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SUBMITTED VIA EMAIL ([randall.d.overton@uscg.mil](mailto:randall.d.overton@uscg.mil))

Randall D. Overton  
Bridge Administrator  
Coast Guard Thirteenth District  
915 2<sup>nd</sup> Ave. #2664  
Seattle, Washington 98174

**RE: Comments on the Columbia River Crossing General Bridge Permit Application  
and Compliance with the National Environmental Policy Act**

Dear Mr. Randall,

Please accept these comments from the Northwest Environmental Defense Center (“NEDC”) regarding the Columbia River Crossing (“CRC”) application for a General Bridge Permit submitted to the United States Coast Guard (“USCG”). We recognize that there is not an official public comment period associated with the initial processing of USCG general bridge permit applications. NEDC believes, however, that the massive scope, overwhelming complexity and ongoing controversy surrounding the CRC, in combination with recent modifications to the proposed project, support the need for greater public scrutiny at all stages of the authorization process.

In 2011 the Federal Highway Administration (“FHWA”) and Federal Transit Administration (“FTA”) issued a Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) that identified a replacement bridge for the Interstate 5 Bridge that would be 95 feet above zero Columbia River Datum (“CRD”) (“95 foot bridge”). In November of 2012, the agencies published an internal re-evaluation to support a design change for a bridge that would be 116 feet above zero CRD (“116 foot bridge”). *See* Columbia River Bridge Vertical Clearance NEPA Re-evaluation, December 2012 (“Re-evaluation”). The FHWA and FTA claim the Re-evaluation is sufficient to meet the agencies’ duties under the National Environmental Policy Act (“NEPA”) to analyze the environmental impacts of the CRC. These comments pertain to the decision by the FHWA and FTA to forgo the preparation of a Supplemental EIS (“SEIS”) that would have analyzed the environmental impact of the changes to the bridge design and new information, and provided for meaningful opportunity for public comment.

Given NEDC's mission to protect and conserve the natural resources of the Pacific Northwest, we are concerned about the environmental impacts of the latest iteration of this major bridge project. We are concerned that the FHWA's and FTA's failure to complete an SEIS precluded the public from having a meaningful opportunity to scrutinize and comment on the changes to the CRC bridge design and new information presented in recent studies. As part of its general permit authorization, the USCG must determine whether NEPA has been satisfied. 33 C.F.R. § 115.60(a). This obligation is also an opportunity to correct the co-lead agencies' failure to prepare an SEIS, and thereby afford the public and other comment agencies a meaningful opportunity to scrutinize the recent changes and new information. We hope that the USCG recognizes the magnitude of this proposed project and carefully reviews the adequacy of the CRC's environmental analysis. To maintain compliance with NEPA, we request that the USCG demand the preparation of an SEIS.

**I. NEPA and USCG's own regulations require that USCG deny the CRC's application for a general bridge permit and demand the preparation of an SEIS.**

The purpose of an EIS is to insure fully informed and well-considered decisions. 42 U.S.C. § 4332. NEPA requires an agency set forth in an EIS sufficient information for the general public to make an informed evaluation and for the decision maker to consider fully the environmental factors involved and make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from proposed action. 42 U.S.C. § 4332. Although not expressly mandated by the statutory language, the Supreme Court has recognized that pursuant to NEPA's goal to "prevent or eliminate damage to the environment and biosphere" through analysis of the impacts of a proposed agency action, 42 U.S.C. § 4321, "NEPA does require that agencies take a 'hard look' at the environmental effects of their planned action, even after a proposal has received initial approval." *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

The regulations promulgated under NEPA by the Council for Environmental Quality ("CEQ") require an agency to supplement a draft or final EIS if the "agency makes substantial changes in the proposed action that are relevant to environmental concerns" or if there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c).

Regardless of the co-lead agencies' determinations, the USCG has an independent responsibility to determine whether the change in bridge height and new information provided in the 2012 Navigation Impact Report ("NIR") result in "significant" environmental effects that were not considered in the FEIS for the CRC. Pursuant to USCG regulations, the District Commander must review the application for a permit to construct a bridge over navigable waters and ensure that the application complies with relevant environmental laws, regulations and orders. 33 C.F.R. § 115.60(a). This includes ensuring the permit application complies with NEPA. If the permit application is insufficient, the USCG notifies the applicant. *Id.* The USCG has the authority to deny a permit application and suggest modifications that would justify reconsideration. *Id.* § 115.60(d).

