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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

<p>HAYDEN ISLAND LIVABILITY PROJECT, HERMAN KACHOLD, DONNA MURPHY, HAYDEN ISLAND MANUFACTURED HOME COMMUNITY HOMEOWNERS ASSOCIATION, PAMELA FERGUSON, and ORGANIZING PEOPLE-ACTIVATING LEADERS,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p>	<p style="text-align: right;">Case No. 3: _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p> <p>(Violations of the National Environmental Policy Act, Administrative Procedure Act and Clean Air Act consistency requirements)</p>
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<p>PHILLIP DITZLER, in his official capacity as Federal Highway Administration Oregon Division Administrator, DANIEL M. MATHIS, in his capacity as Federal Highway Administration Washington Division Administrator; the FEDERAL HIGHWAY ADMINISTRATION, an administrative agency of the United States Department of Transportation; RICHARD F. KROCHALIS, in his official capacity as Federal Transit Administration Regional Administrator of Region 10, and the FEDERAL TRANSIT ADMINISTRATION, an administrative agency of the United States Department of Transportation,</p> <p style="text-align: center;">Defendants.</p>	
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INTRODUCTION

1. This action filed pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), challenges the federal government's approval of the Columbia River Crossing project, which is estimated to cost as much as \$3.6 billion and require major construction activities over at least six years in eight separate phases to improve the Interstate-Five corridor between Portland, Oregon and Vancouver, Washington, including the construction of new bridges spanning the Columbia River. The plaintiffs represent and live in a low-income community consisting primarily of manufactured homes, some of which are no more than 50 feet from the proposed location of the construction activities. Plaintiffs allege that in approving the Columbia River Crossing project defendants failed to disclose to the public and to take a hard look at the impacts to their low-income community and the human environment in violation of the procedural requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, its implementing regulations, 40 C.F.R. §§ 1500-1508, and the Clean Air Act consistency

requirements for federally funded highway projects, 42 U.S.C. § 7506(c), 23 U.S.C. § 109(j); 40 C.F.R. § 93.123.

2. Plaintiffs allege that in approving the Columbia River Crossing project defendants failed to disclose to the public and consider adequately degradation of air quality in their local community and resulting impacts to human health from construction activities that are projected to last at least six years and likely longer and that are associated with the \$3.6 billion project. Defendants failed to ensure that the construction emissions will not cause or contribute to violations of health-based air quality standards in violation of the Clean Air Act consistency requirements for federally funded highway projects. Defendants arbitrarily decided not to perform a site-specific air quality analysis, a so-called a “hot-spot” analysis, to assess localized impacts to air quality from construction activities in violation of federal regulations. Defendants further failed to disclose to the public or provide an opportunity for the public to comment on possible alternative sites on which major construction activities, such as cement mixing and bridge fabrication, could be staged in violation of the National Environmental Protection Act.

3. Defendants also failed to analyze adequately the impacts to the local community’s health and welfare on Hayden Island where much of the Columbia River Crossing construction will take place and where a major staging area for the bridge construction will be located. In deciding to approve the Columbia River Crossing project, defendants arbitrarily used a different methodology for determining whether a low-income population existed on Hayden Island than it did for other communities in Oregon and Washington. As a result, the low-income neighborhood in the manufactured home community on Hayden Island was not considered to be an environmental justice community and will not receive the benefit of mitigation measures that other low-income neighborhoods will receive. Additionally, defendants failed under the

National Environmental Policy Act to take a hard look at the direct impacts of the proposed project to Hayden Island residents from: the loss of the Safeway grocery store, the only source of fresh produce and meats on the Island; the denial of access to timely emergency medical services during particular stages of the project construction; and the impacts to the manufactured home community from the noise and vibrations from the project construction. Defendants further failed to consider a reasonable range of alternatives including one that would have preserved the Safeway on Hayden Island and failed to apply appropriate measures to mitigate the impacts of the Columbia River Crossing construction on residents of Hayden Island in violation of the National Environmental Policy Act. In so doing, defendants failed to respond adequately to Hayden Island residents' concerns about and comments on the construction impacts on their community again in violation of the National Environmental Policy Act.

