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**INTERSTATE 5  
COLUMBIA RIVER CROSSING**

**INTERSTATE COLLABORATIVE ENVIRONMENTAL  
PROCESS AGREEMENT**



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**Acronyms**

- 2 CETAS .....Collaborative Environmental and Transportation Agreement  
3 for Streamlining  
4 CRC.....Columbia River Crossing  
5 EIS.....Environmental Impact Statement  
6 FHWA.....Federal Highway Administration  
7 FTA.....Federal Transit Administration  
8 InterCEP.....Interstate Collaborative Environmental Process  
9 NEPA .....National Environmental Policy Act  
10 ODOT .....Oregon Department of Transportation  
11 ROD .....Record of Decision  
12 SAC.....Signatory Agency Committee  
13 SEPA.....State Environmental Policy Act  
14 WSDOT .....Washington State Department of Transportation

1 **Terms and Definitions**

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3 Unless the context requires otherwise, the following terms in this agreement shall  
4 have these meanings:

5 **Agency Representative**, means the individual designated as a Signatory Agency's  
6 primary point of contact for this agreement. This individual is responsible for  
7 coordinating his/her agency's involvement in the coordination process.

8 **Bridge Influence Area**, refers to the area approximately between Columbia  
9 Boulevard in Portland and State Route 500 in Vancouver as identified by the Final  
10 Strategic Plan for the I-5 Transportation and Trade Partnership.

11 **Comment Point**, refers to a specific point or topic in the NEPA process at which the  
12 Resource Agencies in the agreement will be asked to provide advisory comments. See  
13 Section VI.B. of the agreement.

14 **Concurrence**, when used in reference to a Resource Agency's response to a  
15 concurrence point, means that in the Resource Agency's opinion the project topic is  
16 appropriate and will not interfere with the agency's ability to ultimately approve or  
17 permit the project. Concurrence on a concurrence point represents that each of the  
18 following criteria are met: 1) the Resource Agency has determined that there is  
19 adequate information for the topic under consideration for this stage of the project  
20 development; 2) the concurrence is consistent with the agency's applicable statutes  
21 and regulations; and 3) concerns were adequately addressed by NEPA Leads and  
22 Project Sponsors following a non-concurrence (if applicable).

23 **Concurrence Point**, refers to a specific work product or milestone in the NEPA  
24 process at which the Resource Agencies in the agreement will be asked to give a  
25 response of concurrence, non-concurrence or waiver. See Section VI.D. of the  
26 agreement.

27 **Interstate Collaborative Environmental Process Agreement**, refers to this  
28 agreement.

29 **Interstate Collaborative Environmental Process Group**, refers to all the Signatory  
30 Agencies to this agreement.

31 **Methods Reports** (aka Methods and Data Reports), when used in reference to a  
32 comment point, is the document that describes the methods that will be used to collect  
33 data, evaluate impacts and identify mitigation for the CRC project alternatives.

34 **NEPA Leads**, refers to those Federal agencies that have assumed lead agency status  
35 under 40 CFR 1501.5 for the project's NEPA process. For the CRC project the NEPA  
36 Leads are FHWA and FTA.

37 **Non-Concurrence**, when used in reference to a Resource Agency's response to a  
38 concurrence point, means that in the Resource Agency's opinion one or more of the  
39 criteria allowing concurrence is not being met and that the project, if it proceeded  
40 under the current concurrence point element, would likely not be able to receive final  
41 approval or permits from that agency.

- 1 **Preferred Alternative and Conceptual Mitigation Plan**, when used in reference to  
2 a concurrence point, means the project proponents' preferred alternative and proposed  
3 mitigation measures associated with that alternative, as defined by 40 CFR  
4 1502.14(e) and (f).
- 5 **Preliminary Draft EIS**, when used in reference to a comment point, means an initial  
6 version of the document required by 40 CFR 1502.9(a).
- 7 **Preliminary Final EIS**, when used in reference to a comment point, means an initial  
8 version of the document required by 40 CFR 1502.9(b).
- 9 **Project Sponsors**, refers to the Oregon and Washington State Departments of  
10 Transportation, who are sharing the primary responsibility of managing the CRC  
11 project within the scope of this agreement process. For the purposes of this agreement  
12 ODOT and WSDOT are representing other project proponents (including C-TRAN,  
13 RTC, Metro, Tri-Met, City of Portland and City of Vancouver).
- 14 **Purpose and Need**, when used in reference to a comment or concurrence point,  
15 means an initial version of the statement required by 40 CFR §1502.13 describing the  
16 underlying purpose and need to which the agency is responding in proposing the  
17 alternatives.
- 18 **Resource Agencies**, refers to those federal and state agencies from which it is  
19 anticipated a future build alternative would need a permit or other approval. See  
20 section IV.A.3 for a list of Resource Agencies. For the purposes of this agreement  
21 Resource Agencies includes only the Signatory Agencies.
- 22 **Signatory Agencies** refers to those agencies that have signed this agreement in  
23 section IX.
- 24 **Topic**, refers to the subject of a particular comment or concurrence point (i.e. Purpose  
25 and Need).
- 26 **Waive**, when used in reference to a Resource Agency's response to a concurrence  
27 point, means that in the Resource Agency's opinion its participation in the  
28 concurrence point is not necessary at this point in the project or that the concurrence  
29 point topic is outside its jurisdictional scope or expertise.





## **Interstate 5 Columbia River Crossing Bi-State Agreement**

### **I. INTRODUCTION**

The Interstate 5 Columbia River Crossing (CRC) project will be addressing transportation needs in the I-5 Columbia River Crossing Bridge Influence Area, located in the Portland, Oregon and Vancouver, Washington metropolitan area.

