

DATE: February 5, 2003

T0: Members of the Senate Transportation Committee

FROM Emory Bundy

RE: 1. Performance audit of Sound Transit's Link Light Rail Project
2. Review of the performance of the Expert Review Panel
3. Sound Transit's Project Review Committee

Background of the author of this presentation:

Graduate of Roosevelt High School, Seattle
Graduate of University of Washington
President, Associated Students; Captain, varsity swim team
Advanced degree from UCLA
Chief of Staff, US Congressman Allard Lowenstein, 1968-69
Director of Public Affairs, King Broadcasting Company, 1969-83
National awards for productions in the fields of environment,
land use planning, criminal justice, energy, and economics
Columnist, Seattle Business Magazine, 1984-89
Director, The Bullitt Foundation, 1983-2000
The Bullitt family, major owners of King Broadcasting Company,
primarily funded efforts to protect the Northwest environment, also (until
1991) projects pertaining to child welfare and US/Soviet relations
Director of the US/Soviet Exchange Program, and Director of the International
Trade Exhibition, Seattle Goodwill Games, 1990
Member, Citizen Outreach Committee, Central Puget Sound Regional Transit
Authority, 1995-96
Member, Interim Monorail Committee, City of Seattle, 1997-1998
Author, "Why Rail," **Open Spaces: Views from the Northwest** (Summer 2000)
Participant, Call for an Independent Audit, September 6, 2000
Co-chairman, Citizens for Mobility, 2000 to present
Board member, Sane Transit, 2001 to present
Member, Citizens for Effective Transportation Alternatives, 2002 to present

Performance Audit of Sound Transit

Members of the legislature, and this committee, have spoken eloquently of the need to restore accountability and public trust in public works transportation decisions and projects. Nothing illustrates that need as dramatically as Sound Transit's Central Link light rail project. It is a "starter rail," which was supposed to generate so much confidence that the public would support additional local option taxes sufficient to complete a 125-mile light rail network, by 2020. While Central Link, alone, will do nothing to soften the growth of congestion, a 125-mile rail network would.

The project was sold to voters at a fraudulent price tag of \$2.3 billion. The price and taxing level put before voters reflected Sound Transit's elaborate polling, notably that of the Fairbank, Maslin, Maullin & Associates firm of San Francisco. A conservative estimate of what the price actually is, is \$7 billion, University District to SeaTac Airport--nearly \$5 billion in excess of what voters were assured was a "very conservative" figure. Another billion or so would be required to get to Northgate. If the legislature acceded to Sound Transit's request to add \$1.3 billion to the anticipated regional transportation package, purportedly to get to Northgate, that additional sum would not be sufficient for it to get even to the University District.

The north segment, University Link, was to cost \$1.4 billion, the south segment, Airport Link, \$900 million. Today the south segment, called Initial Segment--mostly the same as Airport Link, with some substituted track miles that should add nothing to the cost--is \$2.9 billion,¹ triple what was represented to voters in 1996 as "extremely conservative." The remainder of the project is in disarray, particularly University Link, as, after a decade of claims that the engineering was sublime and the cost estimates were solid, Sound Transit withdrew its Capitol Hill/Portage Bay alignment as non-viable and too-costly. Since then, it has been casting about for an alternative, while hiding and distorting the financial implications of its ineptitude and past deceptions.

If the scale of University Link's cost escalations are proportional to those of Airport Link, a reasonable assumption, the price tag for the 21 miles will exceed \$7 billion. It's likely to be even worse, for three critical reasons. 1) It will be many years before there is any prospect of money sufficient to construct U Link, and the passage of time will add to the cost. 2) Sound Transit now admits that the University District was an ill-considered terminus for its rail line, and it must extend at least to Ravenna Boulevard, adding another mile of tunneling and perhaps \$300 million to the cost. 3) Since the project will cost considerably more than Initial Segment, and will rely much more heavily on borrowed capital, the debt service charges will be many hundreds of millions of dollars greater than they will be for Initial Segment. A cautious estimate would be \$700 million more during the construction phase, and an equal or greater sum during the post-construction years, with the total in the \$3 billion range.²

The motive for Sound Transit's deceptive claims is easy to discern: Its polling revealed that, though the public has a sentimental affection for trains, honest numbers would far

¹ Sound Transit constantly understates the cost to the public, and claims it is \$2.1 billion. That omits contingencies, reserves, cost to acquire the downtown tunnel, mitigation in the Rainier Valley, public art, and capitalized interest--net debt service charges during construction which, according to Generally Accepted Accounting Principles, are part of the development cost. See table in appendix.

² The borrowing necessary for Initial Segment is \$1.33 billion. Payments during the construction phase--part of the cost of development--are projected at \$339 million. The long-term debt phase 2009-2039, that is, after construction, and accounted separately, will be an additional \$1.1 billion, providing interest rates stay low and bond rating stays high. Total, \$1.47 billion for interest payments. University Link likely will require no less than \$3 billion debt which, if it can be obtained at the same favorable terms, will require \$3.32 billion just for interest payments, on top of roughly \$3 billion for construction costs. These calculations do not address the added cost of getting from Tukwila to SeaTac, South 200th Street, last estimated at \$477 million, or north from the University District.

exceed the public's tolerance for cost, and would have defeated the tax proposal. How were the numbers kept deceptively low? We know the mechanisms in general, and have an authoritative source--the Massachusetts Inspector General--to discern the methods in detail.

