

MEMORANDUM: CONTEXT AND EXPLANATION FOR FEDERAL RESPONSE TO PROGRAM

Date: May 19, 2021

Background: In an email dated March 26, 2021 to the Federal Highway Administration and the Federal Transit Administration, the program requested written guidance on the process impacts of updating the previous project's Purpose and Need Statement to include climate change and equity considerations. The most recent working draft of the Purpose and Need that had been in development to incorporate the collective regional interests around climate and equity was provided along with the email request.

Summary and Explanation:

Throughout the program's efforts to update the Purpose and Need in coordination with agency partners, federal guidance cautioned incorporating climate and equity considerations into the document due to the significant impact modifying this foundational document could have on the overall environmental process. The attached response received on May 18, 2021 reiterates this guidance and encourages the program to continue considering how to incorporate climate and equity into the National Environmental Policy Act process, while explaining that substantively modifying the Purpose and Need would likely require a significantly longer environmental process through either a new project or a Revised EIS. In reviewing and interpreting this federal guidance on program efforts to update environmental documentation, additional context and considerations is helpful:

Previous planning efforts spent decades identifying a number of environmental constraints within the corridor and negotiated how best to meet our transportation needs by defining alternatives and identifying ways to minimize and mitigate these impacts. Any effort to identify new alternatives would likely lead to similar conclusions since the previously identified transportation problems continue to exist today. Reopening this work would extend the program schedule, delaying the implementation of a solution to address the transportation problems in the Interstate Bridge corridor and adding significant expense to repeat work previously completed, with a strong likelihood that similar solutions would be identified.

According to the federal guidance, a Revised Environmental Impact Statement could be prepared to address changes to the foundational documents. As this is a very uncommon process, there is very little precedent or federal guidance on this form of environmental documentation and the program would expect there to be extensive agency coordination and legal review throughout the process. Furthermore, if the range of alternatives studied in the previous project's Draft EIS were to change due to an updated Purpose and Need, then a new environmental process and EIS would still need to be initiated. Both a Revised EIS and a new EIS would need to conduct in-depth analysis, and a new EIS would re-open the range of alternatives. Both actions would require substantially more resources and time to repeat much of the prior planning work.

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As has been demonstrated, little federal and legal environmental guidance exists on incorporating climate and equity into the environmental process in foundational documents. While the new administration is working to update its guidance, there is a high probability that before the guidance is available, the program would be subject to added delay, legal review, and ambiguity regarding how the US Department of Transportation interprets climate and equity as transportation needs. This means that even if the program were to restart as a new project or pursue a Revised EIS, there is no guarantee that climate and equity would be able to be treated as transportation problems within a new Purpose and Need statement.

The program is encouraged by FHWA and FTA support of other efforts to ensure program outcomes prioritize climate and equity considerations outside of Purpose and Need. Program discussions with federal and agency partners have reinforced that the program will deliver a replacement bridge through a climate and equity lens by:

- Identifying and analyzing climate and equity considerations in the NEPA re-evaluation, and the additional environmental documentation likely required beyond a re-evaluation
- Working with stakeholders to develop climate and equity screening criteria for design options
- Implementing program-level climate and equity performance measures
- Identifying program commitments that demonstrate actionable outcomes
- Avoiding climate and equity impacts and developing minimization and mitigation measures when impacts are unavoidable
- Working with stakeholders to develop climate and equity design and construction specifications
- Defining climate and equity commitments through letters of agreement with program agency partners

Through a Supplemental EIS process that evaluates proposed modifications within the range of alternatives previously studied, the program has the ability to update and improve upon previous planning work to reflect changes that have occurred since that time without restarting the environmental process. The IBR program is currently working with our partners to determine the changes that should be considered and the design option choices that could address these changes. The program believes that this approach to identify new design options for the IBR solution that address changes that have occurred, while incorporating actionable commitments to climate and equity as outlined above, is the most effective way to keep the program moving forward and address the shared interests of the program, agency partners, and the community.



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May 18, 2021

Gregory C. Johnson
Program Administrator
Interstate Bridge Replacement Program

Response to Updated Draft Purpose and Need

Dear Mr. Johnson:

FHWA and FTA have reviewed the proposed modifications to the Purpose and Need section of the Columbia River Crossing (CRC) Final Environmental Impact Statement (FEIS) for the Interstate Bridge Replacement (IBR) Program, provided in Chris Regan's email dated March 26, 2021, and provide the following response.

We understand the IBR Team has been conducting an outreach effort with the IBR transportation stakeholders and advisory groups to determine if the existing analysis in the FEIS and Record of Decision (ROD) for the CRC, including the original Purpose and Need, is still viable for IBR. This outreach effort has focused on incorporating additional climate change and equity considerations into the analysis and the project. FHWA and FTA strongly support consideration of climate change and equity in transportation projects. Nonetheless, changes to an existing FEIS and ROD must be approached with care to ensure compliance with applicable procedures is maintained and the legal sufficiency of the pre-existing analysis and process is not jeopardized. At a minimum, any changes to the existing FEIS would render it a "revised FEIS"¹ and necessitate a new ROD to effectuate it. In addition to presenting the changes, the revised FEIS would need to show what effect, if any, the changes had on other parts of the analysis as well. For instance, changes to the existing Purpose and Need could necessitate changes to the

¹ The term "revised FEIS" is used into this context to refer to the type of supplemental EIS required to implement and analyze changes to the existing FEIS applicable to all the alternatives and impacts presented in the document; and to distinguish it from the type of supplemental EIS that would be required to implement and analyze only changes to the selected alternative or its affected environment that cause new significant impacts. Both types of supplemental EISs would be prepared in accordance with the procedures specified in 23 CFR § 771.130.

alternatives and impact analyses as well, which would need to be evaluated and disclosed in the revised document. Furthermore, changes to the Purpose and Need section are particularly sensitive since it is so critical to determining the range of alternatives that must be considered. If such changes are so substantial that they render the existing range of alternatives inadequate, then a revised FEIS is no longer appropriate and a new EIS and NEPA process must be initiated to develop a new range of alternatives for the proposed action.

Based on our review, we believe the proposed modifications to the FEIS are potentially substantial enough to require a new EIS and NEPA process, although additional information on precisely how the proposed modifications would affect the existing range of alternatives is needed before we could confirm this. If you would like us to make that determination, please provide us with a full analysis of those effects for our review. Some comments on the proposed changes are included in the attached document as well.

As for the consideration of climate change and equity in the existing project and NEPA analysis, FHWA and FTA believe there are many opportunities to address climate change and equity with meaningful mitigation measures and actions. We strongly encourage the IBR Team to consider ways to include climate change and equity in the NEPA process as you advance the project forward.

We hope this response clarifies how changes made to the existing FEIS will shape the IBR Team's options for moving forward with the project. We also remind the Team that other options not involving changes to the existing FEIS are available that may offer certain advantages, as well as drawbacks, to consider.

Please let us know if you have any questions or need any additional clarifications.

Sincerely,

**THOMAS D
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Thomas D. Goldstein, P.E.
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Kenneth A. Feldman, P.E.
Deputy Regional Administrator,
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Federal Highway Administration

Enclosure: 2021-04-23 Working Draft – Purpose and Need Statement with FHWA Comments

cc:

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