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RESPONSE TO WORK PLAN FOR SUBMITTING BRIDGE PERMIT APPLICATION

Thank you for inviting the Coast Guard to comment on the draft "Work Plan for Finalizing Bridge Height and Submitting Bridge Permit Application."

As you know, the Coast Guard is required to determine the reasonable needs of navigation when acting upon a permit application. As stated in 33 Code of Federal Regulations (C.F.R.) "[a]ll bridges are obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation." Given this statutory requirement, the permit analysis must thoroughly consider the reasonable needs of navigation, and how the impacts to the reasonable needs are either avoided, minimized or mitigated. Because the Coast Guard is the federal agency responsible for bridge permitting, an analysis of the technical documents relating to the bridge permit will be given deference by a court of law.

The enclosed is a summary of our comments with regard to the draft Work Plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "KAT", with a long horizontal flourish extending to the right.

K. A. Taylor
Rear Admiral, U.S. Coast Guard
Commander, Thirteenth Coast Guard District

Enclosure: Comments on CRC Work Plan

Copy: Rick Krochalis, FTA Region 10 Administrator
Dan Mathis, FHWA Washington Division Administrator
Phil Ditzler, FHWA Oregon Division Administrator
Col. John Eisenhower, U.S. Army Corps of Engineers
Kris Strickler, Oregon Director, Columbia River Crossing
Nancy Boyd, Washington Director, Columbia River Crossing

OVERVIEW

A significant potential misunderstanding appears on page nine of the Work Plan under the section titled “Schedule.” The plan states: “it is the intent of the project to submit a permit application in late December 2012, with a goal to achieve a general bridge permit issued by the Coast Guard in mid to late 2013. As a point of clarification, the Coast Guard cannot accept a permit application while “mitigation discussions with potentially impacted river users” continue. The Coast Guard must know what the mitigation measures are before it can consider a permit application. As a matter of procedure, when an application is received, the Coast Guard reviews the application and plans for sufficiency, ascertains the views of local authorities and other interested parties, and ensures that the application complies with relevant environmental laws, regulations, and orders. If the application contains any defects that would prevent issuance of a permit (as for example, if the proposed bridge provided insufficient clearance), the applicant is notified that the permit cannot be granted and given reasons for this determination.¹ Moreover, the EIS itself must state that “all planning and mitigation to minimize these impacts have been accomplished.”² The Coast Guard anticipates mitigation discussions with potentially impacted river users will continue into 2013 and has expressed concern that failure to mitigate the vertical clearance might compel a permit denial. Noting such, the remainder of the document provides page by page comments of the rest of the Work Plan.

Background Section

- On page one it indicates that replacement bridge “alternatives would need to consider...the existing condition of river vessels negotiating multiple bridge piers and calling for a bridge lift.” While much attention has been given to possible positive impacts to navigational safety by eliminating the optional “S” curve (for those vessels that choose to make the optional “S” curve maneuver around bridge piers), it is equally important that the proposed bridge design avoid, minimize and mitigate the impacts to reasonable needs of navigation.
- On page two it states that “the replacement bridge was selected in part, because it provides increased safety for river users with fewer piers in the water and the elimination of the existing “S” curve maneuver river users must make between the Interstate Bridge and the Burlington Northern Santa Fe railroad bridge.” As the primary existing channel is a straight course and does not require an “S” curve maneuver, it is likely the benefit realized by removing the optional “S” curve maneuver may not justify potential impacts to the reasonable needs of navigation. Providing for safety of navigation and the reasonable needs of navigation are not mutually exclusive goals.
- On page two it describes that a mid-height bridge was selected in order to avoid, minimize, and mitigate impacts on a number of different interests, including river

¹ 35 CFR 115.60(a)

² (See COMDTINST M16590.5C Ch 4 IV (2)(b)(2))

users. The Coast Guard remains concerned this conclusion is based on a 2004 boat survey data that did not capture all of the current impacted river users.

- On page two, the mid-height bridge section describes how three representative bridge heights were discussed and studied. However, it is not clear that in 2006 the bi-state task force fully captured the impacts to navigation when deciding what type of bridge to recommend. For example, the 2004 Boat Survey did not capture the full extent of the river users indentified in the 2012 Columbia River User Data report. The Coast Guard is concerned that the subsequent river analysis demonstrates that the 2004 boat survey data was not comprehensive. For example, it appears there may be over one hundred vessel transits per year impacted by the mid-height bridge being reviewed.
- On page three, the Work Plan discusses the analysis of a 125 foot vertical clearance and the additional costs and difficulties for light rail and local municipalities. While the Coast Guard appreciates the significance, difficulty and complexity of a project of this scale, the Service must also ensure impacts to the reasonable needs of navigation are avoided, minimized or mitigated in order to permit a bridge. If the impacts associated with raising the bridge are unacceptable, as the Work Plan states, a thorough analysis of alternatives that avoid, minimize and mitigate the impacts to reasonable needs of navigation is necessary to properly review the bridge permit. We recommend that the last sentence of the first paragraph on page four “With the ROD the project...and permitting” be deleted because the Coast Guard is concerned the assumptions that led to the ROD are incomplete. We instead suggest replacing this language with the following: “While the review of river users is ongoing, the project moved into the next phase of design, construction planning, funding, and permitting. However, if the impacts associated with raising the bridge to meet the reasonable needs of navigation is unacceptable, a thorough analysis of various alternatives, such as various bridge heights, will be necessary to properly review the bridge permit.”
- On pages four through six, the Coast Guard remains concerned that the Work Plan focuses solely on mitigation to users, and does not include an analysis of alternatives that avoid or minimize the impacts to the needs of navigation, which are critically important to properly evaluating a permit request.

