical construction and maintenance.⁶⁰ It should, they argue, reflect the total cost to the community, including the loss of intangible benefits to the affected areas.

We are, therefore, presented with the issue of whether, as a matter of law, a cost-benefit equation must include a recognition of environmental and social costs. It is this court's belief that there is room within the existing framework of this state's highway law to find that environmental and social factors must be considered. Highways are to be constructed only where necessary and feasible. W.R.C.A. § 47.52.131. The test of feasibility used by the White Report in considering highway 605 was a variant of the Bureau of Public Road's "Red Book" model which requires consideration of seven factors:

1. The solvency of a system or group of highways;
2. Land and community benefits from highways and improvement;
3. Costs of construction;
4. Cost of operation and maintenance;
5. Direct benefits to road users in the form of reduced vehicle operating costs and savings of time;
6. Benefits to road users in the form of increased comfort and convenience;
7. Benefits to road users in the form of overall accident reduction.

To state that these factors are exclusive is to state an obvious absurdity. The White Report considered in its design factors such considerations as aesthetics and park lands. The Department of Transportation, however, now requires evaluation of all "social," "economic," and "environmental" effects.⁶¹ Consideration under this scheme must be given to:

1. Fast, safe, and efficient transportation;
2. National defense;
3. Economic activity;
4. Employment;

60. The commission's microeconomic cost-benefit model takes the form $\frac{dU}{dC} < 1$, where dU is the increase in road user benefits, such as decreased travel time and gasoline consumption, and dC is the increase in construction and maintenance expenses. The league argues that dC should include consequential damages to property adjacent to the right-of-way, and the loss of irreplaceable open and green spaces. See BAUMOL, WELFARE ECONOMICS AND THE THEORY OF THE STATE (1965); BUCHANAN, FISCAL THEORY AND POLITICAL ECONOMY (1966).

61. Policy and Procedure Memoranda 20-8, Public Hearings and Location Approval, 23 C.F.R. Appdx. A (1971).

5. Recreation and parks;
6. Fire protection;
7. Aesthetics;
8. Public utilities;
9. Public health and safety;
10. Residential and neighborhood character and location;
11. Religious institutions and practices;
12. Conduct and financing of government including tax base;
13. Conservation including erosion and general ecology;
14. Natural and historic landmarks;
15. Noise, air, and water pollution;
16. Property values;
17. Multiple use of space;
18. Replacing housing;
19. Education including disruption of school district operations;
20. Displacement of families and businesses;
21. Engineering, right-of-way, and construction costs of the project and related facilities;
22. Maintenance and operating costs of the project and related facilities;
23. Operation and use of existing highway facilities and other transportation facilities during construction and after completion.

The list is not, according to the Department of Transportation, intended to be exclusive, nor did it mean that each effect considered must be given equal weight in making a determination upon a particular facility's location or design.

While we are unwilling to require that consideration of environmental and social effects take a specific form or receive a specific weight, we do require that consideration be taken that a highway can constitute a health hazard because of automobile-caused pollution; constitute a nuisance because of noise, glare, fumes, dust, danger, and ugliness; destroy existing resources and recreational areas; reduce property values by any of the above plus division of property, creation of barriers, and loss of access; destroy existing communities by transecting them, denying them access and inconsiderate alignments. Since many of the above are noncompensable in the sense that the due process clause of the United States Constitution requires the state to pay just compensation for their loss, we require that future additions to the state highway system be feasible in view of the total cost. The

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total social betterment must exceed the total costs including the net effects on adjacent communities.

III

Appellant has sought relief in the alternative, asking a mandamus to the city of Bellevue to invoke the statutory arbitration board as a means of either preventing highway 605 or of ameliorating its dislocations in the Lake Hills area. W.R.C.A. § 47.52.131 requires that, when a limited access facility is planned through an incorporated area, careful consideration must be given to available data on the area's comprehensive plan, land use pattern, present and potential traffic volume, and other pertinent surveys. There is no complaint that the White Report has failed to fulfill these requirements. If, however, the incorporated area objects to the proposed highway and withholds its consent, it may convene a panel to arbitrate the points of conflict. W.R.C.A. § 47.52.150. The present controversy, however, indicates the greatest failing in this method of obtaining a forum to express community opposition. If, for whatever reason, the incorporated area acquiesces to the highway, the forum is lost. Even the self interest of the area cannot guarantee the forum. Nevertheless, it is beyond the capacity of the courts to order the city of Bellevue to object. Such an objection is in the nature of a political decision and as such mandamus is an inappropriate remedy.

The order of the court below dismissing appellant's complaint for lack of standing is reversed. The order dismissing appellant's action for mandamus is sustained.

