



October 8, 2012

Washington State Legislative Oversight Committee
Congresswoman Jaime Herrera Beutler
Concerned Citizens

Dear Elected Officials and Fellow Citizens:

Re: Columbia River Crossing – Project Sponsors Council and Open Public Meetings Act

Thank you for the opportunity to communicate to you and your colleagues the results of my forensic accounting analysis of the Columbia River Crossing (CRC) project.

The CRC project is a bi-state highway and transit project along the Interstate 5 corridor between Oregon and Washington that proposes to rebuild interchanges in both states, build a new bridge across the Columbia River, and extend light rail transit from Portland, Oregon into Vancouver, Washington.

While my work is funded by a private citizen, the results of my findings are not a private matter. My client wishes for any findings to be shared with the citizens of Washington and Oregon, their elected officials, and other interested parties who need the information to make informed decisions.

Executive Summary

Acuity Group was hired in April 2011 to review documents and compile data in an attempt to provide clarity related to the expenditures of the Columbia River Crossing project. As part of that work, we have reviewed thousands of documents, attended dozens of meetings, and compiled data provided to us by the Columbia River Crossing project office and Washington State Department of Transportation (WSDOT), about this project.

During the course of our review we discovered that statements made regarding the Project Sponsors Council (PSC) by CRC project office and WSDOT officials do not correspond to documents in our possession. Specifically, statements made by these representatives of the CRC project office and WSDOT during the August 20, 2012 Washington State Legislative Oversight Committee meeting affirmed that the Project Sponsors Council did not exist until 2008. However, we have documents that clearly show that the PSC met as early as October 2005 and made potentially critical decisions related to the CRC project.

In fact, the CRC Project Management Plan, published in June 2006, defines the Project Sponsors Council as a decision making body. According to this document, the PSC was responsible for approving the “Evaluation Framework”, “Purpose and Need Statement”, and the “Range of Alternatives” to be considered in the Environmental Impact Statement(s) of the CRC project. These decisions are essential elements of the NEPA (National Environmental Protection Act) process.¹

As a decision making body, comprised primarily of elected public officials, the PSC’s meetings were likely subject to the Washington State Open Public Meetings Act (RCW 42.30). The OPMA (RCW 42.30) in conjunction with the Public Records Act (RCW 42.32.030) requires, in part, that public meetings are announced so the public can attend and that minutes be promptly recorded. Due to a lack of legal meeting notices and minutes for the PSC, we question whether these RCW’s were complied with.²

An internal memo, dated October 2005, confirms the existence of the PSC and contains wording that speaks to questionable practices by the project office as it relates to the Project Sponsors Council. This memo states:

“It is in the Project Development Team’s [i.e. project office] interest to come to agreement on its preferences concerning the PSC as soon as possible so the appropriate presentation can be developed and so we can ‘work the issues with individual PSC members in advance of the meeting’.”

The memo goes on to explain that:

“It is expected that each of the PSC decision meetings would result in a decision with no need for extended deliberations in future meetings.”

The project office explains how they will accomplish this goal:

“This approach would require extensive coordination among PDT [Project Development Team] members prior to the meetings.”

Of most concern is the following passage concerning public participation:

*“The decision meetings would be open to the public, but only minimum legal notices would be provided and no display advertising would be placed. **We would not encourage public participation.**” [emphasis added]*

¹ The FHWA NEPA process allows transportation officials to make project decisions that balance engineering and transportation needs with social, economic, and natural environment factors. (<http://environment.fhwa.dot.gov/projdev/pd3tdm.asp>)

² Several public records requests made by Acuity Group and others for “meeting minutes” have produced agendas and meeting summaries only. No formal minutes, documenting discussion and decisions made, have been produced.

While the CRC project office provides materials such as meeting agendas, meeting minutes, and other meeting materials related to various advisory groups (e.g. Task Force, CEJG, Urban Design Advisory Group and others) on their website; there is no mention of a Project Sponsors Council until 2008. We question why the documents and other information from the earlier Project Sponsors Council, that according to CRC documents made critical project-related decisions, are not mentioned on the CRC website.

We further question why statements and documents provided to Washington State Legislative Oversight Committee members omit the existence of this Project Sponsor's Council and the decisions the group made.

Lastly, we question whether violations of the OPMA occurred with respect to the Project Sponsor's Council.

As a Certified Public Accountant and Certified Fraud Examiner it is my professional opinion that these questions warrant further investigation by an agency of appropriate jurisdiction. That responsibility from here forward falls to you – the elected officials who run these states – in your representation of your constituents, the citizens of the states of Washington and Oregon.