Here, in summary, is what the performance audit by Deloitte & Touche, September 2001, found was the matter with Sound Transit's cost estimates for Link light rail.³

- "Deficiencies in development of prior estimates including
 - Development of estimates to match a budget
 - Overly optimistic estimates
 - Inadequate contingencies
 - Contingencies prematurely reduced
 - Inadequate/insufficient data (e.g. no soils data, ROW based on EIS, etc.)
 - Inadequate soft costs."⁴

That is a stunning list, and dramatizes that there was no intention to present honest, competent numbers. Sound Transit started from a premise of making its costs reflect what it wanted its budget to be--listed first by Deloitte & Touche--which reflected what the public might be persuaded to buy.

Deloitte & Touche further itemized a daunting list of profound problems, including compounded optimism, understated overhead costs, and unrealistic construction schedules:

"[T]he estimates were developed with too much optimism for the best case scenario to occur in all cases....[E]stimates were prematurely reduced at the direction of Sound Transit management. The mindset or attitude was that any reduction would be made up by savings in other areas as the Project moved forward....Also, the Agency estimates were lowered in 1999 based upon overly optimistic staffing plans. In addition, the Project schedule was based upon a completion date in the fall of 2006 but this was also discovered to be overly optimistic and aggressive."⁵

An understanding of the details for deception is illuminated by the Massachusetts Inspector General's March 2001 report on the history of the Central Artery/Tunnel Project, more popularly known as the Big Dig.⁶ This is not merely an inference borrowed from the country's most horrendously costly highway project and applied to its most horrendously costly light rail project. It is a commentary on the machinations of a key project manager for both projects, Parsons Brinckerhoff Quade & Douglas.

³ The Deloitte & Touche performance audit follows this report, as Appendix D.

⁴ Deloitte & Touche performance audit, powerpoint presentation for Sound Transit board meeting, September 13, 2001, page 5.

⁵ Deloitte & Touche performance audit, September 27, 2001, page 8.

⁶ The Massachusetts Inspector General's report, see Appendix E.

With Bechtel, Parsons Brinckerhoff has been co-project manager of the Big Dig, in Boston. Here, it is head of a project management consortium called Puget Sound Transit Consultants, teamed with lesser partners Earth Tech and BRW. In Boston, in 1993, the lead manager for Bechtel realized that costs were not being honestly presented. He assembled an experienced team from his company, and from Parsons Brinckerhoff, and applied professional rigor to arrive at a realistic number: \$14 billion. A decade later, that number holds up well, illustrating that these firms are capable of competent, honest work.

The Massachusetts Turnpike Authority, counterpart to Sound Transit, wanted the cost to be \$8 billion, and directed Bechtel to get rid of its project manager and get someone more cooperative. The talents of Bechtel and Parsons Brinckerhoff then were applied to creating detailed strategies for deception, to hide costs. They then did it at the bidding of the organization for which they were working. To his credit, the CEO of Bechtel made a stalwart effort to avert deception, and even traveled to Boston to meet face-to-face with the Governor, for three hours, to give him the hard facts. To no avail.

It would have been impossible to hide and misrepresent such prodigious costs without the application of Bechtel's and Parsons Brinckerhoff's talents. The conclusion of the Massachusetts Inspector General's report observes:

"Big Dig officials would never have been able to perpetrate the inaccurate presentation of such detailed information without the active collaboration of B/PB [Bechtel and Parsons Brinckerhoff]--the entity that gathered, controlled, and manipulated all Big Dig cost data. B/PB did not participate passively. B/PB took control soon after Big Dig officials decided to obscure the true costs and after FHWA [Federal Highway Administration] accepted the accounting assumptions. In fact, documents reviewed by this Office illustrate B/PB's efforts to develop and maintain the mechanisms used to obscure Big Dig costs."⁷

An official of Parsons Brinckerhoff made clear, in an interview with the Boston Globe, that the company felt no obligation to tell the truth to the public--only to act in accord with the wishes of its client, the Turnpike Authority. It felt entitled to extend the misrepresentations to the Massachusetts Legislature, a matter currently under criminal investigation.

The work of the Massachusetts Inspector General was an ambitious exercise, by an experienced office, with subpoena powers--although systematic destruction of records and abuse of attorney-client privilege were used to impede the investigation. But here, a puny \$75,000 performance review by Sound Transit's own auditor, which it had but two months to complete, has revealed the application of the techniques perfected in Boston. Here, as there, Parsons Brinckerhoff serves at the direction and pleasure of the organization for which it works, Sound Transit.⁸

⁷ Massachusetts Inspector General, March 2001, page 52.

⁸ One of the anecdotes in the Deloitte & Touche performance notes \$142 million in costs identified in 1999 that Sound Transit considered unwelcome in its budget. So PSTC made the requisite accommodations to hide the \$142 million

At the outset, Puget Sound Transit Consultants had a \$23 million contract, with \$4.6 million for contingencies. Through a series of generous change orders and extensions, that contract has been ratcheted up to \$71 million.⁹ As billions of dollars of hidden costs have progressively been revealed, PSTC has been handsomely rewarded by Sound Transit for its good work.

In December 2000, unable to hide its tunnel bids, property acquisition and spiraling overhead costs any longer, Sound Transit admitted a \$1 billion additional overrun. In January 2001, under close questioning by board member Rob McKenna--the kind of capable performance that gave Ron Sims cause to remove him from the board--Joni Earl was forced to admit an additional \$560 million cost overrun. Then evidence accumulated that just the Airport Link portion was going to sustain another ten-digit increase in its projected cost.