The only NEPA document in this case, the FEIS, is insufficient to satisfy the USCG's responsibilities under NEPA. The FEIS lacks an accurate or adequate discussion of the

environmental effects of the 116 foot bridge. Even before the bridge design had been changed, the USCG made clear that it was considering exercising its veto power based on an inadequate FEIS for the 95 foot bridge. In a memo dated December 7, 2011, from USCG vice commandant Sally Brice-O'Hara to United States Department of Transportation deputy secretary John Porcari ("2011 USCG Memo"), the USCG stated that "the Coast Guard will not be able to accept a bridge permit application based on the information provided in the FEIS" due to defects in the FEIS's treatment of the clearance issue, and noted that the FEIS might need supplementation. The Coast Guard explained that it "cannot determine if the preferred 95 foot bridge clearance will meet reasonable navigational requirements based on the information provided for review."

The Re-evaluation and NIR fail to cure the defects of the FEIS. The Re-evaluation and NIR are not NEPA documents and cannot be relied on to satisfy the USCG's duties under NEPA. A re-evaluation may not be used to present information and analysis that was required but not included in the original EIS. See *Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562 (9th Cir. 2000). The analysis by the co-lead agencies in the Re-evaluation and NIR belongs in an SEIS. For these reasons, and the information provided in Part II below, the USCG should require that the FHWA and FTA prepare an SEIS to address the changes in the bridge design and new information in the NIR. The USCG retains both the authority and the obligation to mandate these changes.

## **II. Recent changes to the CRC project, as well as new information in the NIR, will have significant environmental effects that were not considered in the FEIS and thus necessitate the preparation of an SEIS.**

The changes to the bridge design, new studies and new mitigation measures all will have significant environmental effects that were not considered in the FEIS. CEQ's regulations define "significantly" as encompassing both context and intensity. 40 C.F.R. § 1508.27. Intensity refers to the severity of the impact, which includes, *inter alia*, beneficial and adverse impacts, the degree to which the proposed action affects public health or safety, the unique characteristics of the geographic areas, the potential for controversy, uncertainty of the impacts, and adverse effects on listed species or critical habitat. *Id.* Based on these considerations, the change in the CRC bridge design presents a significantly different picture of the environmental impact of the proposed project from what was previously envisioned.

### *Vertical and Horizontal Clearances*

To start, the top of the bridge deck will be higher. The top of the bridge deck for the 116-foot bridge will be 160 feet above zero CRD, whereas the height of the bridge deck considered in the FEIS was 140 feet above zero CRD. The vertical clearance is increased from 95 feet to 116 feet above zero CRD. The higher vertical clearance will require modifications to the proposed interchanges. For example, the height of I-5 North to Vancouver City Center exit to C Street ramp is increased from 90 feet to 100 feet at the point closest to the Vancouver National Historic Reserve, and the height of the SR 14 West to I-5 South ramp is increased from 68 feet to 72 feet.

The higher vertical clearance also means there will be a steeper grade along the bridge. In Oregon, the mainline grade of I-5 is increased from 2.8 to 3.7 percent. In Washington, the mainline grade of I-5 is increased from 3.4 to 4.0 percent. Steeper grades result in poor site

distances, which increases risks to public safety and runs contrary to the stated purpose and need to, *inter alia*, improve travel safety and traffic operations. Steeper grades may also pose a greater risk of harm from stormwater runoff. The NIR and Re-evaluation fail to address whether the steeper slopes will require changes to the stormwater management plan for the bridge and its interchanges.

The new bridge height will result in a different horizontal clearance. Greater horizontal clearance likely will result in an adverse impact on motor vehicle operation, light rail infrastructure, and pedestrian or bicycle transit due to a steeper profile grade and greater distance to cover. The Re-evaluation states that approaches to the bridge will be lengthened “by varying lengths, which requires more bridge structure.” Re-evaluation, page 4-1. The agencies fail to quantify how much longer the approaches will be or indicate where those changes will be made in the design plans.

The Re-evaluation does state that the transit grade approaching the BNSF railway in Washington would be at 6 percent for 465 feet for the 95 foot bridge, and 6 percent for 595 feet for the 116 foot bridge. Because the light rail transit has a maximum grade of 6 percent, the 116 foot bridge would lengthen the bridge distance from 500 to 1,200 feet in Washington, impacting maintenance and operations. In addition, it is likely that one or more light rail stations would need to be re-evaluated and redesigned. The 5<sup>th</sup> Street in Vancouver would be closed and Columbia Park and Ride reduced to a single access from Columbia Street, causing operational issues. The increased elevation from 30 to 40 feet in downtown Vancouver would cause additional impacts to downtown, such as closing 6<sup>th</sup> Street access to southbound I-5.