4. The Hayden Island Livability Project and its members, the Hayden Island Manufactured Home Community Homeowners Association and its members, Organization People-Activating Leaders and its members, and local residents Mrs. Murphy, Mr. Kachold and Mrs. Ferguson respectfully request that the Court: 1) declare that defendants have failed to comply with applicable legal requirements and acted arbitrarily and capriciously; 2) set aside and remand the Record of Decision for the project; 3) enjoin construction of the project pending completion of an adequate environmental review and public disclosure and commenting process; and 4) issue such further relief as is just and equitable.

5. If plaintiffs prevail, they will seek an award of costs and fees, including attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

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JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction and the authority to grant the relief requested pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (injunctive relief), 2202 (declaratory relief); 5 U.S.C. § 706 (Administrative Procedure Act); 28 U.S.C. § 1346 (United States as a defendant); and 28 U.S.C. § 2201, *et seq.* (Declaratory Judgment Act).

7. This cause of action arises under the laws of the United States, including the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* and its implementing regulations, 40 C.F.R. §§ 1500-1508; Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*; and the Clean Air Act consistency requirements for federal highway projects, 42 U.S.C. § 7506(c), 23 U.S.C. § 109(j), 40 C.F.R. § 93.123.

8. An actual, justiciable controversy exists between the parties. Plaintiffs exhausted their administrative remedies, and the Federal Highway Administration and Federal Transit Administration's Record of Decision for the Columbia River Crossing project constitutes the final agency action for the purposes of 5 U.S.C. § 704. The relief requested by plaintiffs is proper under 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e). At least part of the construction activities and the bridge expansion will occur in this judicial district and plaintiffs reside in this district.

10. Pursuant to Local Rule 3-2(b), Divisional Venue is proper in the Portland Division because all the harm that will result to plaintiffs from the construction impacts of the Columbia River Crossing will occur in this Division as will many of the construction activities.

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THE PARTIES

Plaintiffs

11. Plaintiff the Hayden Island Livability Project (HILP or Livability Project) is an unincorporated voluntary grass roots organization consisting of citizens and residents of Multnomah County and Portland, Oregon.

12. HILP's mission is to protect, renew, and invest in the livability of Hayden Island.

13. A vast majority of HILP's members live, work, and enjoy recreational activities on Hayden Island and are concerned about the impacts that the Columbia River Crossing project will have on the health of the Island's residents, the livability of their communities, and the local environment.

14. HILP and its members participate in a host of public-decision making processes related to Hayden Island and the Columbia River Crossing project. The organization endeavors to keep its members informed about and engaged in on-going activities on Hayden Island.

15. HILP strives to protect the rights of the low-income and elderly residents living in the Hayden Island Manufactured Home Community. Residents of the manufactured home community on Hayden Island are members of HILP.

16. The manufactured home community spans four adjacent parks: Rivershore, Northshore, Westshore and Southshore, just to the west of the existing I-5 freeway.

17. The residents of the manufactured home community are up to 50 percent low-income.

18. One edge of the manufactured home community is within 50 feet of a site on which defendants propose to stage major construction activities for the proposed project.

19. HILP brings this action on its own institutional behalf and on the behalf of its members.

20. Plaintiff, Herman Kachold, is a co-chair of HILP and resident of the Hayden Island manufactured home community in Multnomah County, Oregon.

21. Mr. Kachold has an interest in protecting his health and the health of his community and of maintaining the livability of the manufactured home community and Hayden Island now and in the future.

22. His interests will be negatively impacted by the construction of the Columbia River Crossing project, which will diminish air quality in his community, result in the closure of the only grocery store on the Island, result in significant noise and vibrations in Mr. Kachold's community, and limit his and his neighbor's ability to obtain timely medical emergency services and have access on and off Hayden Island during the construction of the project.

23. Plaintiff, Donna Murphy, is a co-chair of HILP and resident of the Hayden Island manufactured home community.

24. Mrs. Murphy has an interest in protecting her health and the health of her community and of maintaining the livability of the manufactured home community and Hayden Island now and in the future.