The I-5 CRC alternatives will lie within the jurisdictions of both states, thus this project will benefit from an approach that coordinates the federal, state and local regulatory requirements and programs applicable in each state. The Washington State Department of Transportation (WSDOT) and Oregon Department of Transportation (ODOT), each in conjunction with the Federal Highway Administration (FHWA), have existing agreements and procedures in their respective states to aid in coordinating certain state and federal regulatory programs with the National Environmental Policy Act (NEPA) process on state and federal highway projects. These agreements are, in Oregon, the Collaborative Environmental and Transportation Agreement for Streamlining (CETAS), and, in Washington, the Signatory Agency Committee (SAC) Agreement. The SAC agreement also integrates the Washington State Environmental Policy Act (SEPA) in the process. Because the I-5 Columbia River crossing project will evaluate both highway and transit alternatives, the Federal Transit Administration (FTA) and the FHWA will be co-lead agencies for NEPA compliance. Therefore, the coordination process also needs to integrate the procedures and requirements of FHWA and FTA.

In August 2005, project proponents convened a workshop of federal, state and local agencies from Oregon and Washington. The goal of the workshop was to initiate early agency coordination, and to begin developing an agency coordination process for the project's NEPA review. This agreement was initiated through the workshop and finalized through subsequent collaboration.

### **II. GOALS**

The Signatory Agencies are committed to implementing this agreement in a manner that accomplishes the following principles for the process and project:

#### Agreement Process

- Build on the successes of the CETAS and SAC agreements and other regional collaboration efforts.
- Implement a coordination process in compliance with NEPA requirements.
- Integrate the NEPA/SEPA process with subsequent permitting requirements, including section 404(b)(1) of the Clean Water Act.
- Use frequent and early communication.
- Use sound information, good science and agency and community input to make intelligent decisions.
- Implement a collaboration process that is efficient and cost effective and that integrates transportation, environmental and land use planning objectives.

- Develop a process and alternatives that reflect all participating agencies' missions and input.
- Accommodate broad advisory input from each agency but limit agreement-related authority to each agency's respective legal authority.
- Develop and meet efficient and realistic timelines.

CRC Project Outcome

- Develop alternatives that have strong community support and are able to serve the region's future growth and quality of life.
- Use collaboration to develop alternatives that accommodate multimodal transportation needs and resource protection in innovative and effective ways.
- Develop a project that will be "permissible" by the agencies with permitting/approval authority.
- Effectively implement the policy of avoidance, minimization and mitigation of impacts to affected resources.
- Strive to achieve the project's vision and values.

**III. APPLICABILITY**

A. Agreement Limited to I-5 Columbia River Crossing Project

This agreement is limited to agency coordination efforts related to the Interstate 5 Columbia River Crossing project.

B. Scope of Coordination

This agreement establishes a process for coordination of the NEPA and SEPA process and the various federal, state and local regulatory programs administered by the Signatory Agencies. This agreement will coordinate the Signatory Agencies' involvement in the NEPA/SEPA planning process, including the ultimate development of an Environmental Impact Statement (EIS) and Record of Decision (ROD). The purpose of this agreement is to coordinate between the NEPA Leads/Project Sponsors and the Resource Agencies and is not intended as a forum for resolving issues amongst the NEPA Leads and Project Sponsors. NEPA Leads and Project Sponsors will use other forums for developing the NEPA work products used in this agreement's collaboration process and will use other forums for coordinating with participating agencies that are not signatories to this agreement. The process outlined by this agreement effectively ends when a final EIS and ROD have been issued for the project. However, the Signatory Agencies may continue to use the collaborative framework of this agreement through project permitting, construction and ongoing monitoring as agreed to by the parties.

C. Limitation on Affect of Agreement

This agreement is intended to facilitate the coordination of the environmental review process and does not create rules or regulations, the violation of which, would create a cause of action or proof of violation of existing Federal or state statutes or regulations by any signatory party or third party. Evidence of a signatory party's failure to follow this agreement or the obligations under it including any actions taken or presented under the agreement's issue resolution process, shall not be evidence under the administrative record or otherwise of a party's failure to meet its obligations under any Federal, state or local law or regulation.

**IV. SIGNATORY AGENCIES AND TENETS OF PARTICIPATION**

A. Signatory Agencies

The parties to this agreement and the members of the **Interstate Collaborative Environmental Process (InterCEP)** group include the NEPA Leads, Project Sponsors and Resource Agencies.<sup>1</sup>

1. NEPA Leads

The NEPA Leads are the federal agencies that have the ultimate responsibility for the project's NEPA compliance. They share management responsibilities with the Project Sponsors. NEPA Leads are the:

Federal Highway Administration (FHWA);  
Federal Transit Administration (FTA);

2. Project Sponsors

The Project Sponsors are the state transportation departments who are the proponents of the project. They share management responsibilities with the NEPA Leads. Project Sponsors are the:

Oregon Department of Transportation (ODOT);  
Washington State Department of Transportation (WSDOT);

3. Resource Agencies

The Resource Agencies are the federal and state agencies from which it is anticipated a future build alternative would need a permit or other approval. These agencies will be asked to provide early coordination, comment and/or concurrence on the project through the process described in this agreement. Resource Agencies are the:

National Marine Fisheries Service;

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<sup>1</sup> NEPA Leads and Project Sponsors are coordinating with tribal authorities through a separate, parallel process.

U.S. Army Corps of Engineers;  
U.S. Environmental Protection Agency;  
U.S. Fish and Wildlife Service;  
Oregon Department of Environmental Quality;  
Oregon Department of Fish and Wildlife;  
Oregon Department of Land Conservation and Development;  
Oregon Department of State Lands;  
Oregon State Historic Preservation Office;  
Washington State Department of Archaeology and Historic  
Preservation;  
Washington State Department of Ecology; and  
Washington State Department of Fish and Wildlife.

**B. Tenets of Participation**

All Signatory Agencies agree to follow the processes described in this agreement including consistent meeting attendance and timely participation in the decision making process. As part of participation all Signatory Agencies are responsible for providing sufficient and appropriate staff with the needed expertise and authority to proceed with the timely resolution of the agreement process. Specific roles and responsibilities of NEPA Leads, Project Sponsors and Resource Agencies are further defined below in Section V and VI.

