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**MEMORANDUM**

DATE: September 19, 2013

TO: Governor Jay Inslee

FROM: Bryce E. Brown, Senior Assistant Attorney General *BB*

SUBJECT: **Columbia River Crossing**

In response to your questions about proceeding with elements of the Columbia River Crossing (CRC) project, please be advised that Washington State Department of Transportation (WSDOT) has existing authority to authorize Oregon to construct, operate, and maintain a bridge over the Columbia River and on lands in the State of Washington. This authorization would be consistent with the long-standing cooperative agreements Washington and Oregon have executed for the bridges spanning the two states.

In conjunction with our response to a U.S. Coast Guard letter regarding the bridge permit application, you will find below information on four topics: (1) light rail operations, (2) permitting, (3) mitigation agreements, and (4) tolling. We are operating with the assumption that WSDOT's participation in the Oregon-led project will be at no cost to the state of Washington, unless, and until, the Washington State Legislature appropriates monies for the project. After analyzing these four topics and those raised in the Coast Guard letter, we see no fatal flaws that would preclude Oregon's lead on the project.

**Light Rail Operations**

WSDOT has authority to contract with Tri-Met and/or Oregon for the construction, operation, and maintenance of the light rail system within WSDOT right-of-way. WSDOT will need to receive monetary or other consideration for the light rail use of WSDOT right-of-way. WSDOT has the authority to acquire property for the light rail system if: (a) the property is adjacent to, under, upon, within, or above the right-of-way, and (b) Washington funds are not used for the acquisition.

The Federal Transit Administration (FTA) funding requirements provide that the FTA must conclude (a) that the City of Vancouver will allow light rail to operate in the city, and (b) that funding is available to cover operation and maintenance costs. These costs would include the bridge, light rail, light rail stations, and the park and ride lots. We anticipate that operating and

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maintenance costs for the light rail system will be the subject of an agreement among TriMet, C-TRAN, and the City of Vancouver. Such an agreement would outline roles, responsibilities, and cost sharing.

### **Permitting**

Washington's permitting statutes do not preclude another state from applying for a permit. In addition, WSDOT and Oregon Department of Transportation (ODOT) may enter into an agreement in which WSDOT could apply for Washington state or local permits and ODOT would be responsible for all of the costs of processing the permit application, including WSDOT staff costs. ODOT would also be responsible for funding and carrying out, either directly or through an agreement with WSDOT, any mitigation requirements or other conditions of the permits.

Under this scenario, the potential litigation risks do not differ from those posed to WSDOT, if it were still a funding partner. Most appeals would require a challenger to prove that it was entitled to an injunction, with the exception of an appeal of a shoreline permit, which automatically stays the work covered by the permit until the Shorelines Hearings Board upholds the permit.

### **Mitigation Agreements**

Oregon and Washington have jointly entered into Mitigation Agreements with two fabricators: Oregon Iron Works and Greenberry Industrial. The absence of a Washington appropriation does not invalidate these agreements. Continuation of these mitigation agreements will require administrative action to eliminate WSDOT's obligation to make currently unfunded mitigation payments.

### **Tolling**

Oregon proposes to be the sole tolling authority and the sole issuer of bonds. Oregon would assume all debt and collect all toll revenue. Tolling stations located in Oregon would collect tolls from highway users going both north and south on Interstate 5. This proposal shifts full responsibility to Oregon to finance construction of the tolled facility. As Washington State's transportation policy advisor and statutory tolling authority, the Washington State Transportation Commission already has sufficient authority in its statutory role and mission to participate in Oregon's toll setting process, and to ask questions, raise concerns, or make recommendations.

Pre-completion tolling of the current Interstate 5 bridge was contemplated in the previous finance plan. Should Oregon decide to pursue pre-completion tolling the two states must negotiate an amendment to the 1966 interstate maintenance agreement for the bridge, as it forbids tolling.