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May 21, 2008

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**Sent via Electronic and Regular Mail**

Ms. Gundersen, Mr. McAvoy, and Ms. Gehrke:

The Pacific Environmental Advocacy Center (PEAC) submits this request on behalf of the following organizations: Northwest Environmental Defense Center (NEDC), 1000 Friends of Oregon, Association of Oregon Rail & Transit Advocates (AORTA), Bicycle Transportation Alliance, Cascadia Rising Tide, Coalition for a Livable Future, Community Choices, Community Health Partnership, Oregon League of Conservation Voters, Organizing People, Activating Leaders (OPAL), Portland Transport, and Upstream Public Health. PEAC requests a 60-day extension of the deadline for public comments on the Draft Environmental Impact Statement (DEIS) of the Columbia River Crossing (CRC). At this time, PEAC represents these organizations solely for the purpose of requesting this extension. The current 60-day comment period is wholly insufficient for the public to analyze the massive DEIS and provide meaningful comments on the CRC. A 120-day comment period would ensure that public participation in the National Environmental Policy Act (NEPA) process is meaningful and not merely a procedural formality for approving the CRC.

## NEPA requirements

Concerned citizens and implicated agencies cannot adequately participate in the NEPA process if they are only given 60 days to analyze and comment on a highly technical 5,000 page document. Meaningful public participation is central to the NEPA process. NEPA requires the sponsoring agencies to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 CFR § 1506.6 (a). The Federal Highway Administration’s (FHWA) NEPA implementing regulations further reflect the need for genuine public input, stating FHWA’s policy that “[p]ublic involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.” 23 CFR § 771.105(c). FHWA cannot seriously assert that a 60-day comment period meets its requirement to make public input an essential part of the final EIS, considering the scope and length of the DEIS.

While CRC’s public consultation efforts prior to the DEIS release may be commendable, these efforts do not guarantee public concerns were actually incorporated into the DEIS. Moreover, that informal process is no substitute for the legally-mandated DEIS public comment process. The public must be allowed to analyze the draft to determine whether CRC made genuine efforts to include the public and did not “merely go through the motions” of the NEPA procedures. *See State of California v. Block*, 690 F.2d 753 at 769 (1982). Completing this analysis during the current 60-day comment period places an unreasonable burden on thousands of concerned citizens and 31 implicated agencies.

FHWA and the Federal Transit Authority (FTA) clearly have the authority to extend the commenting period beyond the minimum 45-day public comment period required by NEPA, 40 CFR §§ 1506.10 (c)-(d), 23 CFR § 771.123(i), and the circumstances of the CRC DEIS make such an extension particularly appropriate here. NEPA implementing regulations stipulate that in determining the appropriate time limit for a comment period, an agency may consider several factors, including: the potential for environmental harm, 40 CFR § 1501.8(b)(1)(i), the size of the proposed action, 40 CFR § 1501.8(b)(1)(ii), the number of persons and agencies affected, 40 CFR § 1501.8(b)(1)(v), and the degree to which the action is controversial, 40 CFR § 1501.8(b)(1)(vii). The CRC implicates each of these factors.

### *Potential for environmental harm*

The public needs more time to determine whether the DEIS adequately addresses the diversity of environmental issues implicated by a project of this magnitude. This major transportation project has the potential to cause significant environmental harm to the water quality and ecosystems of the Columbia River, a vital habitat for fish species protected under the Endangered Species Act; the air quality of the Portland metropolitan area; wetland areas; environmental justice communities; local parks and green spaces threatened by urban sprawl; and historic preservation areas. The 60-day comment period is insufficient to meaningfully review the environmental impacts from this project and comment to CRC. If FHWA does not extend the comment period, citizens will not be able to consider all environmental impacts and will only be able to superficially analyze even the most apparent issues. Providing an extra 60 days for thousands of citizens to address their concerns is a minor delay that should not be permitted to trump the severity and longevity of the CRC’s potential environmental harms.

### *Size of the proposed action*

The CRC is one of the largest public works project to ever affect this region, and thus warrants a commensurately substantial comment period. The minimum estimated cost of \$3.1 billion will tap into a significant portion of the region's transportation budget. This lengthy construction project will have significant impacts immediately and long into the future in two states, two cities and a major regional waterway. The need for a 5,000 page DEIS to explain the environmental impacts by itself demonstrates the widespread effects this project will have on the surrounding area. The invested parties bearing the brunt of these impacts deserve a legitimate opportunity to carefully analyze and comment on the DEIS. If impacted parties must rush through the commenting process for a DEIS of this magnitude, FHWA risks oversights and incomplete analysis that may lead to serious problems for the project. Extending the comment deadline will help ensure the DEIS has addressed the concerns of impacted parties and complied with the requirements of national, regional, and local laws.