25. Mrs. Murphy's interests will be negatively impacted by the construction of the Columbia River Crossing project, which will diminish air quality in her community, result in the closure of the only grocery store on the Island, result in significant noise and vibrations in Mrs. Murphy's community, and limit her and her neighbor's ability to obtain timely medical emergency services and have access on and off Hayden Island during the construction of the project.

26. Plaintiff, the Hayden Island Manufactured Home Community Homeowners Association (Homeowners Association), is a membership organization for residents of the manufactured home parks on Hayden Island. The manufactured home community consists of approximately 440 home sites as well as Recreational Vehicle (RV) park sites. The residents of this community are members of the Homeowners Association.

27. The mission of the Homeowners Association is to protect and advance the health and livability interests of all residents of the manufactured home community.

28. Plaintiff, Pamela Ferguson, is the President of the Hayden Island Manufactured Home Community Homeowners Association and a resident of that community. Mrs. Ferguson is also a member of HILP.

29. Mrs. Ferguson has an interest in protecting her health and the health of her community and of maintaining the livability of the manufactured home community and Hayden Island now and in the future.

30. Mrs. Ferguson's interests will be negatively impacted by the construction of the Columbia River Crossing project, which will diminish air quality in her community, result in the closure of the only grocery store on the Island, result in significant noise and vibrations in Mrs. Ferguson's community, and limit her and her neighbor's ability to obtain timely medical emergency services and have access on and off Hayden Island during the construction of the project.

31. Plaintiff, Organizing People-Activating Leaders (OPAL), is a grassroots community-based organization doing business in the State of Oregon and registered as a 501(c)(3) nonprofit with the IRS. OPAL is working to engage, educate, and empower low-income communities and communities of color through direct action and grassroots organizing.

OPAL assists low-income communities and people of color in achieving a safe and healthy environment where they live, work, play, and pray

32. OPAL works in neighborhoods that experience high poverty and a disproportionate burden of the environmental problems in the Portland metropolitan area, such as bad air, asthma, contaminated brownfields, poor infrastructure and public transportation, food deserts, and environmental toxins such as lead poisoning. Hayden Island manufactured home community residents are OPAL members, and OPAL staff, board, and volunteers have worked with the community and HILP to support their efforts. OPAL has an interest in ensuring the fair treatment and equal protection of the manufactured home community's health and the livability of their community.

33. The project will impact the air quality where members of HILP, the Homeowners Association, and OPAL and plaintiffs Mrs. Murphy, Mr. Kachold and Mrs. Ferguson reside.

34. The project will result in the only grocery store on the Island being removed and along with it access to fresh foods.

35. The project will impact the ability of Hayden Island residents to have access to emergency medical services and their ability to get on and off the Island during certain points in the construction of the project.

36. The project will result in air toxic emissions, noise, dust, and vibrations in plaintiffs' community from construction activities.

37. As a result, the construction of the project will harm plaintiffs' health, safety, economic, aesthetic, recreational, and spiritual interests. These injuries to plaintiffs are caused by the defendants' legal violations and can be redressed by a favorable order from this Court.

Defendants

38. Defendant Phillip Ditzler, is the Federal Highway Administration Oregon Division Administrator. He signed the Record of Decision for the Columbia River Crossing on December 7, 2011 on behalf of the Federal Highway Administration's Oregon Division.

39. Defendant Daniel M. Mathis, is the Federal Highway Administration Washington Division Administrator. He signed the Record of Decision for the Columbia River Crossing on December 7, 2011 on behalf of the Federal Highway Administration's Washington Division.

40. Defendant Federal Highway Administration (FHWA) is an agency within the United States Department of Transportation that is responsible for administering the Federal-Aid to Highways Act under which it dispenses federal funds to states, subject to the requirements of law, for the construction of highways. FHWA is a co-lead federal agency of the National Environmental Policy Act process for the Columbia River Crossing project. The Federal Highway Administration participated in the drafting of the Environmental Impact Statements and Record of Decision that are the subject of this dispute, and made the decision to approve the project as documented in the Record of Decision.

41. Defendant R.F. Krochalis, is the Federal Transit Administration Regional Administrator of Region 10. He signed the Record of Decision for the Columbia River Crossing on December 7, 2011 on behalf of the Federal Transit Administration.