The revelations--with more to come--prompted some responsible persons in the Sound Transit organization to propose a good-quality performance audit, to identify what the problem was, and to facilitate corrective measures. That resulted in a series of machinations by those who knew too well the basis of the problem, what a recent expert team described as "strategic misrepresentation."¹⁰ They restricted and starved the idea of a performance audit, put in on a very short, under-funded leash, and assigned an arcane element of it to Sound Transit's own auditor, thinking that would be safe. A summary of those machinations, quoting directly from the official record, is appended under the heading, Decision Not to Find Out What Went Wrong.¹¹

⁹ SOUND TRANSIT
MOTION NO. M2002-27

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute a contract amendment with Puget Sound Transit Consultants (Contract No. RTA/LR26-97) to continue project control support of Link Light Rail through 2003 and engineering and architectural design support services for Central Link construction through 2008, in the amount of \$13,728,020 plus a contingency of \$696,545 for a total of \$14,424,565 and for a new total authorized contract amount not to exceed \$71,241,877.

Background:

In December 1997, Sound Transit established a limited notice to proceed for the Joint Venture Partnership composed of Parsons Brinkerhoff Quade & Douglas, Inc., Earth Tech (formerly ICF Kaiser Engineers Inc.), and BRW Inc. otherwise known as Puget Sound Transit Consultants (PSTC) to perform engineering/architecture services for both the Tacoma and Central Link Light Rail Projects. In January 1998, the Board authorized the Executive Director to award a contract to PSTC for conceptual and preliminary engineering for Central Link Light Rail Project.

The contract (RTA/LR26-97) established a base contract amount of \$22,989,057 and a contingency of \$4,600,000 for a total amount of \$27,589,057....

¹⁰ Bent Flyvbjerg et al, "Underestimating Costs in Public Works Projects: Error or Lie?", American Planning Association Journal, Summer 2002, page 290.

¹¹ Apprndix A.

What is remarkable is what was revealed by a mere \$75,000 contract to Sound Transit's auditor, in two short months. Though the report finds that the \$2.9 billion cost for Initial Segment is reasonable--the only segment of Central Link to deserve that commendation--it lists pages of reasons why more cost overruns can be anticipated even for Initial Segment, unless there are major reforms in Sound Transit's management. The problems identified by Deloitte & Touche have not been solved--and, in any case, prudence dictates that their resolution be confirmed with another, independent performance audit.

Recommendation:

Members of the legislature have expressed their dismay and concern about cost overruns, accountability, and public trust. They have expressed a resolve to have competent cost estimates and performance audits in the future. The legislature created Sound Transit, and is responsible to oversee its performance. Sound Transit has shown itself incapable of internal reform. When 88 citizens, including 12 elected officials and a former governor, asked for an independent audit, knowing that costs were at least a half-billion higher than admitted, they were slandered at a Sound Transit press conference chaired by Ron Sims, and accused of "twisting the truth."¹² More recently, billions of dollars of additional overruns later, Sound Transit subverted calls by conscientious participants for a board-sponsored performance audit, "to find out why the Link Light Rail cost estimates were so far off and how the systems have been changed so this doesn't happen again." The conscientious parties within Sound Transit, and citizens and taxpayers without, need this committee to commission a genuinely independent performance audit--before a massive and irrevocable commitment is made by the region. A performance audit can build on the limited work completed by Deloitte & Touche, and be illuminated by the more thorough, parallel work of the Massachusetts Inspector General.

Expert Review Panel

In January 1990, the State of Washington created an Expert Review Panel, "to review Metro's methodology and planning assumptions in evaluating high capacity transit alternatives--a first in transit system planning." It was mandated in response to the findings of Dr. Don H. Pickrell, senior economist at the Volpe National Research Center, United States Department of Transportation, that sponsors of urban rail projects routinely understated costs and exaggerated ridership benefits of their proposed projects. On average, costs were about double what was predicted, and ridership about half--so the value of the projects, cost-to-benefit, averaged merely one-fourth what was represented. Typically, the projects were the most costly public works undertakings in the history of the affected local areas. Had true costs and benefits been forthcoming, more productive options would have been selected. But by the time the fraud was discerned, usually it was too late to turn back.¹³

¹² Seattle Times, September 7, 2000.

¹³ Dr. Pickrell's official, scholarly report in 1989 is dense. He later published an accessible and widely-read article in the American Planning Association Journal, "A Desire Named Streetcar: Fantasy and Fact in Rail Transit Planning," Spring 1992.

According to Sound Transit executive director Bob White, the Pickrell Report "led the [Washington] state legislature to create the Puget Sound Region High Capacity Transit Expert Review Panel (ERP) comprised of independent experts from around the country."¹⁴

The purpose of the legislature was public-spirited. Regrettably, it was subverted. The plan devised by the Central Puget Sound Regional Transit Authority, Sound Move, was adopted by its board May 31, 1996, and submitted to the public for the approval of local-option taxes the following November. Pursuant to the directives of the state legislature, the plan was subjected to "rigorous scrutiny by an independent Expert Review Panel appointed by and accountable to the state of Washington." It was used to give citizens and voters confidence in the cost and ridership representations made by Sound Transit:

"Sound Moves is based on extremely conservative cost and ridership assumptions and methodologies reviewed by an independent expert review panel appointed by the governor, the state Legislature, and the state Transportation Department. In addition, the RTA has adopted strict cost management control principles to make certain Sound Move stays on schedule and within budget."¹⁵

It is of vital importance to ascertain why the outcome has been so deficient, and to take corrective measures to see that Sound Transit's standard of performance does not continue.

The cost trajectory for Central Link light rail has been summarized, above. Now, at best, only the cheaper, easier part of the line will be finished, scheduled to carry one-third the passengers, mostly people who would be traveling in the downtown Seattle transit tunnel anyway. It will be more than three years later than the ten-years promised voters for the entire project. The date of completion for the rest of the line is unknown, but distant, if ever. Initial Segment was supposed to cost no more than 40 percent of the total, and it, alone, is straining the outer limit of the fiscal capacity of North and South King County subareas. Even with three extra years of tax revenues added to the pot.