Please note that these findings are limited in scope to the review of the Project Sponsors Council that met from October 2005 through January 2007. There may be other instances or events, not referenced herein, which may also be possible violations of the OPMA acts in both Washington Oregon. These findings should not be considered a complete collection of suspected questionable events and will be amended as additional work is completed and/or additional documents are provided.

DETAILED ANALYSIS

Background

Due to the large and complex nature of the CRC project, the CRC Project Development Team (PDT) was tasked with guiding the project through the NEPA (National Environmental Protection Act) process. The process is a lengthy one, requiring many years of environmental impact studies, input from the community, and approval of the project by many sponsoring organizations.

As part of the process, a decision making body called the "Project Sponsors Council" (PSC) was formed. According to page 3-7 of the published June 2006 Columbia River Crossing Project Management Plan (**Exhibit A**) the Project Sponsors Council was described as:

"The PSC is made up of executive level representatives from the eight public agencies that ultimately must agree on the locally preferred alternative for the CRC project. The role of the PSC is to provide direction at key milestones, representing the collective interests of each of the sponsoring agencies. Through developing consensus-based decisions at those milestones, the PSC will collaboratively build toward the selection of the locally preferred project alternative."

Based on the CRC project office's own documents, such as the decision making process fact sheet that was published by them in October 2005 (**Exhibit B**), the PSC's role was to make decisions on the CRC project's purpose and need as well as the specific alternatives to be studied during the environmental impact study process. These decisions were to be based on the following:

- Recommendations from a 39-member community based Task Force,
- Public Input, and
- Advice from the Project Development Team (i.e. CRC project office employees – WSDOT, ODOT and major contractor employees)

It is our understanding that the PSC met for 16 months from October 2005 through January 2007 at which point the group disbanded.

CRC Project Manager, Nancy Boyd, and the Washington State Secretary of Transportation, Paula Hammond, are on the record during the August 20, 2012 Washington State Legislative Oversight Committee meeting, stating that the Project Sponsors Council did not exist until 2008³. During this same meeting they also stated that the 39 member Task Force approved the "Purpose and Need Statement" and other critical decision making steps for the CRC project. Additionally, the CRC website (**Exhibit C**) and handouts to Washington State Legislative Oversight Committee members (**Exhibit D**) clearly state that the Project Sponsors Council was not formed until 2008.

We understand that a different Project Sponsors Council was formed by the Oregon and Washington Governors in 2008. According to the CRC website (**Exhibit C**), this group's role was to advise the Departments of Transportation on completion of the Environmental Impact Statement, project design and timeline, and financial plan. This particular Project Sponsors Council was formed in 2008 and was comprised of different members than the earlier group. The PSC that was formed in 2008 should not be confused with the Project Sponsors Council that met and made CRC-related decisions between October 2005 and January 2007.

We question why the CRC project office and WSDOT maintain that the PSC did not exist until 2008, when documents provided by their offices indicate that an earlier Project Sponsors Council existed and made CRC-related decisions as early as 2005.

1. Existence of Project Sponsors Council

Several documents in our possession point to the existence of the Project Sponsors Council prior to 2008.

³ WA State CRC Legislative oversight committee meeting 8/20/2012 (elapsed time: 27:15 to 27:45 and 31:04 to 33:25)
http://www.cityofvancouver.us/cvtv/cvtvarchive2/Community_Events/2012_Events/Columbia_River_Crossing_Oversight_Subcommittee_Meeting_Part-1_8-20-12.wmv

The first, a June 2006 Project Management Plan, defines the Roles and Responsibilities of the PSC and establishes it as a decision making body (**Exhibit A, page 3-8**):

“Actions by the PSC will be by consensus⁴. There are four mid-course project consensus points – or milestones- where the PSC will act. These points include: Approval of the Purpose and Need Statement; Approval of the Evaluation Framework and Criteria; Approval of the range of alternatives; Approval of the alternatives to be considered in the EIS.”

Through a series of public records requests, we were provided numerous PSC meeting summaries and agendas, showing that this group met between October 2005 and January 2007. These documents also inform the reader that the majority of the members of the PSC were elected public officials (**Exhibit E**). It is unclear why the CRC website⁵ does not list the Project Sponsors Council meeting materials, as it appears to do for all advisory and other groups that have met during the project’s existence (**Exhibit F**).

2. Decisions of Project Sponsors Council

Based on documents provided to us, it appears that the Project Sponsors Council made NEPA-related decisions.

Page 1-2 of the published Columbia River Crossing Management Plan (**Exhibit G, page 1-2**) states that the Project Sponsors Council approved the Purpose and Need Statement in December 2005.