Participation in this agreement does not imply endorsement of the project. Nothing in this agreement or its appendices is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved.

All participating federal Resource Agencies with offices in both the states of Oregon and Washington agree to make efforts to coordinate their participation in this agreement, such as appointing one office to represent the agency on the CRC project, so as to minimize jurisdictional overlap and to provide a single person as the agency's primary point of contact.

Each Signatory Agency shall identify a single person as that agency's primary point of contact for the agreement process who will be responsible for representing the agency in the process. Other staff may be used in a technical or supporting role as needed. See *Appendix A: Contacts* for a list of agency representatives. Agency representatives should have sufficient authority to represent the agency during meetings and participate in decision making. Representatives need not have signatory authority to formally respond to concurrence point requests, but it is the representative's responsibility to see that concurrence requests are reviewed by appropriate agency authorities within the process timeline.

## **V. IMPLEMENTATION PROCEDURES**

### **A. Agreement Management**

Project Sponsors have the overall responsibility of coordinating and facilitating the process described in this agreement.

#### **1. Implementation Coordinator**

Project Sponsors will provide an Implementation Coordinator. It is the responsibility of this coordinator to be a central point of contact for all Signatory Agencies and insure that all meeting notices and other necessary information are disseminated to participating agencies in a timely manner. This person will also be ODOT's and WSDOT's primary representative at meetings and during the decision making process.

#### **2. Facilitator**

Project Sponsors may provide for a facilitator at meetings and other points in the process as needed. The facilitator may be an agency staff person, contractor or other designee but will not be an agency's sole representative at the relevant meeting or process point and will not be an advocate for any agency while acting as facilitator but will strive to (1) ensure meetings are efficient, focused and productive, and (2) achieve consensus among participating agencies to the extent possible. The facilitator will work closely with the implementation coordinator to ensure appropriate collection and dissemination of information for the facilitated meeting or process point.

#### **3. Decision Documentation**

Project Sponsors are responsible for completely and accurately documenting all decisions that are made during the agreement process. This includes providing for note-taking during all meetings. All meeting summaries will be distributed to all Signatory Agencies with any substantive decisions and assignments conspicuously marked. All Signatory Agencies shall have an opportunity to comment, within a specified timeframe, on the accuracy of any summaries disseminated.

Project Sponsors are responsible for the collection and dissemination of all requests for concurrence, comments received from Resource Agencies and responses to comments.

All notes and appropriate documents will be transmitted to the NEPA Leads by the Project Sponsors for the administrative record.

#### **4. Electronic Information System**

Project Sponsors are responsible for establishing and maintaining a web-based information repository that shall be the primary means of disseminating information to Signatory Agencies. All documents

necessary to implement the agreement process shall be located on this system and available to all Signatory Agencies. E-mail or other appropriate means shall be used to notify agency representatives when new information is added to the system.

## B. Meetings

### 1. Timing of Meetings

A meeting of the InterCEP group shall be held approximately on a monthly basis, depending on need, for the purpose of information sharing, monitoring of the process and addressing other project issues. The frequency of meetings may be adjusted over time. A scheduled meeting may be cancelled by the Project Sponsors up to one week before the meeting date.

At the request of any Project Sponsor, NEPA Lead or two or more Resource Agencies, additional meetings may be convened.

### 2. Meeting Agenda

Project Sponsors shall distribute a preliminary agenda approximately one month before a meeting or at the time of scheduling whichever is later. Agendas shall clearly outline items for discussion or resolution or actions requested of agency representatives at the next meeting. Agendas shall also indicate which Resource Agencies, if any, may not need to attend based on the planned topics of discussion. Excused Resource Agencies should communicate with the Implementation Coordinator to verify their attendance is not needed. Resource Agencies, however, may attend any meeting regardless of whether designated as excused or not. Agendas shall also clearly indicate if discussion topics are expected to be of such a technical matter that agency representatives may want to bring additional staff and if a specific decision will need to be made at the meeting. Agency representatives shall also review the meeting agenda topic descriptions to determine if additional agency staff/managers should attend.

Resource Agencies may request additions to the agenda of any scheduled meeting by submitting a "Request for Discussion" form (*Appendix C*) to the Implementation Coordinator at least 14 calendar days before a scheduled meeting. See section IV.D. Issue Resolution and *Appendix B* for more on this process.

### 3. Meeting Attendance

It is the responsibility of agency representatives to attend scheduled meetings unless it was indicated on that meeting's agenda that their presence is not warranted. Decisions will not be revisited because an agency, absent during the relevant meeting, objects to the outcome. If an agency representative knows they will not be able to attend a meeting they

shall inform the Implementation Coordinator prior to the meeting. Although not preferred, representatives that cannot attend in person may be able to connect to the meeting via conference call, with adequate notice.

If an agency representative cannot attend a meeting during which a concurrence point presentation is scheduled, a makeup presentation may be scheduled with that representative at the discretion of the Project Sponsors.

#### 4. Proxy

If an agency representative is unable to attend a scheduled meeting he/she may send a proxy representative from his/her agency or coordinate with a separate Signatory Agency to represent them. Proxy representatives should have sufficient authority and knowledge in order to fully represent the agency in the process and any decision making. Agencies sending proxy representatives should consider, as needed, sending written instructions or opinion on scheduled discussion or decision topics.

#### C. Workgroups and Off-line Meetings

Workgroups may be formed by the Project Sponsors to address any issue they believe needs more focused or technical attention than is available within the scheduled InterCEP meetings. Any Signatory Agency(ies) may recommend the formation of a workgroup or single offline meeting and make recommendations regarding the composition of the workgroup. Workgroups shall be composed of all Signatory Agencies relevant to the topic available to attend and can be staffed with the existing agency representatives or other staff as needed. Generally it is expected that workgroups will report back to the primary committee on meeting results and any action that may be needed as a result of the workgroup's effort. Workgroups will make regular progress reports during scheduled InterCEP meetings.

