

The Environmental Legal Clinic  
of Lewis & Clark Law School

Pacific  
Environmental  
Advocacy  
Center

10015 S.W. Terwilliger Boulevard  
Portland, Oregon 97219  
phone: 503-768-6831  
fax: 503-768-6642

www.peaclaw.org

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Columbia River Crossing

Columbia River Crossing  
Heather Gundersen,  
CRC Environmental Manager  
John Osborn, Co-Director  
Doug Ficco, Co-Director  
700 Washington Street, Suite 300  
Vancouver, WA 98660

Federal Highway Administration  
John McAvoy, PE,  
Major Projects Manager FHWA  
Western Federal Lands Building  
610 E 5th St Vancouver, WA 98661

Federal Transit Administration  
Linda Gehrke, Deputy Regional Administrator,  
Region 10 915 Second Avenue, Suite 3142  
Seattle, WA 98174

**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

<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.

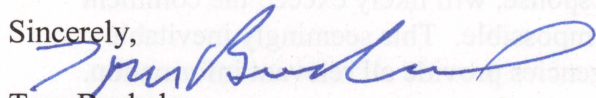
## Benefits of Comment Extension

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,



Tom Buchele

Managing Attorney & Clinical Professor

Pacific Environmental Advocacy Center (PEAC) at Lewis and Clark Law School

10015 SW Terwilliger Blvd.

Portland, OR 97219

T. 503-768-6736 F. 503-768-6642

[tbuchele@lclark.edu](mailto:tbuchele@lclark.edu)

On behalf of:

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

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## The Oregonian

### THE \$4 BILLION COLUMBIA RIVER CROSSING

Sunday, May 18, 2008

**ROBERT LIBERTY**

The Oregonian

This spring and summer the Portland City Council and Metro Council will vote on recommendations from the Columbia River Crossing Task Force. The task force has been studying how to address rush-hour congestion caused by commuting on Interstate 5 between Portland and Vancouver.

Most task force members have indicated they prefer demolishing the two existing I-5 bridges, which are structurally sound. The six lanes on those two bridges would be replaced with a new 12-lane freeway toll bridge coupled with an extension of light rail from Portland to downtown Vancouver.

Many serious questions remain to be answered about the proposal:

Does building a 12-lane bridge just move the traffic jam south to the Rose Quarter's four lanes?

How can widening I-5 to handle 40,000 more car trips a day be consistent with a new Oregon law that calls for a 10 percent reduction in greenhouse gas emissions by 2020?

Are the study's methods and assumptions appropriate?

But taxpayers need answers to a different set of questions about the task force. At an estimated cost of \$3.1 billion to \$4.2 billion, the project is easily the most expensive transportation investment ever proposed for our region.

Oregon taxpayers will be startled to learn that elected officials are being pressed to endorse the \$3 billion to \$4 billion Columbia River Crossing before there is any agreement about how it will be financed and who will pay for it.

The idea that our federal gas taxes will pay for all, or even most, of the new bridge is unrealistic. At best, those taxes might fund one-third of the total project cost.

Another third of the cost would come from charging tolls of \$2.50 to \$3 each way to bridge users, tolls that will also help reduce traffic volumes. (Should we spend billions to widen I-5 and then impose bridge tolls to discourage people from using it?)

That leaves about \$1.2 billion to be paid by Oregon and Washington taxpayers. How should we allocate these costs between the two states and two parts of the region?

Oregon officials apparently assume that Oregonians should pay one-half of the cost not covered by tolls or federal gas taxes, about \$600 million. However, Clark County commuters are the primary cause of the congestion and the primary beneficiaries of the project.

A regional gas-tax increase of about 7.5 cents a gallon, imposed in Clackamas, Washington and Multnomah counties, dedicated solely to the Columbia River Crossing for 20 years, would generate \$600 million. A 2-cent statewide tax, imposed for 10 years, also could generate enough money -- but should residents of Bend, Eugene, Coos Bay, Ontario and Klamath Falls subsidize Clark County commuters?

Should Oregonians spend \$600 million on the project when we don't have enough money to fix the three bridges over the Willamette River that are older than the I-5 bridge, to fix the Sellwood Bridge or to repair and maintain our existing roads?

Late last year the Metro Council officially concluded that even if the Oregon state gas tax were increased by 1 cent every year for the near future, and even if the vehicle registration fee were increased by \$15 every eight years, the region still faced a \$7 billion shortfall for various proposed transportation projects in the region -- not counting the Columbia River Crossing.

Should the crossing be our region's top transportation priority, especially if other projects might do a better job, dollar for dollar, in reducing congestion, moving freight or focusing jobs and housing in places where we want growth? Shouldn't we be comparing the freeway bridge's costs and benefits with other projects before we commit to building it?

Before agreeing to spend as much as \$4 billion on the bridge and sacrifice other projects and opportunities, elected officials need to explore some cheaper alternatives. We could impose more modest tolls on the I-5 bridges now (reducing congestion immediately) and use the revenues to make the bridges stronger and rebuild ramps that delay trucks and contribute to accidents and congestion.

The next step would be to build a two-lane bridge from Hayden Island to Portland for cars and light trucks, so that residents don't have to use I-5 during rush hour. The also bridge could carry light rail to Jantzen Beach, where buses from Vancouver could provide connections.

Building another bridge across the Columbia and extending light rail could be carried out later as needed.

That's just one approach; others probably are worth considering.