Sound Transit assured the federal government it could rely on its cost estimates, because they were vouched-for by the state's independent Expert Review Panel. Though its cost projections have been discredited, Sound Transit continues to invoke the authority of the panel for its ridership estimates:

'The state-appointed Expert Review Panel...concluded that the agency's ridership forecasts were reasonable and may well have been overly conservative;...'¹⁶

A profound public interest rests on the reliability of the ridership forecasts. The value of the investment, its relative value to other options, and the degree to which the operating

¹⁴ Letter from Bob White to the RTA Board, February 26, 1996.

¹⁵ Sound Move, page 31.

¹⁶ Sound Transit, New Starts submission to FTA, October 2001, page 42.

budget relies on farebox revenue, all rely upon the competence and veracity of the ridership estimates. As it stands, from 2009 through 2016, 87 percent of North King County's revenue is budgeted for bond payments and operating subsidies for Initial Segment, with an even more precarious margin of safety for South King County. The Expert Review Panel has proven notoriously unreliable on the cost estimates--missing by a factor of three. If its ridership forecasts are even half as deficient, there will be hell to pay. North and South King County may even accumulate annual debt beyond their capacity to manage it, the so-called "death spiral" that faced local electric utilities and prompted the WPPSS meltdown.

Recommendation:

It is imperative that the state learn what went wrong with the Expert Review Panel's cost estimates, so such mistakes can be avoided in the future. It is imperative that the ridership estimates be independently and expertly vetted, before Initial Segment proceeds any further, to avert a parallel tragedy. In order to conduct a study in which the legislature and the public can have confidence, it must be commissioned and supervised independent of Sound Transit.

Project Review Committee

The historic machinations of Sound Transit continue today. This is important for the legislature to be aware of, as that agency seeks to convey the opposite impression. Yes, there were **bad** old days, as Ron Sims acknowledges but they have been consigned to the past, and things purportedly are different and better now. Sound Transit is reformed.

That's not true. The bad old habits Ron Sims decries are thriving under the present regime.

Misrepresentations to the federal government: the Project Review Committee

Sound Transit continues to misrepresent the project to the federal government. It got caught by the Inspector General last time--which was lucky for the region--and it is repeating its pattern of misrepresentations in its current New Starts application. For example,

"A Project Review Committee, chaired by former Seattle Mayor Charles Royer, was formed in 2001 to provide an independent review of the light rail project. Review committee members included U.S. Senator Slade Gorton, former Governor Booth Gardner and Seattle civic leader Jim Ellis. The committee supported Sound Transit's decision to start with an initial segment. In a letter to the Sound Transit Board, the committee concluded in part that, 'with tight cost controls on the construction of the initial segment and careful cost budgeting to match available revenues for the rest of the

project, Sound Transit should have sufficient local and federal revenues to construct both the north and south segments of the light rail line."¹⁷

That contrived statement is narrowly true--save for use of the word "independent"--and its effect is fundamentally false. Here is its context:

The Royer committee forwarded a consensus letter to Dave Earling, chairman of Sound Transit's board, and to executive director Joni Earl, June 27, 2001, saying, in part, that Sound Transit should confine itself to developing Link light rail south of downtown.

"The northern terminus should initially be at the south edge of downtown. The PRC does not believe the Downtown Seattle Transit Tunnel ('DSTT') should be converted for joint rail/bus use until such time as construction is funded and underway on the northern segment of the light rail line. Only at the point that increased ridership is sufficient to justify closure of the DSTT for more than two years should the tunnel be retrofitted for light rail (or for joint rail/bus use)."

That was prudent counsel, consistent with the stated position of the Downtown Seattle Association and the Greater Seattle Chamber of Commerce. It was insisted upon by committee member Steve Koehler, representing DSA, and strongly supported by Booth Gardner. The latter accepted other elements of the consensus statement that he did not like, as the best that could be obtained.

What then happened belied the claim that the Project Review Committee was independent. There was a flurry of back-room meetings involving, not the members of the committee, but Sound Transit management, John Howell (staff of the Project Review Committee), and Sound Transit's public affairs consultant, Cocker Fennessy.¹⁸

According to Cocker Fennessy invoices, it "participat[ed] in a PRC meeting July 25, and draft[ed] recommendations for a revised scope of work." There's no record of a scheduled PRC meeting that day--it appears to have involved hand-picked members--and there is no indication in PRC minutes that committee members were aware its scope of work had been altered. Also, it is telling that the scope of work of a purportedly independent committee was redrafted by the public affairs consultant of the agency that was supposedly being reviewed.

Then Cocker Fennessy "provid[ed] strategic counsel to Howell, Ilgenfritz and Earl regarding PRC." So Howell, PRC staff, was the recipient of "strategic counsel" from Sound Transit's public affairs consultant, in the company of the chief communications officer and the executive director of the organization PRC publicly claimed to be independently evaluating. Then the independent committee's final report, which

¹⁷ Sound Transit, Link Light Rail: Initial Segment, submitted to the Federal Transit Administration, October 2001, page 42.