#### D. Issue Resolution

The purpose of this issue resolution process is to provide a means to resolve disagreements between Signatory Agencies. The intention is to expeditiously resolve issues at the lowest level of the organizations through collaboration and consensus. Alternative issue resolution forums (e.g., facilitation or mediation) can be used in this process.

##### 1. Triggers

The issue resolution process may be initiated by any Signatory Agency for the following reasons: there is a disagreement on the interpretation of this agreement; a Resource Agency gives a response of non-concurrence to a request for concurrence; or any other dispute in the process that cannot be resolved by a consensus of agency representatives.

## 2. Process

The issue resolution process involves first an informed discussion amongst agency representatives and then, if a resolution can not be reached, the sequential elevation of the issue to higher levels of authority within the agencies until a resolution is achieved. See *Appendix B: Issue Resolution Process* for details on the elevation sequence, process and timeline.

## VI. COMMENT AND CONCURRENCE PROCESS

### A. Comment and Concurrence Points

Comment and concurrence points are specific milestones or decisions in the project process at which the NEPA Leads and Project Sponsors will request Resource Agencies to provide specific comments or concurrence on the project at that stage.

### B. Comment Points

Comment points represent specific points in the project process at which Resource Agencies will be asked to provide written, advisory comments to NEPA Leads and Project Sponsors. Participation in comment points by resource agencies does not represent an endorsement of the project. Comments received by NEPA Leads and Project Sponsors at these points are advisory only and treatment of advisory comments does not trigger the issue resolution process. The comment points for this agreement are:

- i. Purpose and Need (For all Resource Agencies except the Corps of Engineers)
- ii. Methods and Data Reports
- iii. Preliminary Draft EIS
- iv. Preliminary Final EIS

In order to support the collaborative process, Resource Agencies should comment on, amongst others, the following issues if appropriate:

- The appropriateness of the specific comment point topic;
- How the comment point topic will impact further development and ultimate completion and approval of the EIS and ROD by the project NEPA Leads;
- How the comment point topic would be consistent or inconsistent with the agency's ability to ultimately approve or permit the project;
- How the specific comment point topic will support the best possible project and environmental outcome.



Resource Agencies should focus comments on the element's interaction with resources under that agency's legal jurisdiction or expertise and on how that element may impact the agency's ultimate approval or permitting of the project.

### C. Comment Point Process

The purpose of the comment point process is to provide Resource Agencies with several opportunities to provide early input on the comment point topic and allow the NEPA Leads and Project Sponsors to refine the topic if needed.

#### 1. Initial Comment Opportunity

The NEPA Leads and Project Sponsors shall submit an initial comment package at least 20 calendar days prior to a scheduled meeting at which the comment point topic will be discussed. The initial comment package should provide agencies with sufficient information regarding the comment point to allow substantive comments before or during the meeting presentation.

Resource Agencies are expected to review the initial comment package and may provide NEPA Leads and Project Sponsors with comments on the information in an initial comment package up to seven (7) calendar days before the scheduled meeting presentation.

#### 2. Comment Point Meeting and Discussion

NEPA Leads and Project Sponsors shall make a comment point presentation at a scheduled InterCEP meeting of the signatory agencies. The presentation shall describe the comment point topic and how it relates to the overall project. The presentation shall indicate any changes to the comment point topic since the distribution of the initial comment package. NEPA Leads and Project Sponsors shall allow for Resource Agencies to comment on and discuss the presentation and initial comment package at the meeting.

#### 3. Final Comment Opportunity

After the comment point meeting, NEPA Leads and Project Sponsors shall submit a final comment package to each Resource Agency for written comments.

The information in the final comment package should represent the current version of the relevant topic based on previous Resource Agency input during the initial comment opportunity and meeting and indicate any changes to the comment point topic since the distribution of the initial package.

#### 4. Response to Final Comment Package

Within 20 calendar days of receiving a final comment package, a Resource Agency may provide in writing on a form provided by the Project Sponsors, any further advisory comments on the comment point topic.

NEPA Leads and Project Sponsors shall provide a response to any advisory comments within 45 calendar days of receipt. Advisory comments and responses to them do not trigger the issue resolution process as they are only advisory in nature and do not constitute conditional approval.

#### D. Concurrence Points

Concurrence points represent specific points in the project process at which Resource Agencies will be asked to provide a written concurrence on that stage of the project to NEPA Leads and Project Sponsors. Concurrence on a Concurrence Point means that the information submitted for a particular concurrence point meets the definition of “Concurrence” in this Agreement. The Concurrence Points for this agreement are:

- i. Purpose and Need (For Corps of Engineers only)<sup>2</sup>
- ii. Evaluation Criteria
- iii. Range of Alternatives to be considered in the Draft EIS
- iv. Preferred Alternative and Conceptual Mitigation Plan

Concurrence Points shall follow the process established in the remainder of Section VI.

#### E. Pre-Concurrence Coordination

The purpose of pre-concurrence coordination before the submittal of a formal concurrence point is to allow early identification of issues that may prevent a Resource Agency from being able to concur on the point in question.

##### 1. Pre- Concurrence Package

A pre-concurrence package is an important element of the process because it provides Resource Agencies an opportunity to assist the NEPA Leads and Project Sponsors to provide as complete a concurrence package as possible. NEPA Leads and Project Sponsors will submit a pre-concurrence package to Resource Agencies at least 20 calendar days prior to a scheduled meeting at which the concurrence presentation will be made. The pre-concurrence package should provide agencies with sufficient

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<sup>2</sup> The U.S. Army Corps of Engineers was given concurrence authority on the Purpose and Need Statement due to permit authority under Section 404 of the Clean Water Act and interactions between NEPA and Section 404(b)(1) guidelines.

information regarding the concurrence point to allow substantive comments before or during the concurrence presentation.