#### *Impacts to Bicycle and Pedestrian Transportation*

The FEIS does not address the impact of steeper grades and longer paths for bikes and pedestrians on both sides of the river that will result from a higher bridge clearance design. The Re-evaluation highlights that the 95 foot bridge would have improved bike and pedestrian facilities, in part by reducing grades. Re-evaluation worksheet, page 7. It also states that for the 116 foot bridge design, the bike and pedestrian route “is lengthened by 700 feet” and “[g]rades in some locations are increased, but are still within Americans with Disabilities Act standards.” Re-evaluation, page 4-1. The change in bridge design has a significant environmental effect – specifically, longer and steeper routes – that was not considered in the FEIS. Even if the Re-evaluation could be considered as part of the NEPA analysis, the agencies again failed to analyze the significance of the steeper grade and longer distance for bikers and pedestrians. This lack of analysis is especially surprising given the strong public interest that any new bridge include improvements for bike and pedestrian transportation.

#### *Different Footprint*

Due to the increased height and corresponding increased horizontal clearance, it is likely that the new bridge design will have a different footprint. Although the Re-evaluation states the bridge and its approaches will be longer, it fails to explain how longer distances will not result in an increased footprint. Re-evaluation pages 4-1 - 4-2. In *The Piedmont Environmental Council v. U.S. Dept. of Transportation*, the district court determined that the FHWA should have prepared an SEIS for the modification of termini for a proposed highway bypass project where

the agency's review of the environmental consequences in an Environmental Assessment prepared after modifications were proposed provided insufficient detail to ensure the environmental consequences of terminus shift were fairly evaluated. 159 F.Supp.2d 260 (W.D. Va. 2001). Here, too, the FHWA and FTA have failed to provide sufficient detail to ensure the environmental consequences of the design change were fairly evaluated. A longer bridge and longer approaches will necessarily result in a larger footprint, which is likely to have significant environmental impacts. Because these environmental impacts were not considered in the FEIS, an SEIS is necessary.

### *General Fiscal Considerations*

The discussion of costs and funding in the FEIS is inadequate. The analysis lacks sufficient detail to promote public participation and evaluation of the economic impacts of the project. Without an adequate analysis of the funding available for the CRC, it has been impossible for the concerned public to evaluate the economic effect of the project in the Portland and Vancouver area.

The brevity of the analysis in the FEIS is compounded by the recent changes to the bridge design. The Re-evaluation states that the increased horizontal clearance for the higher bridge and for approaches to the bridge "increases cost." Re-evaluation, page 4-1. The co-lead agencies have explained that bridge heights above 110 feet would require modifications to sustain the additional weight and seismic load on the bridge structure, which are likely to be costly. See CRC Work Plan for Finalizing Bridge Height and Submitting Bridge Permit Application, addressed to the USCG and dated August 16, 2012 (hereafter "Work Plan"), page 8. Without quantifying the increased lengths or explaining the changes in the configuration, the co-lead agencies summarily determined the increased lengths do "not have a noteworthy change in environmental impacts." Re-evaluation, page 4-1. As was just stated, this summary conclusion is insufficient to ensure the environmental impacts of the change in design were considered.

Even so, the increased cost alone is relevant to environmental concerns because as the agencies themselves have stated, greater costs are likely to trigger a phased construction plan, which means the impacts on the environment will be drawn out. In addition, the analysis of the effects of the proposed action on the human environment includes economic effects. 40 C.F.R. § 1508.8. Because the change in bridge height will have economic effects that were not analyzed in the FEIS, the FHWA and FTA must prepare an SEIS.

### *Indirect Economic Effects*

The FEIS lacks critical analysis of the indirect effects of a lower bridge clearance. NEPA requires agencies to consider indirect effects. 40 C.F.R. § 1508.8. The FEIS fails to analyze the induced restriction on growth along the Columbia River north of the CRC site that will result from a lower bridge clearance than what currently exists. The 116 foot bridge, as compared to the existing bridge with a 178 foot clearance in the raised position, makes the upriver portions of the Columbia River less accessible. The USCG expressly identified this as a deficiency in the 2011 USCG Memo, noting that "[t]he FEIS does not address current and future impacts to navigation/waterway users as a result of the proposed decreased vertical clearance."