42. Defendant the Federal Transit Administration (FTA) is an Agency within the United States Department of Transportation that is responsible for administering financial assistance to eligible recipients under the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users." The Columbia River Crossing project anticipates funding from FTA. The FTA is a co-lead federal agency of the National Environmental Policy Act

process for the Columbia River Crossing project. The FTA participated in the drafting of the National Environmental Policy Act documents that are the subject of this dispute, and made the decision to approve the project as documented in the Record of Decision.

LEGAL BACKGROUND

A. The National Environmental Policy Act.

43. The National Environmental Policy Act (NEPA) is the nation's basic charter for the protection of the environment. NEPA makes it national policy to "use all practicable means and measure . . . to foster and promote the general welfare, [and] to create and maintain conditions under which [humans] and nature can exist in productive harmony." 42 U.S.C. § 4331(a).

44. NEPA's purposes are to "help public officials make decisions that are based on [an] understanding of environmental consequences, and [to] take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c).

45. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare an environmental impact statement (EIS) for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). NEPA further provides that agencies "shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id.* § 4332(E).

46. An EIS must describe: (1) the "environmental impact of the proposed action;" (2) "any adverse environmental effects which cannot be avoided should the proposal be implemented;" (3) "alternatives to the proposed action;" (4) "the relationship between local short-term uses of [the] environment and the maintenance and enhancement of long-term

productivity;” and (5) “any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(c).

47. The Council on Environmental Quality (CEQ), an agency within the Executive Office of the President, has promulgated regulations implementing NEPA that are binding on all agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 *et seq.*

48. Agencies that prepare an EIS must take a hard look at the impacts of the action and “ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken” and the “information must be of high quality.” 40 C.F.R. § 1500.1(b).

49. In preparing NEPA documents, federal agencies “shall insure the professional integrity, including scientific integrity, of the discussions and analyses” and “identify any methodologies used and [] make explicit reference by footnote to the scientific and other sources relied upon for conclusions.” 40 C.F.R. § 1502.24. “An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond . . . in the final statement.” *Id.* § 1503.4(a).

50. As part of their NEPA review, defendants considered whether the proposed project will have disproportionate adverse impacts on low-income populations as specified by the Executive Order 12898 on environmental justice.

51. Executive Order 12898 requires federal agencies to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Exec. Order 12898.

52. The Presidential Memorandum issued along with Executive Order 12898 provides that “[e]ach Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4321 *et seq.* Mitigation measures outlined or analyzed in an environmental assessment, environmental impact statement, or record of decision, whenever feasible, should address significant and adverse environmental effects of proposed Federal actions on minority communities and low-income communities.”

53. The U.S. Department of Transportation (DOT) has issued its own order regarding environmental justice implementing the executive order. DOT Order 6510.2. DOT’s goal is “to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities” and “whenever practical and appropriate to assure that disproportionately high and adverse effects on minority and low-income populations are identified and addressed” DOT Order 6510.2 (4.b).

54. Federal Highway Administration Order 6640.23 also implements the Executive Order. The Order specifies that low-income “means a household income at or below the Department of Health and Human Services poverty guidelines.”

55. A low-income population is defined as “any readily identifiable group of low-income persons who live in geographic proximity.”

56. The goal of the Order is “to identify and avoid discrimination and disproportionately high and adverse effects on minority populations and low-income populations.”

57. These orders recognize the need for environmental justice issues to be considered in project planning and through the NEPA process.

58. Federal Transit Administration guidance recommends using small area Census data such as blocks and block-groups for projects and local planning activities, or using American Community Survey results or surveying community residents directly in order to create a residential demographic profile.

B. The Clean Air Act Consistency Requirements and Air Quality Standards.

59. The Clean Air Act provides that “[n]o department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for . . . any activity which does not conform to an” approved state implementation plan. 42 U.S.C. § 7506(c)(1). The Clean Air Act places a similar obligation upon metropolitan planning organizations. 42 U.S.C. § 7506(c)(1).

60. The Act creates an “affirmative responsibility” on the agency’s part to “assur[e] conformity” to the implementation plan, which includes ensuring that the proposed activity “ will not – cause or contribute to any new violation of any standard in any area” 42 U.S.C. § 7506(c)(1)(B).