Resource Agencies are expected to review the pre-concurrence package and may provide NEPA Leads and Project Sponsors with comments on the information in a pre-concurrence package up to seven (7) calendar days before the scheduled concurrence presentation.

## 2. Concurrence Point Meeting and Discussion

NEPA Leads and Project Sponsors shall make a concurrence point presentation at a scheduled InterCEP meeting. The presentation shall describe the concurrence point topic and how it relates to the overall project. The presentation shall indicate any changes to the concurrence point topic since the distribution of the pre-concurrence package. NEPA Leads and Project Sponsors shall allow for Resource Agencies to comment on and discuss the presentation and pre-concurrence package at the meeting. The intent of the meeting is to increase all participants' understanding of the proposed concurrence point and any concerns, in order to reach a collaborative decision. Following the presentation and discussion, the Resource Agencies at the meeting will be polled to determine whether (a) each agency is ready to receive a formal concurrence request, or (b) any agency needs additional dialogue with the group before making a concurrence decision. At the request of any Resource Agency, a second meeting on the concurrence point will be scheduled. Any Resource Agency(ies) requesting the additional meeting will specify, in their request, their concerns to be addressed at the meeting.

### F. Formal Concurrence Request

After the concurrence point meeting(s), NEPA Leads and Project Sponsors shall submit a formal concurrence request to each Resource Agency for written concurrence on the particular project stage.

The information in the concurrence request should represent the current version of the relevant project element based on previous Resource Agency input during the pre-concurrence coordination and the outcome of any prior decisions or concurrence and comment points under this agreement.

### G. Response to Concurrence Request

#### 1. Response Process

Within 20 calendar days of receiving a formal concurrence request a Resource Agency shall provide in writing on a form provided by Project Sponsors, one of the following responses:

- i. Concurrence
- ii. Non-Concurrence
- iii. Waive

If the Project Sponsors make significant substantive changes to the concurrence topic after the concurrence request has been delivered, then the 20-day review period will start again once the changes have been provided in writing to the Resource Agencies.

If there has been only one concurrence presentation meeting prior to the formal concurrence request, a Resource Agency may request in writing a ten (10) calendar day extension.

If a Resource Agency's response is non-concurrence, it shall be accompanied by a detailed explanation of the reasons for non-concurrence and the specific authority (i.e., law, statute, administrative rule, etc.) upon which the non-concurrence decision has been based.

A non-concurrence response shall commence the issue resolution process of Section V.D. of this agreement.

If any Resource Agency has not provided a written response before the 20 day deadline (30 days if an extension was granted), Project Sponsors shall issue that agency a written notice, accompanied by a telephone call to the agency representative, that it has not responded to a concurrence request and if it does not provide a response within ten (10) calendar days the agency will waive its participation on that concurrence point. If the NEPA Leads and Project Sponsors do not receive a written response of Concurrence, Non-concurrence or Waiver within 30 calendar days (40 if an extension was granted) of the resource agencies receiving the concurrence request, the Project Sponsors shall inform the Resource Agency in writing that they have been deemed to have waived participation in this concurrence point.

## 2. Effect of Concurrence

Concurrence on a concurrence point means that each of the following criteria are met: 1) the Resource Agency has determined that there is adequate information regarding the topic under consideration for this stage of the project development; 2) the concurrence is consistent with the agency's applicable statutes and regulations; and 3) concerns were adequately addressed by NEPA Leads and Project Sponsors following a non-concurrence (if applicable).

Once a Resource Agency has provided concurrence on a given point it agrees not to revisit that project topic unless there is substantial new information or substantial changes have occurred to the project, the environment or relevant laws and regulations.

Concurrence is not legal approval and does not preclude a Resource Agency from denying later project approval or permitting. Concurrence does, however, preclude an agency from later revisiting the project decisions made at the particular concurrence point. Concurrence does not diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved.

### 3. Effect of Non-Concurrence

Non-concurrence on a concurrence point is appropriate if a Resource Agency has determined that one or more of the criteria allowing concurrence is not being met and that the project, if it proceeded under the current concurrence point element, would likely not be able to receive final approval or permits from that agency.

The grounds for a Resource Agency's non-concurrence shall be limited to the agency's legal authority. A Resource Agency should only provide a non-concurrence if it believes it would be unable to provide final approval to the project.

Non-concurrence by any Resource Agency prevents the project from continuing to the next concurrence point request under this agreement until the issue is resolved. Non-concurrence does not prevent NEPA Leads and Project Sponsors from continuing to advance the project development process.

### 4. Waiver

A Resource Agency may choose to waive a concurrence point. Waiver may be appropriate if an Agency believes that its participation in the concurrence point is not necessary at this point in the project or that the concurrence point topic is outside its jurisdictional scope or expertise.

A waiver has the same procedural effect as a concurrence in that it allows NEPA Leads and Project Sponsors to proceed to the next comment or concurrence point (assuming all resource agencies have concurred or waived). By responding with a waiver the Resource Agency agrees not to revisit that project topic unless there is substantial new information or substantial changes have occurred to the project, the environment or laws and regulations.

### 5. Advisory Comments

Advisory comments may be provided with any response to a concurrence request. Such comments are submitted for informational purposes only and do not represent a conditional response. Advisory comments are appropriate if the Resource Agency has comments that are:

- i. About the concurrence point that were not severe enough to warrant non-concurrence;
- ii. Outside the agency's regulatory authority;
- iii. Beyond existing minimum standards for resource protection; or
- iv. The Resource Agency wishes to provide early substantive input and recommendations for a subsequent stage of the process.

NEPA Leads and Project Sponsors shall provide a response to any advisory comments within 45 calendar days of receipt. NEPA Leads and Project Sponsors' treatment of advisory comments does not trigger the issue resolution process.