Given the USCG's obligation to meet the reasonable needs of navigation, 33 U.S.C. § 401 and § 502, the USCG should pay particularly close attention to the lack of analysis in the FEIS to address future impacts to interstate commerce. The USCG authorizes bridges "only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation." 33 U.S.C. § 116.01(a). Under the USCG's Bridge Guide Clearances, bridges over the Columbia River from the mouth of the river to the BNRR Bridge at Vancouver with a vertical clearance of at least 180 feet and bridges upriver from that point to The Dalles with a vertical clearance of at least 135 feet will ordinarily receive favorable consideration in the bridge permitting process. See United States Coast Guard, Bridge Guide Clearances, available at <http://www.uscg.mil/hq/cg5/cg551/Bridge.asp>. The 116 foot bridge is well under the guidance of 180 feet. The FEIS failed to analyze the environmental effects of a 116 foot bridge, in terms of induced restrictions on growth upriver due to a lower bridge clearance, and thus must prepare an SEIS.

### *Impacts to Aircraft*

The NIR does not evaluate the specific impacts to aircraft posed by a bridge height of 116 feet, but instead simply states that "alternatives that lower the bridge height reduce potential impacts to aircraft but increase the number of potentially impacted river users." NIR, page 4-1. The NIR does state that a 178 foot bridge would impact aviation safety associated with Pearson Airpark approaches and departures. NIR, page 7-34. The Re-evaluation likewise does not evaluate specific impacts to aircraft posed by a 116 foot bridge. Yet the FEIS noted that the Federal Aviation Administration would not allow the bridge to be much higher than the preferred alternative at 95 feet, in view of flights in and out of two nearby airports. Plus, the bi-state task force eliminated the four high-level bridge components (greater than 130 feet) from consideration because of safety concerns with Pearson Airfield and 2004 findings that all known commercial and recreational vessels could be accommodated at 125 feet. The gap in this analysis regarding the potential impacts of a 116 foot bridge on aircraft in the region is a significant environmental impact that was not considered in the FEIS and should be considered in an SEIS.

### *Landside Impacts*

The Re-evaluation concludes, without analysis or detail, that the "landside impacts are similar to the 110-foot bridge analyzed in the NIR," except for a higher vertical curve of one and a half feet. A higher vertical curve means that vision for drivers would be reduced, thereby increasing risks to the safety of drivers. Just as with other aspects not considered in the FEIS but considered in the NIR, the Re-evaluation relies on analysis conducted in the NIR to compare 110 foot bridge and 115 foot bridges to the 116 foot bridge chosen. Yet the NIR was completed after the FEIS and provides new information relating to the environment and resulting from the bridge replacement project. This is precisely the type of new information that should be analyzed in an SEIS.

### *New Information: 2012 Navigation Impact Report*

New information provided in the NIR is relevant to environmental concerns, has bearing on the proposed action and its impacts, and will result in significant environmental impacts that

were not considered in the FEIS. The CRC's Work Plan states that the FEIS contained "very preliminary" information on the 125 foot bridge clearance alternative, with the understanding that an updated vessel assessment, impact analysis, and engineering evaluation would be necessary to explore a higher clearance. Work Plan, page 3. The NIR does more than merely update material already contained in the FEIS: it alters the overall picture of the environment. For this reason an SEIS must be prepared.

For example, the NIR includes a vessel survey conducted in 2012 provides more detailed information on river users in the project area. The survey updated the types and number of vessels affected by a 95 foot bridge and documented bridge lift trends for the existing bridge from 1987 to 2011. The NIR also provides more specific analysis of impacts and mitigation to specific vessels and users and analyzes whether there are critical infrastructure manufacturing assets jeopardized by the 95 foot bridge. The NIR evaluates impacts to future users and land use impacted with a 95 foot bridge as compared to bridges 125 feet above zero CRD, as well as other mid-level vertical clearance options. The NIR includes a study of river water levels at the I-5 Bridge based on 40 years of river water level data. Because this new information relates to the environment and the findings bear upon significant environmental impacts caused by the bridge replacement project, the FHWA and FTA should have prepared an SEIS to evaluate the new information presented in the NIR.