¹⁸ A summary of Cocker Fennessy's work on PRC, for Sound Transit management, taken from Cocker Fennessy's monthly invoices, is appendix B.

appeared over the chairman's name, September 27, 2001 **was prepared and presented to the board with the assistance of Cocker Fennessy:**

"Staff Project Review Committee regarding their letter of recommendations and presentation to the ST board".¹⁹

Rather strange, that Sound Transit's public affairs firm actually staffed PRC's final report, and its presentation to the Sound Transit board--while the public and the federal government were told that PRC was an independent committee. Then Cocker Fennessy staffed the placement of an op-ed in the Seattle PI, by Charles Royer and Kathy Scanlan, aided by Slade Gorton and Jim Ellis, called "Good news for Sound Transit."²⁰

PRC, at the instigation and with the close involvement of Sound Transit management and its public affairs consultant, held that Sound Transit can complete 21-mile Central Link with existing taxing authority. That conclusion contradicts the clear evidence of the agency's own 2002 Financial Plan, 1997-2021, and did an end-run on PRC's June 27 consensus resolution not to intrude upon the downtown tunnel until a plan is in place, with sufficient resources in hand, to continue north beyond the University District.

Now the conclusions of PRC are rhetorically disseminated by the chairman of the board, used by Sound Transit's management in the Sane Transit v. Sound Transit court proceeding, and insinuated into the New Starts submission to the federal government. The latter even invoked governor Booth Gardner's name, though he had no knowledge of the machinations, and did not approve of the result. This is a continuation of the misrepresentations that brought the agency into disrepute in its earlier federal application.

How independent is the so-called independent Project Review Committee? Key members Jim Ellis and Slade Gorton--who helped craft and defend the financial plan--are senior members of Sound Transit's primary law firm, Preston Gates & Ellis. That firm is the beneficiary of millions of dollars of billings, so far, with more millions on the way. It also is co-bond counsel, and the more money that's borrowed, the more the firm will prosper. Kathy Scanlan, who chaired the finance committee, did not have a conflict of interest, or the appearance thereof, when appointed to and serving on the committee. But now she's a principal in Cedar River Associates--which received a \$250,000 contract from Sound Transit to staff an eight-month, part-time citizen committee. Its work consisted of staffing several committee meetings, and a lot of back-room meetings strategizing with Sound Transit management and its public affairs consultant. Its work product was comprised of a four-page letter on June 27, 2001, and a six-page report to the Sound Transit board on September 27--although Cocker Fennessy claims considerable credit for the latter, and billed taxpayers for the report's preparation and presentation.

Conflicts of interest on PRC do not end there. Mike Vaska is a partner in Foster Pepper, which also is under contract to Sound Transit. He, alone, was good enough to publicly announce the relationship, saying, "His law firm does do some legal work for Sound

¹⁹ Cocker Fennessy invoice for September 3-September 28, 2001, dated October 8, 2001.

²⁰ Seattle PI, 11.8.01. The Op-ed is appended, Appendix C.

Transit, but he receives no compensation for that work."²¹ The "some legal work" includes the role of co-bond counsel, currently under a \$1 million contract with Sound Transit. Even though he is not billing for hours while serving on PRC, he could hardly promote any action that would diminish the prospects for large-scale borrowing by Sound Transit, as that would directly conflict with the interests of his firm, and the desires of a seven-digit client.

Other members appear to have been selected due to their fidelity to rail transit projects. One member is associated with the development of the MAX system in Portland. Steve Goldblatt has proven his fidelity to Link light rail, no matter how much it costs, as a long-time member of Sound Transit's hand-picked Citizens Oversight Committee. And Tom Walsh is an employee of King County, a direct subordinate of Sound Transit's board chairman Ron Sims.

As for the chairman, Charles Royer, was he paid? Was he, in effect, working for and under the direction of Sound Transit management? His conduct conveys that appearance. Committee members were under the impression that he was a citizen volunteer--but that's the same impression this reporter, and other members of Sound Transit's Citizen Outreach Committee, chaired by Dick Ford, had in 1996. One example of felt betrayal is the recent comment by committee member Skip Rowley, prominent businessman from Issaquah, who recently held a key chairmanship role on the Blue Ribbon Commission on Transportation, appointed by governor Gary Locke:

"I did not know of the Preston (Dick Ford) contract. [At the time Ford was chairing the so-called citizens committee] ...I assumed that Preston, and Ford in particular, was leading the outreach committee in good faith and as a volunteer as we were....

"Yes, we were set up. It was in fact an entirely controlled and manipulated process. From that time on, I never serve on any committee without taking the time to ensure that it is real and not some pre-ordained outcome. Was I pissed? You bet I was! I expressed that to both Ford and White, but I never knew about any \$300,000.00 contract."²²

Whether Charles Royer was paid by Sound Transit may not be easy to ascertain, just as the details of Dick Ford's role are hidden behind attorney-client privilege. He could have been paid out of the largess forwarded to Cedar River Associates. Or he could have been paid via Preston Gates & Ellis, with that avenue of remuneration also hidden behind attorney-client privilege--which leads to the next point.

²¹ Project Review Committee minutes, May 16, 2001

²² Personal correspondence, June 28, 2002. Members of the committee only learned, years later, that Preston Gates & Ellis had a \$330,879 contract with Sound Transit while Dick Ford, of Preston Gates & Ellis purported to be chairing an "independent" committee. That belated revelation explains the manner in which he executed his role.

Improper use of attorney-client privilege

In its investigation of the excesses of the Big Dig, the Massachusetts Inspector General reported difficulty fully ascertaining the facts, due to systematic destruction of records, and an expansive use of attorney-client privilege to shield access to vital information.²³ This is reminiscent of the arrangement Sound Transit forged with Preston Gates & Ellis.

"Sound Transit has also become increasingly aware of the importance of retaining experts and other third-party consultants through Preston (or other firms) in a manner that preserves the attorney-client relationship and the accompanying attorney-client privilege. Sound Transit wishes to preserve its ability to make such arrangements at the same time recognizing that prompt payment of such experts and consultants is important. With this contract amendment, Sound Transit will allow Preston to invoice Sound Transit for such experts and third-party consultants separate from its regular monthly invoice....