## **VII. MONITORING, REPORTING AND ADAPTIVE MANAGEMENT**

### **A. Monitoring and Evaluation**

The signatory agencies will monitor the success of the agreement process and modify it as necessary to improve it. A workgroup shall be formed to monitor and evaluate the success of this agreement. The monitoring and evaluation workgroup will give annual progress reports at a scheduled InterCEP group meeting. The subgroup shall consider topics including, but not limited to: minor editorial correction to the agreement; more substantive proposals for improvement in the agreement process; how to monitor and measure the success of the agreement process; changes to the agreement process to reflect monitoring results; and continuation of monitoring and evaluation.

### **B. Annual Report**

Project Sponsors shall prepare an annual report and distribute it to all Signatory Agencies. The report shall include the progress of the project to date and how the process established by this agreement has impacted the project. The report shall also address the goals developed for this agreement. The reporting time period will be from January 1 to December 31 of each year.

## **VIII. EFFECTIVE DATE, AGREEMENT MODIFICATION AND TERMINATION**

### **A. Effective Date of Agreement**

This agreement becomes effective upon the signature of the NEPA Leads, Project Sponsors and at least four Resource Agencies. The agreement is only effective for those agencies that have signed the agreement. The agreement becomes effective for any other listed Signatory Agency on the date of their respective signatures.

**B. Agreement Modification**

This agreement may be modified upon approval of all Signatory Agencies. Revisions may be proposed by any Signatory Agency. Proposals for modifications will be circulated to all Signatory Agencies for a 30-day period of review. Approval of such proposals will be indicated in writing. This provision does not prevent agencies from entering into supplemental agreements to address issues of limited concern affecting only a portion of the Signatory Agencies.

**C. Agreement Termination**

Any Signatory Agency may choose to withdraw from this agreement upon 30-days written notice to the other parties of this agreement. Withdrawal of any Signatory Agency does not affect the continued use of the agreement by the remaining signatory agencies.

IX. SIGNATURES

Daniel M. Mathis  
Federal Highway Administration, Washington

02/07/06  
Date

[Signature]  
Federal Highway Administration, Oregon

Feb 7, 2006  
Date

[Signature]  
Federal Transit Administration

2/17/06  
Date

[Signature]  
Oregon Department of Transportation

\_\_\_\_\_  
Date

[Signature]  
Washington State Department of Transportation

\_\_\_\_\_  
Date

Michael R. Crouse  
National Marine Fisheries Service

2/28/06  
Date

[Signature]  
U.S. Army Corps of Engineers

6 MAR '06  
Date

[Signature]  
U.S. Environmental Protection Agency

2/12/06  
Date


[Signature]  
U.S. Fish and Wildlife Service

04/04/06  
Date

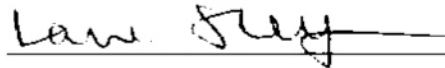
[Signature]  
Oregon Department of Environmental Quality

2/14/06  
Date

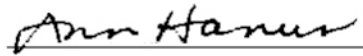


  
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Oregon Department of Fish and Wildlife

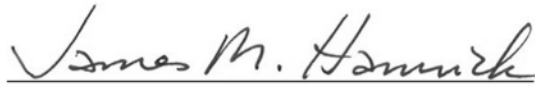
3/13/06  
Date

  
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Oregon Department of Land Conservation and Development

Jan. 25, 2006  
Date

  
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Oregon Department of State Lands


1/31/06  
Date

  
\_\_\_\_\_  
Oregon State Historic Preservation Office

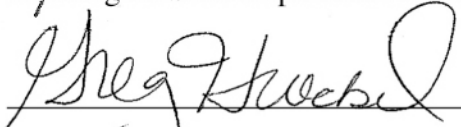
3 Mar 06  
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Washington State Department of Archaeology and  
Historic Preservation

1/25/06  
Date

  
\_\_\_\_\_  
Washington State Department of Ecology

2/26/06  
Date

  
\_\_\_\_\_  
Washington State Department of Fish and Wildlife

1/25/06  
Date



## APPENDIX A: SIGNATORY AGENCY CONTACTS

<b>Agency</b>	<b>Name</b>	<b>Email</b>	<b>Role</b>	<b>Phone #</b>
CRC Team	Heather Gundersen	gundersenh@columbiarivercrossing.org	Agreement Coordinator	360-737-2726
Federal				
FHWA - OR	Jeff Graham	jeffrey.graham@fhwa.dot.gov	Primary - OR	503-587-4727
FHWA - OR	Michelle Eraut	michelle.eraut@fhwa.dot.gov	Alternate - OR	503-587-4716
FHWA - WA	Gary Hughes	gary.hughes@fhwa.dot.gov	Primary - WA	
FHWA - WA	Sharon Love	sharon.love@fhwa.dot.gov		
FHWA - WA	Steve Saxton	steve.saxton@fhwa.dot.gov	Alternate - WA	
FTA	Linda Gehrke	linda.gehrke@fta.dot.gov	Primary	
FTA	Thomas Radmilovich	thomas.radmilovich@fta.dot.gov	Alternate	
EPA	Patty Betts	pbet461@ecy.wa.gov	Alternate	360-407-6925
EPA	Yvonne Vallette	vallette.yvonne@epa.gov	Primary	503-326-2716
NOAA	Michael Grady	michael.grady@noaa.gov	Alternate	206-526-4645
NOAA	Neil Rickard	neil.rickard@noaa.gov	Primary	360-753-9090
USFWS	David Leal	david_leal@fws.gov	Primary	503-231-6179
USACE	Susan Sturges	susan.m.sturges@usace.army.mil	Primary	503-808-4381
Oregon State				
DLCD	Bob Cortright	bob.cortright@state.or.us	Alternate	503-373-0050 ext. 241
DLCD	Matt Crall	matthew.crall@state.or.us	Primary	503-373-0050 ext. 272
ODFW	Tom Murtagh	tom.murtagh@state.or.us	Primary	503-657-2000 ext. 241
ODOT	Joyce Cohen	cohen.joyce@deq.state.or.us	Primary	503-229-6916
ODOT	Susan Haupt	susan.haupt@odot.state.or.us	Alternate	
ODSL	Mike McCabe	mike.mccabe@state.or.us	Primary	503-378-3805 ext. 255
OR DEQ	Ann Levine	levine.ann@deq.state.or.us	Alternate - Land	
OR DEQ	Dick Pedersen	pedersen.dick@deq.state.or.us	Primary	
OR DEQ	Marianne Fitzgerald	fitzgerald.marianne@deq.state.or.us	Alternate - Air	503-229-5946
OR DEQ	Tom Melville	melville.tom@deq.state.or.us	Alternate - Water	503-229-5845
OR SHPO	Kirk Ranzetta	kirk.ranzetta@state.or.us	Primary	503-986-0678
OR SHPO	Lucie Tisdale	lucie.tisdale@state.or.us	Alternate	503-986-0683
Washington State				
Ecology	Iloba Odum	iodu461@ecy.wa.gov	Alternate	360-690-7170
Ecology	Terry Swanson	tswa461@ecy.wa.gov	Primary	360-407-6789
WA DAHP	Matthew Sterner	matthew.sterner@dahp.wa.gov	Alternate	
WA DAHP	Russell Holter	russell.holter@dahp.wa.gov	Primary	360-583-3533
WDFW	Sam Kolb	kolbssk@dfw.wa.gov	Alternate	360-906-6729
WDFW	Teresa Eturaspe	eturatea@dfw.wa.gov	Primary	360-902-2575
WSDOT	Phil Kauzloric	kauzlop@wsdot.wa.gov	Primary	