Technical Corrections

- The Work Plan uses language from the Coast Guard Bridge Administration Manual,³ but at times its use is not technically correct. For example, the Work Plan states that the “USCG is responsible to preserve the public right of navigation, and bridges are permitted only when they serve the needs of land transportation.” While this language is found in the manual, the actual sentence reads as follows:

“The Coast Guard's duty and responsibility, under the authorities delegated to the Commandant, is to preserve the public right of navigation. Bridges across the navigable waters of the United States are considered obstructions to navigation,

³ COMDTINST M16590.5C

permitted only when they serve the needs of land transportation. While the public right of navigation is paramount to land transportation, it is not absolute. This right may be diminished to benefit land transportation, provided that the reasonable needs of navigation are not impaired.”⁴

- To clarify this language, a bridge may be allowed to diminish that right only when the reasonable needs of navigation are fully met through avoidance, minimization, and mitigation. An inference that bridges are permitted only to serve the needs of land transportation is not technically correct, and may cause the thrust of justification in a bridge application to miss the mark.
- The Work Plan states that “inherent in that responsibility is the obligation ‘to accommodate, to the greatest practical extent, the needs of all surface transportation modes.’” While the Coast Guard will attempt to accommodate all modes of transportation, the Bridge Administration Manual provides: “It is the Commandant’s policy, when considering bridge actions, to work toward promoting the overall goals of the Department of Homeland Security in a balanced manner in order to accommodate, to the greatest extent practicable, the needs of all transportation modes. However, the safety of navigation is a paramount consideration that cannot be compromised when addressing bridge program issues.”⁵
- The Work Plan assertion on page four that it “fully incorporates and respects the requirements of the USCG, was developed in coordination with USCG staff, and specifically addresses the following issues raised in USCG correspondence” is not correct. For example, during the 5 July 2012 meeting with the CRC team, the Coast Guard expressed concern that alternate to avoid or minimize the reasonable needs of navigation were not being incorporated into the permit application.

Work Plan Task Items

- On page five of the Work Plan, the end of the first paragraph states: “It will evaluate vertical clearance . . .and river navigation needs.” Please add to this: “Should the mid-range bridge height alternatives prove unable to meet the reasonable needs of navigation, other alternatives that avoid or minimize the impact to navigation need to be thoroughly explored and properly analyzed.”
- On page five of the Work Plan, under item two of the tasks entitled “Avoidance and Minimization,” it states that “To support a permit decision that will result in impacts to vessels, the USCG administrative record must demonstrate that the applicant has considered reasonable alternatives to avoid and minimize impacts to marine navigation.” This statement is not technically correct. As stated previously, in order for the Coast Guard to properly review and analyze a bridge permit, the application

⁴ COMDTINST M16590 5C, Chapter 1.A.1.

⁵ COMDTINST M16590.5C, Chapter 2.E.1.

should include design alternatives that will not unreasonably obstruct navigation.⁶ As noted previously, as the full extent of navigational needs were not known until completion of the Columbia River User Data Report in 2012, the Coast Guard remains concerned that these needs were not taken into consideration when the range of alternatives were developed in 2006.

- On page five, the Work Plan indicates that it will “demonstrate that the vertical clearance to be proposed in the permit application avoids impacts to navigation as much as reasonably practicable.” Technically, the Coast Guard authority to approve or deny a bridge permit is not based on the practicability or reasonability of the avoidance measures, but rather whether or not the proposed bridge meets the reasonable needs of navigation.
- On page six of the Work Plan, under item two of the tasks entitled “Avoidance and Minimization,” the CRC indicates that current impact analysis is considering design alternatives of a mid-height bridge “that demonstrates trade-offs between alternative navigation clearances and landside transportation and land use impacts.” Though the cost-benefit analysis of alternatives may be useful to CRC in evaluating avoidance and minimization measures, an analysis of a “trade-off” between land and navigational use is technically not relevant to Coast Guard Bridge permitting decisions if that “trade-off” results in a bridge that does not meet the reasonable needs of navigation.
- The Coast Guard is also concerned that the mitigation options discussed in the draft Work Plan are focused on changing the impacted users, not how the bridge design can be altered to avoid or minimize navigational impacts. The degree and scope of mitigation efforts on impacted vessels is a factor taken into consideration when determining whether the bridge design is an unreasonable obstruction to navigation.
- Task three in the Work Plan states: “For each potentially impacted vessel, continue to develop and evaluate alternatives for mitigating the impacts if those impacts cannot be avoided.” For clarification, if a proposed bridge impacts the navigational needs of vessels currently using the waterway, then a thorough analysis of alternatives minimizing those impacts, such as different bridge heights, is needed to conduct a proper review of the bridge permit application.

The key draft findings in the Work Plan indicate that the proposed bridge design “has the potential to address navigation needs for all but a small number of river users.” However, as noted previously, the Coast Guard is concerned that subsequent river analysis has shown that the 2004 boat survey data informing the choice of alternatives was not comprehensive. As previously noted, there may be over one hundred vessel transits per year impacted by the mid-height bridge being reviewed that were not accounted for in 2004. Current and potential future river users must be taken into consideration when determining the reasonable needs of navigation.

⁶ Bridge Act § 494, “No bridge erected or maintained under the provisions of sections 491 to 498 of this title shall at any time unreasonably obstruct the free navigation of the waterway over which it is constructed.”