This election year voters should pay close attention to see whether their elected officials ask the tough questions and explore all of the alternatives to ensure that their taxes are prudently invested in addressing the region's most important transportation needs.

Robert Liberty is a member of the Metro Council, representing portions of Northeast, Southeast and Southwest Portland.

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## The Oregonian

### New I-5 bridge? You decide

Reports touting a toll span, with far less congestion, will help the public choose which way to go

Friday, May 02, 2008

**DYLAN RIVERA**

The Oregonian

Replacing the decrepit Interstate 5 bridge over the Columbia River with mass transit lines and new car lanes on a toll bridge would reduce future traffic congestion by two-thirds, from a whopping 15 hours a day to potentially less than five.

That's a key finding in a massive set of reports by transportation professionals in Oregon and Washington to be released today.

Significantly, an intermediate measure -- leaving the current bridge in place but adding supplementary spans containing more lanes, mass transit and bicycle lanes -- would reduce congestion by just one-third, to a better but grinding 11 hours a day.

As Oregon and Washington struggle to decide which kind of bridge to erect, they are required by law to weigh benefits and environmental impacts. Today's reports are designed to help residents and leaders alike decide.

"The information and the public's comments will help us select the preferred alternative to remove a bottleneck hurting the economies of the region, the West Coast and the nation," said Hal Dengerink, chancellor of Washington State University, Vancouver and co-chair of a task force advising on the project.

The reports today on the \$4.2 billion Columbia River Crossing will likely foment controversy that could kill it or accelerate its approval. Critics of urban sprawl say the project, in absorbing more vehicles, will create more traffic and expand development northward. And Vancouver residents skeptical of mass transit see light rail as an unwanted encroachment of Portland into southwest Washington.

Yet, the governors of Oregon and Washington and business groups from both sides of the river say the crossing is key to the region's prosperity.

Congestion -- and the stranglehold it places on I-5 in North Portland -- is the driving force behind replacing the aging bridge. So the project touts a balancing act of tolls and mass transit to manage bridge use and curb an unchecked growth in the volume of vehicles, and thus more congestion.

The task force advising the CRC staff is expected to decide among the five options offered by June 24. The formal public comment period ends July 1. City, regional and transit agencies in Portland and Vancouver will vote on the project in July.

Planners say the region must find consensus in the next three months for the project to have its best shot at federal money. They said they hope to apply for it by Aug. 15.

#### Milestone in debate

Today's reports, called a Draft Environmental Impact Statement, are a milestone in finding a solution to the I-5 bridge bottleneck -- the subject of debate for more than a decade. The draft impact statement is required before Congress can include it next year among the nation's top priority transportation projects.

And it requires federal agencies to identify what they believe to be the least environmentally detrimental alternatives, said Dan Rohlf, a law professor and director of the environmental law clinic at Lewis & Clark

Law School.

"But there's no requirement that the agency adopt what it believes to be the least environmentally harmful alternative," Rohlf said. "The idea is we have to go into this with our eyes open."

Several environmental and business groups have already taken sides, which may harden as the 850-page report and its 5,000 pages of supporting technical reports undergo scrutiny.

"Folks seem to be entrenched, and they don't have the full picture or don't want to take in data that maybe contrary to what their position may be," said John Osborn, co-director of the Columbia River Crossing.

The Portland Business Alliance has gathered about a dozen business associations, businesses and others into a pro-project coalition that is working on a Web site and other public involvement, said Megan Doern, spokeswoman for the group.

"It's something people feel very strongly about," Doern said. "The CRC task force has done a tremendous job in all the research they've done and the things that they've considered."

### Many skeptical

Not everyone agrees.

A loose affiliation of Portland transportation activists and the nonprofit Coalition for a Livable Future have countered Columbia Crossing engineers at public meetings and have started a Web site, [www.smarterbridge.org](http://www.smarterbridge.org), to publicize their views.

For months, transportation planners have presented slides with findings that are backed up by information released today.

"They could allay our concerns, but I'm skeptical based on what I've seen so far," said Joe Cortright, an economist who has volunteered time to critique the traffic forecasts. "They've kept so much of it concealed, particularly how they came up with these projections that there's going to be this increase in congestion . . . and actually the traffic has gone down in each of the last two years."

Downtown Vancouver business groups have protested the light-rail option, making buttons calling for protection of driveways for a longstanding Dairy Queen restaurant.

Columbia Crossing staff said they have not made a recommendation among the five alternatives they studied, which includes doing nothing. They chose to wait until the 39-member task force that Dengerink co-chairs picks a locally preferred alternative.

Yet, a replacement bridge with light rail has gained tremendous momentum in recent months. In November, at the task force's request, staff disclosed its technical "finding" that a new bridge with light rail meets the project's goals more cost effectively than a supplemental bridge or bus rapid-transit alternatives.

At its January meeting, the task force took an informal vote, which showed overwhelming support for the replacement bridge and light-rail options.

A close look at the environmental statement's data should eliminate fears that the bridge will cause sprawl and undermine land-use goals, Osborn said. While the proposed 12-lane bridge would add more car-handling capacity, tolls and mass transit would prevent sprawl and promote downtown Vancouver, he said.

"What you hear is -- 'big project, urban sprawl' -- that's the kind of thing that keeps me up at night" Osborn said. "Reasonable people should look at both sides of the story and take a look at the data."

Dylan Rivera: 503-221-8532; [dylanrivera@news.oregonian.com](mailto:dylanrivera@news.oregonian.com) For environment news, go to [oregonlive.com/environment](http://oregonlive.com/environment)