"Expert fees and the costs of third-party consultants retained by Preston at Sound Transit's request (for purposes of privilege or other reason) may be billed separately from Preston's monthly bill for legal services and costs. Sound Transit will expedite payments to Preston for such expert and other fees so that payment can generally be made to the consultants within thirty days of the date Preston receives a complete and satisfactory invoice from the consultant. When such invoices are anticipated to exceed \$10,000/month and payment cannot be made within 30 days as described above, Preston may request that funds sufficient to cover the anticipated monthly consultant costs be deposited in a trust account with Preston for payment upon receipt of a complete and satisfactory invoice approved by Sound Transit."²⁴

This situation merits the review of an authoritative body, with subpoena powers, entitled to access the pertinent data:

The Sound Transit/Preston contract, by creating a mechanism for "retaining experts and other third-party consultants **through Preston**" [emphasis added] suggests the agency is protecting personages and organizations of its choosing with attorney-client privilege, by routing their payments through the law firm. Also, the agency "wishes to preserve its ability to make such arrangements...[and assure] prompt payment of such experts and consultant"--so the firm is obliged to process requested payments promptly, rather than incorporate them in its monthly invoices.

Perhaps Charles Royer was a citizen volunteer, and genuinely independent. Perhaps he was a Sound Transit contractor, paid from the generous \$250,000 contract to Cedar River Associates. And maybe compensation was handled via Preston Gates & Ellis, and shielded by a claim of attorney-client privilege. The public, and the federal government, deserve to know, so they can judge how independent he was, as part of an assessment of the credence to accord PRC's extraordinary findings and recommendations. Also, the public deserves more information about the details of the various out-of-sight meetings

²³ MIG, A History, page 21-22.

²⁴ Contract between Sound Transit and Preston Gates & Ellis, signed May 1, 1999.

between the staff of the purported independent committee and Sound Transit's management and its consultant, meetings of which the non-conflicted members were unaware.

Those behind-the-scenes strategy sessions help explain the swift, extraordinary embrace of the Royer committee's findings by Sound Transit--in spite of the fact that they conflicted with the agency's prior estimation, its current financial plan, past promises to voters, and existing board policy.

Acting on assumptions contrary to Sound Move, and to board policy

The assertions made by Charles Royer, Kathy Scanlan, Jim Ellis, and Slade Gorton, in the name of the Project Review Committee, that Sound Transit can complete Central Link light rail with existing tax resources, rely, among other things, on the following: 1) A higher risk for bonds--lowering the debt service coverage ratio from 2 x 1 (1.3 x 1 in any single year) to 1.15 x 1, and 2) extending subarea borrowing for an additional decade after 2009. Both changes violate explicit commitments made to voters in 1996, and existing Sound Transit board policy. Now agency officials are representing to the public, the court, and the federal government, that it can complete Central Link with existing resources, premised on policies in direct violation to those in place.²⁵

²⁵ Royer's September 27 recommendations include extending inter-subarea borrowing--which is of questionable legality anyway--an additional ten years, from 2009 to 2019, and reducing the debt service ratio to 1.15. Both are contrary to assurances made to voters in 1996, and existing board policy. That does not negate the recommendations, but it precludes agency management, and the chairman of the board, from actions that presume the recommendations have been approved by the voters and enacted by the board.

A newspaper reporter told this writer that, "Sims has hinted to me that they would 'reallocate' money if needed to get to U District with existing taxes, but would not elaborate." (personal correspondence, 9.13.02) That sounds precisely like inter-subarea borrowing that Royer, apparently prompted by Sound Transit management, recommended. But it remains in violation of existing board policy, and representations to voters in Sound Move. It wouldn't be enough money, anyway.

In Sound Move: The Ten-Year Regional Transit System Plan, submitted to and approved by voters in 1996, the following representations were made:

"subarea benefits--The RTA is committed to invest revenues to benefit the areas where they are raised. The amount of long-term debt financing used to benefit each subarea will be based on its financing capacity (defined by revenues generated and ability to repay debt over covering operating expenses)." (Sound Move, page 34)

"Equity will be defined as utilizing local tax revenues and related debt for projects and services which benefit the subareas generally in proportion to the level of revenues each subarea generates. This equity principle will apply to the ten-year system plan as well as all future phases." (Sound Move, page B-3)

"a) The RTA further recognizes the importance of a conservative debt service coverage ratio, both to insure a conservative use of debt and to secure favorable financing costs.

"b) For planning purposes, the RTA's debt service coverage ratio policy will be set at an average coverage ratio of 2.0x for net revenues over annual debt service costs, not to fall below 1.3x in any single year." (Sound Move, page B-5, 6)

Appendix A

Sound Transit: Decision Not to Find Out What Went Wrong

From the minutes of the Executive Committee Meeting of the Board, May 4, 2001

QUOTE

Board Member Greg Nickels requested answers to three questions 1) how much money does Sound Transit have? 2) what can we build with that? 3) and when can we start? To restore the agency's credibility Sound Transit has formed an Audit and Reporting Subcommittee. This Subcommittee was established to find out why the Link Light Rail cost estimates were so far off and how the systems have been changed so this doesn't happen again.

Mr. Nickels moved that the Executive Committee give direction that the Audit Subcommittee proceed ahead with a performance audit on the cost estimates of the Central Link project and take a look at whether the problems that led to those estimates being so far off have been resolved with intent to draw this to conclusion within 60-90 days. Cost to be determined and presented by staff when the work plan is developed.

Mr. Sims requested that a work plan and cost estimate be brought to the full Board.

It was moved by Mr. Nickels and seconded by Mr. Sims and carried by the unanimous vote of all members present that the motion be approved.