### *Number of persons and agencies affected*

The comment deadline should be extended because the project directly affects millions of citizens and dozens of local, state, and regional agencies. CRC has already included more than 31 local, regional, and national agencies in the planning stages for the DEIS. More than 12,000 community members have engaged in the CRC process since 1995. While the involvement of these agencies and citizens in the initial planning stages has surely been beneficial, the public still needs adequate time to comment on the DEIS after the May 2, 2008 publication. If these agencies and citizens do not have sufficient time to review the 5,000-page DEIS, there is no way to ensure either that their initial input was meaningfully considered by CRC or that citizens will submit additional useful comments. Without a legitimate public check on these agency actions, the public comment period will merely be a formality, violating the spirit of NEPA's public involvement requirements.

### *Degree to which the action is controversial*

CRC is a controversial project that is at the forefront of public attention in the Portland/Vancouver area. Several affected groups have developed passionate and diverse opinions about the project that must not be stifled. The stakes of this project, and thus of the DEIS, are high and CRC needs to allow sufficient time to consider the issues presented by those affected. Recent news articles highlight the tension surrounding the CRC project and the DEIS. The Oregonian reported several key DEIS findings on May 2, 2008, in an article emphasizing conflicts between transportation advocates, economists and the CRC task force.\* A more recent editorial elaborated on certain contentious issues, raising questions about funding, environmental impacts, and compliance with Oregon's greenhouse gas emissions targets.† These difficult

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\* Dylan Rivera, *New I-5 bridge? You decide*, THE OREGONIAN, May 2, 2008, at A1, available at <http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1209700523119680.xml&coll=7>.

† Robert Liberty, Editorial, *The \$4 Billion River Crossing: Is this project best deal for Oregon taxpayers?*, THE OREGONIAN, May 18, 2008, at C2, available at <http://www.oregonlive.com/commentary/oregonian/index.ssf?/base/editorial/1210960504229760.xml&coll=7>.

questions have yet to be answered, and until they are, the project will continue to be controversial.

Moreover, with groups positioned on all sides of the proposal, some positions will inevitably lose to others. When this happens, CRC will face scrutiny by dissatisfied parties that feel the participating agencies did not provide them an opportunity to meaningfully comment on their concerns. CRC should respect the controversial nature of the project by allowing for a more appropriate time period to explore all aspects of it. The current 60-day comment period will limit commenting parties to superficial analyses, heightening tensions and unjustly serving all.

CRC needs to consider these factors described by NEPA that allow for an extension of the comment period. Reasonable consideration of these factors indicates the need to extend the commenting period to 120-days to allow meaningful public participation.

### **FHWA has extended comment periods in the past on similar projects**

These factors have led FHWA to grant extensive public comment periods on DEISs regarding other massive proposed federal actions. For example, FHWA granted the Interstate 81 project in Virginia, a similar large-scale project, a 5-month public comment period for its DEIS.<sup>‡</sup> Like I-81, the I-5 corridor serves tens of thousands of vehicles daily, and like the I-81 project, the proposed CRC implicates the interests of many citizens and multiple states.

FHWA and the Michigan Department of Transportation also recently extended the commenting period to 90 days for a river crossing project between Detroit and Canada.<sup>§</sup> On May 1, 2008, the FHWA announced its decision that the public needed more than 60 days to comment on the lengthy DEIS for the Detroit River International Crossing Project.<sup>\*\*</sup> FHWA similarly needs to give the public in the Portland region more than 60 days to comment on the Columbia River Crossing Project, and in fact should grant a longer comment period than for the Detroit crossing, which FHWA projects will cost under \$1.5 billion,<sup>††</sup> less than half of the minimum projected cost for the CRC.

The Washington Department of Transportation and FHWA also recognized the need for a longer comment period for another proposed bridge construction along I-5, SR520. The CRC project will have an even greater impact than the SR250 and thus deserves an even longer comment period than the 74-days allowed for SR250. The CRC project implicates a densely-populated interstate community and has generated more controversy.

Clearly FHWA has exercised its authority to extend comment periods on DEISs in the past, to tailor the comment period to the project. The public is already heavily invested in the process due to CRC's widespread impacts, massive scale and controversial nature. FHWA must

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<sup>‡</sup> Press Release, Va. Dep't of Transp., VDOT and FHWA Extend Comment Period for I-81 Tier 1 DEIS (Apr. 27, 2006) *available at* [http://www.virginiadot.org/news/statewide/2006/vdot\\_and\\_fhwa\\_extend.asp](http://www.virginiadot.org/news/statewide/2006/vdot_and_fhwa_extend.asp).