This decision was critical to the project’s entire process. According to the Federal Highway Administration’s website (**Exhibit H**):

“The purpose and need section is in many ways the most important chapter of an environmental impact statement (EIS). It establishes why the agency is proposing to spend large amounts of taxpayers’ money while at the same time causing significant environmental impacts. A clear, well-justified purpose and need section explains to the public and decision makers that the expenditure of funds is necessary and worthwhile and that the priority the project is being given relative to other needed highway projects is warranted. In addition, although significant environmental impacts are expected to be caused by the project, the purpose and need section should justify why impacts are acceptable based on the project’s importance.”

In addition to the Purpose and Need Statement it appears that during the February 21, 2006 meeting, the Project Sponsors Council approved the Evaluation Framework for the CRC project (**Exhibit I**).

⁴ Consensus decision making is defined as a group decision making process that seeks the consent, not necessarily agreement about the “favorite” choice of all participants. It is used to describe both the decision and the process of reaching a decision. (various sources, including consensusdecisionmaking.org, dictionary.com and Merriam-Webster Dictionary)

⁵ www.columbiarivercrossing.com

Minutes for these decision making meetings have been requested, but not provided as of the date of this report.

3. Potential violations of Open Public Meetings Act (RCW 42.30)

We have provided a full copy of RCW 42.30 - Washington State's Open Public Meetings Act (OPMA) at **Exhibit J.**

According to the OPMA:

"The legislature finds and declares that all public commission, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly."

"The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

RCW 42.30.020 defines a governing body as a:

"...multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment."

RCW 42.30.030 also states that meetings must be declared and open to the public:

"All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter."

RCW 42.30.060 provides guidance about decision making:

"No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter."

"Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void."

We question the CRC project office's adherence to the OPMA because an internal memo dated October 15, 2005 (**Exhibit K**), outlining the Project Sponsors Council Roles and Responsibilities, contains language that appears to be contradictory to the OPMA:

“The decision meetings would be open to the public, but only minimum legal notices would be provided and no display advertising would be placed. We would not encourage public participation.” [**Exhibit K, Page 2, Paragraph 2**]

Furthermore, there appears to be a lack of documentation for the Project Sponsors Council meetings. To date, legal notices for the PSC meetings as well as minutes have not been produced

Because of this lack of information it is unclear whether required public notices were posted or whether public input or participation was allowed during the meetings.

4. Internal Memo Documenting Questionable Acts

The internal memo referenced above (**Exhibit K**) was written by the Project Development Team (i.e. CRC project office) in October 2005 prior to the first meeting of the Project Sponsors Council.

It is my professional opinion that the wording in this document warrants scrutiny. First, it establishes the existence of the Project Sponsors Council in October 2005. More importantly, it brings into question the CRC project office's management of public officials, management of public participation; and potentially, management of the Purpose and Need Statement and Range of Alternatives. The language contained in this document appears to indicate that the CRC project office may have identified predetermined outcomes that warranted “working” (**Exhibit K**) of PSC members prior to meetings:

First page, first paragraph: *“It is in the Project Development Team’s (PDT) interest to come to agreement on its preference concerning the PSC as soon as possible so the appropriate presentation can be developed and so we can ‘work’ the issues with individual PSC members in advance of the meeting.”*

Second page, first paragraph: *“It is expected that each of the PSC decision meetings would result in a decision with no need for extended deliberations in future meetings. This approach would require extensive coordination among PDT [Project Development Team] members prior to the meetings.”*

Second page, third paragraph, last sentence: *“If individual PDC members desire more detailed information on the progress of the project, they can consult one-on-one with their senior staff members. Again, the PDT should manage the ‘care and feeding’ of individual PSC members to ensure they have the required level and frequency of information.”*

Second page, fourth paragraph: *“Non-decision meetings should be treated as opportunities for the PSC members to advise the PDT on key issues. No ‘official’ decisions should be made at the meetings. No public notice would be provided and Task Force participation would not be sought. Meeting notes would be prepared but not posted on the website.”*

5. Contradicting Information Provided by CRC Project Office

In addition to statements made by Ms. Boyd and Ms. Hammond during the August 20, 2012 CRC Legislative Oversight Committee meeting, as well as documents provided to the committee members during that same meeting (**Exhibit D**). CRC project office representatives have made contradictory statements to the Washington State Attorney General’s office as well as private citizens.

On March 16, 2009 the CRC Project Office wrote to Washington State Assistant Attorney General, Timothy Ford (**Exhibit L**). This letter addressed concerns about potential violations of the Open Public Meetings Act that had been raised by a concerned citizen. On page 2 (item #5) of the letter, the CRC Project office tells Mr. Ford:

“The original Project Sponsors Council met eight times from mid-2005 to January 2007 to reach consensus on project development. Members included elected officials and regional leaders of the sponsoring agencies. This group made no recommendations while it existed.”

