

July 5, 2006

TO: CRC Task Force Members
FROM: Heather Gundersen, CRC Environmental Manager
SUBJECT: Role of Federal, State and Local Agencies and Tribes in the CRC Project

Introduction

The Columbia River Crossing (CRC) Project will require permits or approvals from several federal, state and local agencies. Several Tribal Governments also have an interest in the project due to the rich historic and prehistoric settlements and activity in and around Fort Vancouver. Ultimately, the project will benefit from the expertise and knowledge these agencies and tribes bring regarding the protected and important natural and cultural resources in the study area.

To facilitate effective, efficient and timely involvement, the CRC project team began meeting with resource agencies and initiated coordination with interested tribes in fall 2005. We developed forums where these agencies and some tribes can learn about the project and discuss their concerns. Early involvement allows the project to move forward, and continued coordination will help the project achieve greater accountability and efficiency. Various laws and regulations require the project to coordinate with three major groups – resource agencies, participating agencies and Tribal Governments. This memo outlines the roles of each group in the CRC project.

Regulatory Background

Numerous local, state and federal environmental laws and regulations apply to the CRC project. Below is a brief description of some of the key laws and their nexus to agency and tribal coordination.

National Environmental Policy Act (NEPA) – NEPA is the overarching federal law that requires any federally funded project to evaluate a range of reasonable alternatives and their impacts on the environment. During the early NEPA scoping process the lead Federal agency must invite the participation of Federal, state and local agencies, Indian tribes and other groups affected by the proposal. Appropriate agencies with “jurisdiction by law or special expertise with respect to any environmental impact involved” may also elect to become “cooperating agencies” more directly involved in the NEPA process. Washington State Department of Transportation (WSDOT) and Oregon Department of Transportation (ODOT), have formed coordination agreements with selected resource agencies to establish a formal process for integrating NEPA with other regulatory programs.

2005 Federal Transportation Bill; The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) - This bill requires transportation projects to implement a coordination process that involves Federal, State and local agencies and Indian

tribal governments in the development of key NEPA milestones such as purpose and need and analysis methods. SAFETEA-LU also directs resource agencies to coordinate their review under other environmental laws (i.e. Clean Water Act) with the review of the project under NEPA.

Endangered Species Act (ESA) – Federal agencies must conduct their actions in a manner that does not threaten the survival and recovery of threatened and endangered species. To ensure this goal, all Federal agencies must consult with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) before undertaking an action that could impact a protected species. The ESA encourages agency coordination through designation of a lead agency and by consolidating the required consultation with other environmental reviews including NEPA. Agency coordination is important because each Federal agency involved has an individual responsibility to ensure they are complying with the act.

Clean Water Act (Section 404 and 401) – Section 404 of the Clean Water Act prevents the discharge of dredged or fill materials to waters of the U.S. without a permit from the Army Corps of Engineers (Corps). When the Corps considers a permit application it must coordinate with other Federal and state agencies regarding project impacts to resources such as fish and wildlife. In issuing the permit, the Corps may also have independent responsibilities under the ESA and other laws that could be met through a larger coordination effort. Section 401 of the Clean Water Act requires federal coordination with states, specifically to obtain certification that a project will not harm state water quality standards.

National Historic Preservation Act (Section 106) - Federal agencies must consider the impacts of their actions on significant historic resources (including prehistoric resources and traditional cultural properties). They must consult with state historic preservation agencies and solicit input from tribes to identify and evaluate such properties, evaluate impacts and mitigation, and resolve any adverse effects.

Executive Order 13175 - Each federal agency must have a program that describes and maintains the consultative relationship with tribes. The overarching theme is to focus special attention on ensuring that Tribal Government and other Native American groups are provided appropriate opportunities to participate in appropriate ways on projects that have substantial effects on them.

How CRC Coordinates with Resource Agencies

Interstate Collaborative Environmental Process (InterCEP) – In coordination with the resource agencies, the CRC project developed an agreement that outlines a process for bi-state coordination with state and federal resource agencies. Central to the agreement is a collaborative process for agency input at key project milestones, including four “concurrency” and three “comment points (see below).

- ❖ Project Purpose and Need Statement (*Concurrency for the US Army Corps of Engineers, and Comment for others*) – **Completed in February 2006**
- ❖ Evaluation Criteria (*Concurrency*) – **Completed in May 2006**
- ❖ Methodologies to be used for analyzing alternatives and impacts (*Comment*) – **Currently reviewing methodologies**
- ❖ Range of alternatives to be considered in the Draft EIS (*Concurrency*) – **Spring 2007**
- ❖ Preliminary Draft EIS (*Comment*) – *Winter 2008*
- ❖ Preferred Alternative and Conceptual Mitigation Plan (*Concurrency*) – **Summer 2008**
- ❖ Preliminary Final EIS (*Comment*) – **Fall 2008**

This approach builds from existing coordination processes in both states, and meets many of the coordination requirements of NEPA, SAFETEA-LU and other laws and regulations. It is also expected to improve project efficiency and predictability and lead to better environmental stewardship.

Participating Agencies – In accordance with requirements in SAFETEA-LU, this group was established to provide a systematic and regular opportunity to participate in the project for a wide array of local, state, and federal agencies. Invitations were sent out to an extensive list of local, state and federal agencies and all interested Tribal governments. Participating agencies may or may not have permitting authority (this is a key differentiator from InterCEP where all agency members have state or federal permitting or approval authority). The primary coordination with participating agencies occurs through meetings and correspondence at key project milestones.

How CRC Coordinates with Tribes

The CRC project is consulting with eight Tribal Governments:

- ❖ Yakama Nation
- ❖ Confederated Tribes of Grand Ronde
- ❖ Confederated Tribes of Warm Springs
- ❖ Nez Perce Indian Tribe
- ❖ Confederate Tribes of Umatilla
- ❖ Cowlitz Indian Tribe
- ❖ Confederated Tribes of Siletz
- ❖ Spokane Indian Tribe

The CRC team has met individually with five tribes to date and is working to schedule meetings with the other three. The purpose of the initial meeting is for the project to hear major concerns from the tribes, which include the potential for ‘inadvertent discovery’ of human remains, stewardship of natural resources (especially fisheries), and preservation of ‘Traditional Cultural Properties’. The project is committed to on-going coordination through individual formal (with Tribal Council) and informal (with tribal staff) meetings, and continued correspondence. The tribes have the opportunity to review any document produced by the project, and the project will closely consult with tribes regarding archeological investigation techniques and developing a plan for inadvertent discovery of human remains or artifacts.

Please contact Heather Gundersen, CRC Environmental Manager at 360.816.2199 or gundersenh@columbiarivercrossing.org with questions or comments.