



TOM BUCHELE  
Managing Attorney & Clinical Professor

10015 SW Terwilliger Blvd  
Portland, OR 97219  
phone (503) 768-6736  
fax (503) 768-6642  
email [tbuchele@clark.edu](mailto:tbuchele@clark.edu)  
website [www.pcaclaw.org](http://www.pcaclaw.org)

Columbia River Crossing  
Heather Wills,  
CRC Environmental Manager  
700 Washington Street, Suite 300  
Vancouver, WA 98660  
[wills@cloumbiarivercrossing.org](mailto:wills@cloumbiarivercrossing.org)

Federal Highway Administration  
John McAvoy, PE  
Major Projects Manager FHWA  
Western Federal Lands Building  
610 F 5th St  
Vancouver, WA 98661  
[john.mcavoy@dot.gov](mailto:john.mcavoy@dot.gov)

Federal Transit Administration  
James Saxton, Transportation Program Specialist  
Region 10 915 Second Avenue, Suite 3142  
Seattle, WA 98174  
[james.saxton@dot.gov](mailto:james.saxton@dot.gov)

September 29, 2011

**Sent via Electronic and Regular Mail**

Ms. Wills, Mr. McAvoy and Mr. Saxton:

**O-001-001** The Pacific Environmental Advocacy Center (PEAC) submits this request on behalf of the following organizations: Northwest Environmental Defense Center (NEDC), Coalition for a Livable Future and Rosemere Neighborhood Association. PEAC requests a 60-day extension of the deadline for public comments on the Final Environmental Impact Statement (FEIS) of the Columbia River Crossing (CRC). The current 30-day comment period is wholly insufficient for the public to analyze the massive FEIS, which is a significantly different from the DEIS.

### O-001-001

FTA and FHWA sent a formal reply to PEAC's request, declining to extend the deadline for public comments on the FEIS.

**O-001-001**

To illustrate some changes, both the “Ecosystems” and the “Air Quality” sections of the FEIS are significantly different from the DEIS. The “Ecosystems” section in the FEIS contains more than 400 pages of new material compared to DEIS. Furthermore, the FEIS includes a Biological Opinion located at Appendix N which was not available with the DEIS. The “Air Quality” section also contains significant changes from the DEIS. Specifically, the FEIS introduces new points of discussion that were not presented in the DEIS (e.g. the Ruby Junction Maintenance facility). The FEIS also significantly expands both subsection 3.10.4 (Temporary Effects) and the “Temporary Effects” portion under subsection section 3.10.5 (Mitigation or Compensation) of the “Air Quality” section. A 90-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.

CRC circulated the DEIS in May of 2008. Three years and four months later, CRC then released the FEIS. In this time, CRC illegally did not supplement the draft EIS. A 90-day comment period is imperative considering the substantial changes from the DEIS to the FEIS. If supplements had been provided to allow the public to analyze new materials in a timely fashion, perhaps a 30-day final comment period would be sufficient. Where, as here, however, the FEIS is significantly different from the DEIS, a 90-day comment period is essential for meaningful public participation.

**O-001-002**

Concerned citizens and implicated agencies cannot adequately participate in the NEPA process if they are only given 30 days to analyze and comment on the thousands of pages of the highly technical 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 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 30-day comment period meets its requirement to make public input an essential part of the finalizing the FEIS.

**O-001-003**

While CRC’s CD containing the FEIS also contains responses to comments it received on the DEIS, that fact alone does not demonstrate that public concerns were adequately addressed. To fully complete the NEPA process, CRC must “provide a ‘meaningful reference’ to all responsible opposing viewpoints concerning the agency’s proposed decision;” see *State of California v. Block*, 690 F.2d 753 at 773 (1982), see also 40 CFR § 1503.4. For the public to intelligently review over 1,600 public comments from the DEIS and CRC’s responses to those comments within 30 days places an unreasonable burden on the interested public’s efforts to ensure that CRC has satisfied the relevant regulations.

**O-001-002**

The project has been soliciting public input and providing public information throughout the process of developing the FEIS. The FEIS describes specific outreach and involvement efforts that occurred and how they have influenced the project. The locally preferred alternative was selected in the summer of 2008 and has been the subject of extensive public and agency coordination and input since then. The findings and conclusions in the FEIS are not fundamentally different from the DEIS. Many of the changes in the FEIS were in response to input received from citizens and other stakeholders. While the FEIS is not subject to a formal public comment period as the DEIS is, FTA and FHWA solicited comments on the FEIS prior to finalizing the NEPA process.

**O-001-003**

Please see responses above.

Whether or not citizens read the entire FEIS, all DEIS comments, and all responses to DEIS comments is not really the test for determining whether or not public concerns were adequately addressed. As noted in the responses above, there has been extensive public outreach and input during the preparation of the FEIS, many of the findings were released to the public before the FEIS was published, and many of the meaningful refinements since the DEIS have been the result of public outreach.

In addition, each person who commented on the DEIS was provided reasonable opportunity to review the response to his or her comments, as well access to any other comments and responses. For those who did not wish to review all 1,600 comments, the FEIS provided a summary of the most common comments received and responses to them (Chapter 6--Public Input on the Draft EIS).

O-001-004

FHWA and the Federal Transit Authority (FTA) have the authority to extend the commenting period beyond the 30-day public comment period. 40 CFR §§ 1506.10 (d), 23 CFR § 771.125; 23 CFR § 771.127(a) The circumstances of the FEIS makes 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.

The CRC is a major transportation project with 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. 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 is a minor delay given the CRC's potential environmental harms.

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 invested parties bearing the brunt of these impacts deserve a legitimate opportunity to carefully analyze the changes from the DEIS to intelligently comment on the FEIS.

Further, the comment period the comment should be extended because the project directly affects millions of citizens and dozens of local, state and regional agencies. CRC has already included twelve local, regional and national agencies in addition to nine federally recognized and non-federally recognized tribes on this project. More than 12,000 community members have engaged in the CRC process since 1995. While the involvement of these agencies, tribes and citizens in the initial planning stages has been beneficial, the public still needs adequate time to comment on the FEIS after the September 23, 2011 publication.

Finally, the 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 FEIS, are high and CRC needs to allow sufficient time to consider the issues presented by those affected. With groups positioned on all sides of the proposal, some positions will inevitably lose

#### O-001-004

The fundamental finding of impacts did not change meaningfully between the DEIS and FEIS. Both documents disclose that the project will not cause significant harm to water quality, ecosystems, air quality, wetlands, EJ communities, or induced sprawl. The project would have significant impacts to parks and historic resources, although the impacts were reduced through project refinements following the DEIS. This information was the subject of public outreach, and the revisions were made in part to reflect public and agency input during the preparation of the FEIS.

FTA and FHWA previously sent a formal reply to PEAC's request regarding the comment period.

O-001-004

to others. When this happens, CRC will face scrutiny by unsatisfied 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 30-day comment period will limit commenting parties to superficial analyses, heightening tensions and unjustly serving all.

In short, all parties involved will benefit from an extension of the public commenting period, and the project will not be adversely affected by an extension. Therefore, CRC should grant an extension of the public comment deadline until December 23, 2011.

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), Coalition for a Livable Future and Rosemere Neighborhood Association.