On November 7, 2011 the CRC project office responded to a public records request by Sharon Nasset who had requested “minutes, sign in sheets, public notices” for the Project Sponsors Council (**Exhibit M**). The CRC Project Office responded as follows:

“This Project Sponsors Council met eight times from mid-2005 to January 2007. The Project Sponsors Council’s intent and function was advisory only. The Project Sponsors Council was not a governing body for the Columbia River Crossing project. Thus, as an advisory group, the open meetings law requirements of Oregon and Washington did not apply to this group.”

Closing Comments

Based on documents provided, it appears that the Project Sponsors Council met between October 2005 and January 2007 and made key decisions for the CRC project. It is my professional opinion that certain critical questions and determinations need to be assessed by an agency of appropriate jurisdiction as it relates to the Project Sponsors Council, including:

- A. Why have CRC project office and WSDOT officials made statements on the record that appear to deny the existence of the Project Sponsors Council that met between October 2005 and January 2007?

- B. Why do documents (including the CRC website) provided by the CRC project office omit references to the Project Sponsors Council that met and made decisions between October 2005 and January 2007?
- C. Why did the CRC project office plan to ensure that decisions during Projects Sponsors Council meetings would be made without “need for extended deliberations”? **(Exhibit K)**
- D. Why did the CRC project plan to limit public participation?
- E. Where are the meeting minutes and required legal meeting notices for these decision making meetings?
- F. If the decisions made by the Project Sponsors Council are deemed a violation of the OPMA, then would the following CRC-related decisions be null and void?
 - a. Purpose and Need
 - b. Evaluation Framework and Criteria
 - c. Approval of Alternatives considered in the Environmental Impact Statement
- G. If violations of OPMA occurred, and the decisions made are deemed null and void, how does that affect the NEPA process and the currently approved Draft Environmental Impact Statement, Final Environmental Impact Statement, and Record of Decision documents?

I welcome the opportunity to provide additional documentation or answer any questions you may have in regards to my analysis of the Columbia River Crossing. If you have any questions or comments, please call me at 360.573.5158.

Respectfully,



Tiffany R. Couch, CPA/CFF, CFE

cc: Oregon State Legislative Oversight Committee
Washington State Transportation Committee
Clark County Board of Commissioners
C-Tran Board Members
Vancouver City Council
Representative Ed Orcutt
Representative Paul Harris
Representative Liz Pike

EXHIBITS ATTACHED

- EXHIBIT A:** **Section 3 of CRC Project Management Plan⁶**
This section establishes the roles and responsibilities of the Project Sponsors Council and establishes the group as a decision making body with specific directives. (See Section 3.3)
- EXHIBIT B:** **CRC Project Decision Process – October 2005 Open House PowerPoint Exhibit**
- EXHIBIT C:** **Current Columbia River Crossing Website**
Omits original Project Sponsors Council and purports that the PSC was formed in 2008.
- EXHIBIT D:** **Columbia River Crossing Public Engagement Process**
Handed out during August 20th WA State Oversight Committee meeting. States that Project Sponsors Council started in 2008
- EXHIBIT E:** **Project Sponsors Council Meeting Agendas and Summaries**
- EXHIBIT F:** **Columbia River Crossing Website**
Library section showing meeting materials in chronological order. Omits Project Sponsors Council
- EXHIBIT G:** **Section 1 of CRC Project Management Plan**
Establishes the Project Management Plan as an authoritative document. Further notates the decisions already made by the Project Sponsors Council (see Section 1.4 – Purpose and Need)
- EXHIBIT H:** **Federal Highway Administration “NEPA and Project Development”**
Explains the importance of the Purpose and Need Statement in the NEPA process
- EXHIBIT I:** **Project Sponsors Council Agenda 2/21/06**
Indicates the group will come to agreement on “Evaluation Framework”

⁶ The published June 2006 CRC Project Management Plan is a 238 page document that can be sent in its entirety upon request.

- EXHIBIT J:** **RCW 42.30**
Washington State Public Records Act
- EXHIBIT K:** **October 15, 2005 CRC Internal Memo**
*Identifies responsibilities of PSC and speaks of discouraging public input.
Outlines PDT's "managing" of public officials*
- EXHIBIT L:** **CRC Letter to Tim Ford, Attorney General's Office (3/18/09)**
*Note Numeral 5 (page 2) - CRC states that "This group made no
recommendations while it existed."*
- EXHIBIT M:** **CRC Email to Sharon Nasset**
*Indicates that the PSC was "advisory only" and was not subject to Open
Public Meetings Laws*