## **APPENDIX B: ISSUE RESOLUTION PROCESS**

### **I. INTRODUCTION**

The purpose of this issue resolution process is to provide a means to resolve disagreements within the scope of the Interstate Collaborative Environmental Process (InterCEP) Agreement between Signatory Agencies. The intent is to expeditiously and systematically resolve issues at the lowest level of the involved agencies through a consensus building process before triggering an elevation to higher levels. Alternative issue resolution processes (e.g., facilitation or mediation) can be used.

### **II. ISSUE RESOLUTION PROCESS TRIGGERS**

- A. Written non-concurrence at any of the concurrence points (Resource Agency needs to provide detailed reason(s) for its non-concurrence). See Section III.B of this appendix for the process.
- B. A disagreement on the interpretation of the agreement. See Section III.A of this appendix for the process.
- C. Any other dispute in the process that cannot be resolved by a consensus of agency representatives. See Section III.A for process.

### **III. ISSUE RESOLUTION PROCESSES AND TIMELINES**

#### **A. Initial Issue Discussion for Issues Not Involving Non-Concurrence**

The intent of the initial issue discussion process is to focus discussions amongst agency representatives in order to resolve issues and avoid unneeded issue elevations. When any Signatory Agency believes that there is an unresolved or emerging issue under their agency's purview that needs attention, the agency representative may request discussion of that issue during the next scheduled InterCEP meeting or through a forum agreed upon with the Project Sponsors.

- 1. To initiate the request, the initiating agency will fill out the "Request for Discussion" form (Appendix C) and submit it to the Implementation Coordinator at least 14 calendar days prior to the next scheduled InterCEP meeting to allow time to adjust the meeting agenda to accommodate time for discussion (if the initiating agency requests that the issue be presented through the InterCEP group).
- 2. The purpose of the "Request for Discussion" form is to save time by having a clear statement of the issue to be addressed, to identify which agencies or project specific interests need to be involved in the resolution discussion, to establish a timeframe for resolution, and to track the progress in resolving the issue.
- 3. Other Signatory Agencies will receive a copy of the "Request for Discussion" form in their meeting agenda submitted at least seven (7)

calendar days prior to the scheduled InterCEP meeting (or an alternative forum agreed to by the initiating agency and the Project Sponsors). Signatory Agencies may add to the articulation of the problem and submit a revised “Request for Discussion” form to the Implementation Coordinator at least five (5) calendar days before the scheduled InterCEP meeting (or alternative forum).

4. Sufficient time will be made available on the scheduled InterCEP meeting agenda to adequately present the issue and allow the discussion to work towards resolution with the Signatory Agencies. The issue will be presented by the agency representative requesting discussion.
5. If the issue is resolved during the InterCEP meeting, this will be noted on the “Request for Discussion” form, including a statement of the decision and the rationale for that decision. This will also be documented in the meeting minutes. Additional time for discussion of the issue may be scheduled during subsequent InterCEP meetings (or alternative forums) if there is consensus from the participants that additional discussion is necessary to resolve the issue before seeking elevation.
6. If the issue is not presented or discussed through a InterCEP meeting, but through some alternative forum (conference call, site visit, etc.) then the outcome will be noted on the “Request for Discussion” form, including a decision for resolution or not of the issue, and key discussion points raised. Copies of the “Request for Discussion” form will be provided to the other Signatory Agencies.
7. If the issue is not resolved to the satisfaction of the initiating agency, the agency representative shall inform the Implementation Coordinator that the agency is initiating the issue elevation process (see Section III.C. of this appendix).

#### B. Initial Non-concurrence Discussion

1. Within ten (10) calendar days of receiving a written non-concurrence, the Project Sponsors and Implementation Coordinator will consult with the non-concurring agency’s representative and any other Signatory Agencies’ representatives needed to resolve the issue. If the issue(s) cannot be resolved, the agencies involved will proceed to the issue elevation process (see Section III.C).
2. If the issue(s) causing the non-concurrence can be resolved, the Project Sponsors and non-concurring agency will each provide the other Signatory Agencies written documentation that outlines the issues and their resolution. If the project changes are substantial, the NEPA Leads and Project Sponsors will submit a revised concurrence point package to the Resource Agencies immediately. If the project changes appear minimal and non-substantive, the NEPA Leads and Project Sponsors must verify

this determination with all Resource Agencies. Within 15 calendar days of receipt of the determination request, each Signatory Agency will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

NEPA Leads, Project Sponsors and nonconcurring Resource Agencies are strongly encouraged to consult with other agencies during the discussion process to pursue the resolution of non-concurrence issues without creating new issues of concern for other Resource Agencies.