### **III. The FHWA's and FTA's Re-evaluation and NIR fail to cure the agencies' failure to conduct the analysis required by NEPA in the FEIS.**

The FHWA and FTA regulations mirror CEQ's regulations, stating that "[a]n EIS shall be supplemented whenever the Administration determines that . . . Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS," or "[n]ew information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS." 23 C.F.R. § 771.130(a). The "Administration" refers to the FHWA or FTA, or a State if it has been delegated the authority to carry out such responsibilities. 23 C.F.R. § 771.107(d).

The determination of whether a change in the proposed action or information will result in "significant" environmental effects not analyzed in the EIS, such that preparation of a SEIS is necessary, is committed to the discretion of the responsible agencies. *Sierra Club v. US Army Corps of Engineers*, 701 F.2d 1011, 1035 (2d Cir. 1983). *See also Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir 1980) (explaining that it is for the agency to "evaluate [new information] and make a reasoned determination whether it is of such significance as to require implementation of formal NEPA filing procedures"). In this case, the FHWA and FTA have the discretion to determine whether an SEIS was necessary. This discretion, however, is limited.

First, the FHWA's and FTA's regulations state that an EIS *shall* be supplemented when the agencies determine that either changes to the proposed action will result in significant environmental impacts that were not evaluated in the EIS, or new information relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.<sup>1</sup> Here, both the changes to the

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<sup>1</sup> An agency must follow its own regulations. *See, e.g., United States v. Nixon*, 418 U.S. 683 (1974).

bridge design and new information in the NIR will result in significant environmental impacts not evaluated in the FEIS. *See* Part II, above. In accordance with its own regulations, the FHWA and FTA should have prepared an SEIS.

Second, the purpose of a re-evaluation under NEPA is to determine whether an SEIS is necessary. 23 C.F.R. § 771.129 (explaining that the purpose of a re-evaluation “is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed”). A re-evaluation is not the proper document for presenting information and analysis that should have been included in an EIS. *Idaho Sporting Congress*, 222 F.3d 562. The Re-evaluation prepared by the FHWA and FTA improperly supplemented the original analysis required by NEPA in the FEIS, and constitutes an improper post hoc justification.

The Re-evaluation adds information not considered in the FEIS to evaluate the design change from the 95 foot bridge to the 116 foot bridge. The Re-evaluation relies on and summarizes new information contained in the NIR to support its conclusion that the change in design does not result in significant environmental impacts. Re-evaluation, page 3-1. In fact, the agencies have made the NIR part of the Re-evaluation. *See id.* at 3-1 (noting that the NIR “is considered part of this re-evaluation and is incorporated by reference herein and included as an appendix to this document”). The NIR itself constitutes new information related to the environment that will result from the bridge replacement project. This new information triggered the FHWA’s and FTA’s regulations that require an SEIS.

The Re-evaluation states that the draft and final EIS considered the following alternatives: “low with a movable span (around 65 feet above zero CRD vertical clearance), mid (95 to 110 feet above zero CRD vertical clearance), and high (around 130 feet above zero CRD vertical clearance).” Re-evaluation, page 2-11. It then concludes that “[t]he mid-level bridge was not clearly defined,” but that “[a] 116-foot bridge would fall within that range.” *Id.* As the first sentence makes clear, the FEIS considered mid-level bridges at a height of 95 to 110 feet. There is no reason to infer that the co-lead agencies also meant to include a height of 116 feet in that analysis. In fact, the Re-evaluation relies on new information contained in the NIR to analyze the environmental impacts of the new 116 foot bridge height. *See* Re-evaluation, page 3-1 (explaining that information in the NIR “was used to inform the design refinement to 116 feet of vertical clearance”). This supports that the environmental impacts of the 116 foot bridge were not sufficiently analyzed in the FEIS, and this is the type of new information that must be analyzed in an SEIS.

## **Conclusion**

NEDC urges the USCG to address the aforementioned deficiencies in the CRC’s environmental analysis under NEPA before addressing the CRC’s general bridge permit application. An EIS is required to give the public an adequate means of evaluating the alternatives and the environmental impacts of a proposed action. The change in bridge design and new information presented in the NIR are precisely the type of significant changes that require additional discussion and public input. Because the FEIS, Re-evaluation and NIR do not meet the requirements under NEPA or CEQ’s regulations, the USCG should deny the CRC’s permit application and require the FHWA and FTA to prepare an SEIS.



Sincerely,

A handwritten signature in black ink, appearing to read "Marla Nelson". The signature is fluid and cursive, with the first name "Marla" being more prominent than the last name "Nelson".

Marla Nelson  
Legal Fellow