UNQUOTE

From the minutes of the May 24, 2001 Sound Transit Board Meeting:

QUOTE

Performance Audit on Link Light Rail Cost Estimates

Mr. Earling told the Board that the Executive Committee had asked for a discussion of this item by the Board. A memo from Joni Earl had been distributed to the Board.

Mr. Hugh Simpson, Finance Director, outlined the memo for the Board. The memo was in response to a May 4th request by the Executive Committee. Option 1 is to review all cost estimates from 1996 forward, and Option 2 reviews only the current cost estimates starting with the development of the Locally Preferred Alternative forward.

Sound Transit proposes to retain Deloitte & Touche as the independent project manager. Staff anticipates that the audit could be completed in 60 to 90 days after the Board decides on the technical auditor.

It was moved by Mr. Nickels and seconded by Ms. Gates that Option No. 2 for the Performance Audit of Link Light Rail cost estimates be approved as presented.

The motion to approve Option No. 2 for the Performance Audit of the Link Light Rail cost estimates was carried by the majority vote of all Board members present. Those voting in the minority were Mr. Ladenburg, Mr. Enslow, and Mr. White.
UNQUOTE

From Board minutes, July 26, 01:

QUOTE

Motion No. M2001-77 Authorizing the Executive Director to execute and amendment to the contract with Deloitte & Touche, LLP in the amount of \$475,000 for a new contract amount not to exceed \$1,533,618 to provide audit services for the link cost estimates.

It was moved by Mr. Nickels and seconded by Mr. Phelps that Motion No. M2001-77 be approved as presented.

Mr. Hugh Simpson, Finance Director, presented the staff report on Motion No. M2001-77. Mr. Simpson said the proposed motion addressed the request made by the Board at its May 24, 2001 meeting for an independent audit and assessment of the reasonableness and the accuracy of the 1999 LPA budget; identification and reason for the cost growth between 1999 and 2000; review of the current cost estimate for the potential revised MOS; and a review of Sound Transits cost estimating systems and methodologies for project management. Mr. Simpson said that the audit work was not anticipated in the budget, but that there were sufficient funds in the Link budget to fund the audit.

In response to Mr. McIvers inquiry, Mr. Simpson said that time was a factor in deciding to amend the Deloitte & Touche contract, and also that there was little interest in the industry in doing the work.

It was moved by Mr. Crawford and seconded by Ms. Gates to amend Motion No. M2001-77 so that tasks three and four of the project scope as stated in the original motion be carried out by the contractor.

Mr. Simpson introduced Mr. Chimes of Deloitte and Touche, who described the components that [sic] the report.

Mr. MacDonald offered and Mr. Crawford and Ms. Gates agreed to a friendly amendment to the amendment to Motion No. M2001-77 that the contractor

complete task four of the contract scope of the original motion, for delivery in September, and that the contract amendment amount be revised to \$75,000 with an additional \$25,000 for indirect costs, for a new total contract amount not to exceed \$1,058,618.

It was carried by the unanimous vote of all Board members present to amend Motion No. M2001-77.

UNQUOTE

The Seattle Times of July 27, 01 reported:

QUOTE

In other action yesterday, the Sound Transit board decided not to spend \$475,000 for a detailed audit of how the agency went wrong with its proposed 21-mile light-rail project.

Earlier this year, it was discovered that that project was more than \$1 billion over budget. The agency is debating how large a light-rail system should be to start with and what route it should take.

Sound Transit was considering hiring Deloitte & Touche to determine what happened. Instead, the board agreed to pay the firm up to \$100,000 to review the agency's methods for estimating costs.

UNQUOTE

The Seattle PI of July 27, 01 reported:

QUOTE

Also yesterday, the Sound Transit board approved spending up to \$100,000 on an outside audit of Link light rail's cost estimates. The agency's staff had recommended a broader assessment of cost-estimate problems, past and present, but Deloitte & Touche's audit price tag of up to \$510,000 raised concern.

State Transportation Secretary Doug MacDonald, a board member, recommended reducing the audit scope just to cover the current method of judging light rail costs. The proposal was approved.

UNQUOTE

Appendix B

Cocker Fennessy Billings Related to Project Review Committee:

(Everything following is an exact quote, but only PRC-relevant billing items are included.)

April 2-April 28, 2001:

Provide information to PRC staff as requested

Attend PRC meetings and provide follow-up support

Strategize on board options and PRC

April 30-May 25, 2001

Assist PRC members

Attend PRC meetings

Debrief PRC meetings

Strategy session with Royer, Ceis, Smith, Howell [Tim Ceis and Jared Smith staffed the Sound Transit work of board members Ron Sims and Paul Schell. Now Ceis is chief of staff for Sound Transit board member Greg Nickels, mayor of Seattle, and Smith works for Parsons Brinckerhoff.]

May 28-June 30, 2001

Update and advise Sound Transit regarding Project Review committee's work

Attend PRC strategy meeting on June 6

Meet with PRC members Ellis, Gorton regarding Sounder issues

Review regional transportation legislation as requested by PRC

July 2-July 28, 2001

Cocker Fennessy provided public affairs services to Sound Transit during this period. Activities primarily related to supporting the Project Review Committee, and included meeting with committee members to discuss the committee's role, participating in a planning meeting with board members and their staff, preparing for and participating in a PRC meeting on July 25, and drafting recommendations for a revised scope of work.