### C. Issue Elevation Process

1. Step 1: The Implementation Coordinator begins the issue elevation process by informing all other Signatory Agencies that the issue elevation process is being initiated and describe in detail the reasons for initiation. The notice must also indicate which signatory agencies need to consult, either to resolve the issue or to determine how concerns can be best addressed.
2. Step 2: Within ten (10) calendar days of Step 1, the initiating agency, NEPA Leads, Project Sponsors and/or other Resource Agencies involved will develop and exchange questions or comments to be addressed in white papers and identify the change that is needed for issue resolution.
3. Step 3: Within 30 calendar days of Step 2, white papers will be developed and exchanged addressing each question or comment submitted and detailing concerns, and a meeting will be held with the next level of supervisors. The Implementation Coordinator will manage the issue resolution meeting unless any involved agency requests a mediator. The mediator may be a specialist from one of the Signatory Agencies or a contractor (contingent upon a project's budget).

Depending on the Signatory Agencies involved in the issue resolution process, the following individuals or their designees will participate at this step:

Emily Lawton – Federal Highways Administration

X – Federal Transit Administration

X – Oregon Department of Transportation

X – Washington Department of Transportation

X - National Marine Fisheries Service;

Donald Borda – U.S. Army Corps of Engineers;

X - U.S. Environmental Protection Agency;

X - U.S. Fish and Wildlife Service;

X - Oregon Department of Environmental Quality;

X - Oregon Department of Fish and Wildlife;

Bob Cortright - Oregon Department of Land Conservation and Development;

Eric Metz – Oregon Department of State Lands;

X - Oregon State Historic Preservation Office;

Russell Holter – Washington State Department of Archaeology and Historic Preservation;

X - Washington State Department of Ecology; and

Gayle Kreitman – Washington State Department of Fish and Wildlife.

If the issues cannot be resolved by project and agency staff at Step 3, the involved agencies will proceed to Step 4.

If the issue(s) can be resolved, and involved a non-concurrence, the Project Sponsors and nonconcurring agency will each provide the other Signatory Agencies written documentation that outlines the issues and their resolution. If the project changes are substantial, the NEPA Leads and Project Sponsors will submit a revised concurrence point package to the Resource Agencies immediately. If the project changes appear minimal and non-substantive, the NEPA Leads and Project Sponsors must verify this determination with all Resource Agencies. Within 15 calendar days of receipt of the determination request, each Signatory Agency will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

NEPA Leads, Project Sponsors and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of non-concurrence issues without creating new issues of concern for other Resource Agencies.

4. Step 4: If resolution cannot be achieved at Step 3, a meeting will be held with the signatories of the agreement or their designees. This meeting will occur within 45 calendar days of the exchange of white papers (Step 3). (It is presumed that the signatories will reach an agreement on how to resolve the disputed issues).

If the issue(s) can be resolved, and involved a non-concurrence, the Project Sponsors and nonconcurring agency will each provide the other Signatory Agencies written documentation that outlines the issues and their resolution. If the project changes are substantial, the NEPA Leads and Project Sponsors will submit a revised concurrence point package to the Resource Agencies immediately. If the project changes appear minimal and non-substantive, the NEPA Leads and Project Sponsors must verify this determination with all Resource Agencies. Within 15 calendar days of receipt of the determination request, each Signatory Agency will

decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

NEPA Leads, Project Sponsors and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of non-concurrence issues without creating new issues of concern for other Resource Agencies.

Depending on the signatory agencies involved in the issue resolution process, the following people or their designees will participate at this step:

David Cox – Federal Highways Administration

X – Federal Transit Administration

X – Oregon Department of Transportation

X – Washington Department of Transportation

X - National Marine Fisheries Service;

Colonel Thomas E. O’Donovan – U.S. Army Corps of Engineers;

X - U.S. Environmental Protection Agency;

X - U.S. Fish and Wildlife Service;

X - Oregon Department of Environmental Quality;

X - Oregon Department of Fish and Wildlife;

Lane Shetterly - Oregon Department of Land Conservation and Development;

John Lilly – Oregon Department of State Lands;

X - Oregon State Historic Preservation Office;

Allyson Brooks – Washington State Department of Archaeology and Historic Preservation;

X - Washington State Department of Ecology; and

Don Haring – Washington State Department of Fish and Wildlife.

If resolution is not reached at Step 4 the Project Sponsors may choose to proceed ahead with the project.



**APPENDIX C: REQUEST FOR DISCUSSION FORM**

<b>Requestor's Name/Agency:</b>
<b>Issue(s) that require discussion- Specific Statement of each issue that needs to be resolved or decided:</b> (No more than one short paragraph per issue)
<b>Statement of need or concern of requestor's agency, related to the issue(s):</b>
<b>Solution proposed by requestor's agency (if known) and statement of why this solution is important to that agency:</b>
<b>Other potentially interested or affected agencies:</b>

**Proposed Discussion Forum:**

Next Scheduled InterCEP meeting  Date \_\_\_\_\_

Alternative Proposed Forum (please describe):

**The information below will be filled out following the discussion forum. The completed form will then be sent out to all the participants, and a copy will be sent to all of the signatory agencies.**

**Outcome:**

\_\_\_\_\_ Issue was resolved:

Decision:

Rationale for the decision:

\_\_\_\_\_ Issue was not resolved:

Additional discussion require (based on consensus of InterCEP members):

Next scheduled discussion date:

\_\_\_\_\_ Issue to be elevated:

Level to which issue will be elevated:

Notification date of elevation:

Means of notification of elevation to the next appropriate level:

**COMMENTS:**