<sup>§</sup> Detroit River Int'l Crossing Project, <http://www.partnershipborderstudy.com>.

<sup>\*\*</sup> Press Release, U.S. Fed. Highway Admin., Detroit River International Crossing Reaches Milestone (Feb. 29, 2008), *available at* <http://www.fhwa.dot.gov/pressroom/fhwa0804.htm>.

<sup>††</sup> Detroit River Int'l Crossing Project, [http://www.partnershipborderstudy.com/pdf/FAQ\\_March\\_2008-B.pdf](http://www.partnershipborderstudy.com/pdf/FAQ_March_2008-B.pdf).

recognize that the public deserves more time to analyze the DEIS in light of the frustrations the public has already encountered trying to meaningfully comment on the CRC.

### **The public needs more time to correct deficiencies in CRC's NEPA process**

NEPA requires agencies to provide the public with all environmental documents necessary to inform citizens of the proposed action. 40 CFR § 1506.6(b). The public cannot provide meaningful comments on the DEIS without comprehensive information. However, the public does not currently have all necessary documents. Commenting parties require the document "CRC, Toll Financial Capacity Analysis Results, November 2007," which is cited in chapter four of the DEIS, on pages 4-22. Yet CRC failed to include the report in its supporting documents. On February 22, 2008, economist Joe Cortright submitted a public records request for this document and others related to traffic issues and toll revenues, issues central to the project. CRC has still not furnished this potentially important document, though it is necessary for Cortright's analysis and comment on the DEIS. The DEIS may be missing additional documents, and the public needs more time to discover what else was not properly disclosed.

Once CRC has provided all required documents, the public will need additional time to read and incorporate them into their comments. Time spent submitting a Freedom of Information Act request for missing documents, and waiting for the response, will likely exceed the comment period, making complete comments by July 1, 2008 impossible. This seemingly inevitable outcome clearly violates NEPA's requirement that agencies provide all relevant information.

Additionally, the managing attorney at the Pacific Environmental Advocacy Center waited for more than two weeks for delivery of a draft-EIS CD. A spam-filter on the email server for public requests for DEIS CDs apparently prevented proper filing of the request. Other citizens who submitted CD requests online may have been delayed as well, resulting in a shortened commenting period for an unknown number of stakeholders. These delays and problems have frustrated some citizens' attempts to engage in the public commenting process. CRC has the legal burden to provide "diligent efforts" to involve the public in the NEPA process, 40 CFR § 1506.6 (a), and it has clearly failed to meet that burden.

Finally, the public should not be penalized because CRC has delayed the commenting period twice. The original schedule from November 27, 2007 indicated the initial DEIS release date would be on January 22, 2008.<sup>¶¶</sup> On January 22, 2008, the release date was pushed back until the beginning of March 2008.<sup>¶¶</sup> Finally, the DEIS was released on May 2, 2008 and the public commenting period is set to end on July 1, 2008. The delay in releasing the DEIS further reflects the complexity of the document and supports the position that the public requires more time to comment. Any other time restraints resulting from the delayed DEIS release cannot be borne by citizens, who have a legal right to meaningfully provide input to CRC. Maintaining CRC's "schedule" regarding non-NEPA matters is not a legally sufficient reason to deny an extension of the comment period.

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<sup>¶¶</sup> CRC Project Schedule: Near Term, November 27, 2007.

<sup>¶¶</sup> CRC Project Schedule: Near Term, January 22, 2008.

## **Benefits of Comment Extension**

All parties involved will benefit from an extension of the public commenting period. The public needs more time to meaningfully analyze and comment on the 5,000 page DEIS. 60-days is an absurdly short period of time to properly analyze such a massive project that will have such wide-reaching impacts on the region. Without meaningful public comments, the agency will be less likely to address public input on the project, as required under NEPA.

Rushing through the initial stages of the DEIS may create roadblocks for the project down the line. If the public does not have enough time to comment on a possible project alternative excluded in the DEIS, the final EIS may not include a proper reasonable range of alternatives.

NEPA requires agencies conducting major actions with environmental impacts to conduct diligent efforts to involve the public in the action process. The magnitude of CRC's impact on the Greater Portland area is severe enough to warrant additional time for public commenting. In the absence of meaningful feedback on the DEIS, public involvement in the NEPA process will be nominal at best. CRC has the burden to facilitate public participation and should grant an extension on the public deadline for an additional 60 days.

Sincerely,

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