July 30-August 31, 2001

Review letter to PRC

Provide strategic counsel to Howell, Ilgenfritz and Earl regarding PRC

September 3-September 28, 2001

Staff Project Review Committee regarding their letter of recommendations and presentation to the ST board

October 1-October 26, 2001

Assist with PRC oped placement

Meet with staff, PRC and board members regarding civic outreach

October 29-November 30, 2001

Brief staff on PRC issues

December 3-December 28, 2001

Assist in PRC, COP issues

Appendix C

SEATTLE POST-INTELLIGENCER

http://seattlepi.nwsourc.com/opinion/45765_charlieop.shtml

Good news for Sound Transit

Thursday, November 8, 2001

CHARLES ROYER and KATHY SCANLAN

Good news doesn't seem to travel very fast in this town when the good news is about Sound Transit. Good news has been buried in the noise of the mayor's race and the debate over Sound Transit's admittedly spotted past.

Good news lost in the heat of the Sound Transit Board's decision to build the southern link was a financial report by the independent Project Review Committee. The report concluded, "Sound Transit can build what it promised the voters assuming reasonable revenues, and it can start construction next year. It will take discipline, solid management and some tough policy choices, but it can be done."

What Sound Transit promised the voters and what the PRC believes can be built, is a 21-mile-long light-rail line from South 200th to Northeast 45th Street in the University District with the understanding that the agency "expects to find, and will aggressively seek, additional funding sources to build the segment between the University District and Northgate."

This is not wishful thinking on the part of the PRC. It is based on hard analysis of Sound Transit's financial plan, some reasonable expectations of local and national elected officials and four core principles adopted by PRC.

The first principle is to complete the voter approved light-rail plan before going back to the voters to request additional funding. It is a commitment that can and must be honored.

Second is to preserve the project's federal support. The federal government has approved \$500 million for the project and it can and must be saved.

Third is to begin construction immediately on a first segment of the line. Experience across the country is that completion and operation of a first light-rail segment has resulted in strong public support and federal funding to extend and expand the system. In our case, this first southern segment is 13 miles -- two-thirds of the voter-approved project.

And finally, create a construction budget based upon available revenues. That one sounds simple. But it hasn't been done. Budgets have been swollen by a host of mostly political pressures.

The PRC's analysis of Sound Transit's financial plan revealed some impressive work by the agency's staff but resulted in several recommended changes. If the Sound Transit Board makes these changes, the PRC believes the commitment to voters can be kept.

First, match the financial plan to the current project schedule. The plan is based on what is called Phase One, the portion of the project from Convention Place Station in downtown to South 154th, which would be completed in 2009. However, the agency's planning and construction schedule to complete the entire voter approved light-rail line from South 200th to Northeast 45th stretches out to 2013. The financial plan should be extended to reflect the completion of the entire line in 2013. Just doing that creates additional financial capacity of about \$150 million for North and South King County sub-areas -- money that could be used to complete the light-rail line.

Second, adjust the financial plan to reflect the recent decision to accommodate joint operations (use by bus and light rail) in the downtown Seattle transit tunnel (DSTT). Sound Transit had originally planned to take control of the DSTT from Metro King County in 2007 and convert the tunnel from bus use to light rail. It was assumed that when that conversion occurred Sound Transit would pay for 100 percent of the county's debt service payments for the tunnel. But with planned joint bus-rail operations in the tunnel that doesn't make sense, and the \$80 million in debt service payments through 2013 needs to be renegotiated to save at least \$40 million.

The financial plan also assumes the full cost of converting the tunnel to joint operations will be paid by the North and South King County sub-areas. Since joint operations means that regional bus service will use the tunnel, it makes sense to shift the \$114 million in tunnel joint-use retrofit costs to the regional fund.

That fund that pays for things that benefit all sub-areas, thus increasing the available funds for extending light rail north and south. (It should be noted that the north King County sub-area will still pay for the "base cost" to convert the tunnel to rail use, making this recommendation consistent with cost-sharing agreements made by the three counties at the start of the project.)

Third, there are several underlying assumptions in the financial plan that have the effect of increasing outside borrowing and increasing overall interest payments. Reducing that kind of borrowing by increasing internal borrowing among the various funds could save another \$105 million for the north and south King County sub-areas. And policies relating to debt coverage, design and construction reserves, and a full year of debt service reserves are unnecessarily conservative. With only modest changes in policy, the financial capacity of north and south King County sub-areas could be increased by another \$200 million that could be used to complete the light-rail line.

We believe these and other recommendations concerning the financial plan are consistent with Sound Transit's commitment to sub-area equity and will result in much greater likelihood that both the northern and southern segments of the system can be fully funded.

Finally, the financial plan assumes a costly deep tunnel crossing of Portage Bay resulting in a nearly \$40-million third-party mitigation agreement with the University of Washington and a very expensive deep station in the University District. Sound Transit has committed to reviewing alternative light-rail alignments to the north and the PRC members believe that lower cost solutions can be found. Assuming an alternative crossing of Portage Bay, constructing one, not two, stations in the University District (as has been suggested by university officials) could result in a sizable reduction in mitigation and construction costs, somewhere in the neighborhood of \$100 million to \$200 million.

Add to all that the very real likelihood of additional federal funds received over the period 2002 to project completion in 2013, then funds for completion of the full project from south of the airport to north of the University District have the very real possibility of reaching \$1.6 billion. With tight cost controls on construction of the first segment in the south, budgeting that matches available revenues and some tough but practical policy decisions by the Sound Transit Board, there should be sufficient local and federal revenues to complete the project promised to the voters.

The Project Review Committee believes there is now solid management and staff in place in the agency to build this project. Key leaders on the Sound Transit Board are now fully engaged and committed to building this first light-rail line -- two-thirds of the full project -- in such a way as to regain public support for this key piece of our region's transportation system.

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Charles Royer and Kathy Scanlan are members of the Sound Transit Project Review Committee; members Jim Ellis and Slade Gorton also contributed to this article.