61. The Federal-Aid to Highways Act, 23 U.S.C. §§ 101 *et seq.*, establishes a Federal-Aid Highway Program through which states may receive federal funding assistance for transportation construction and improvements. The Federal Highway Administration administers the Program, which requires consideration of several requirements to determine whether the State projects are eligible for federal funding.

62. Among these requirements is that the Federal Highway Administration “assure that highways constructed pursuant to this title are consistent with any approved plan for . . . the

implementation of a national ambient air quality standard for each pollutant for which an area is designated . . . [pursuant to] the Clean Air Act.” 23 U.S.C. § 109(j). Called the National Ambient Air Quality Standards or NAAQS, these standards are set by the Environmental Protection Agency to protect human health and welfare as required by the Clean Air Act.

63. Air quality standards are established for those pollutants for which the Environmental Protection Agency has made an endangerment finding, except for greenhouse gases, including: carbon monoxide, particulate matter, ozone, nitrogen oxides, sulfur dioxide, and lead.

64. Carbon monoxide is a colorless, odorless gas emitted from combustion processes most notably from cars and other mobile sources. Carbon monoxide can cause harmful health effects by reducing oxygen delivery to the body's organs (like the heart and brain) and tissues and at very high levels can lead to death.

65. Currently there are eight and one hour standards in place for carbon monoxide which are 9 parts per million and 35 parts per million respectively that are not to be exceeded once per year.

66. Particulate matter is a mixture of extremely small particles and liquid droplets made up of numerous components such as acids, organic chemicals, metals, and soil or dust particles. Small sizes of these particles are dangerous when inhaled and can enter the lungs and heart and lead to heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms.

67. Currently there are an annual and 24-hour standard for particulate matter of the diameter 2.5 micrometers ($PM_{2.5}$) which are $15 \mu\text{g}/\text{m}^3$ and $35 \mu\text{g}/\text{m}^3$ respectively. There is also a 24-hour standard for particulate matter of the diameter 10 micrometers (PM_{10}) which is $150 \mu\text{g}/\text{m}^3$.

68. Hazardous or toxic air pollutants are also controlled under the Clean Air Act.

69. Among these pollutants are those generated by mobile sources called Mobile Source Air Toxics (MSAT), which includes benzene, 1,3-butadiene, naphthalene, polycyclic organic matter, formaldehyde, acrolein, and diesel particulates.

70. Monitoring of air toxics in Oregon shows that diesel exhaust, motor vehicles, and burning are all a concern and that elevated benzene and formaldehyde are already an existing concern with highways in the Portland region.

71. In order to demonstrate that a highway project will not cause or contribute to violations of air quality standards, overall project analyses as well as site-specific analyses called a “hot-spot analysis” are required. 40 C.F.R. § 93.123. Hot-spot analyses focuses on key areas where the greatest air quality impacts are likely to occur. 40 C.F.R. § 93.123.

72. The consistency regulations provide that carbon monoxide and particulate matter “hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions.” 40 C.F.R. § 93.123(c)(5).

73. “Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.” 40 C.F.R. § 93.123(c)(5).

74. “Each site which is affected by construction-related activities shall be considered separately, using established ‘Guideline’ methods.” 40 C.F.R. § 93.123(c)(5).

75. In undertaking a consistency analysis for a region, any commitments to reduce air pollution that are assumed within the analysis must be in writing from the appropriate entity who will implement the commitment. 40 C.F.R. § 93.122.

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FACTUAL BACKGROUND

A. Hayden Island

76. Hayden Island is a long, narrow island in Multnomah County, Oregon, situated on the Columbia River, between North Portland and Washington. The main channel of the Columbia River passes on the north of the Island, defining the border between Oregon and Washington. A smaller channel, North Portland Harbor, passes to the south of the Island.

77. Currently, Interstate Highway 5 (I-5) provides the only road access on and off Hayden Island. The present I-5 Bridge spans over the North Portland Harbor to Hayden Island, then spans over the Columbia River to Vancouver, Washington.

78. Hayden Island consists of approximately 2,100 residents, 60% of whom (approximately 1,200) live in the Manufactured Home Community. A majority of those residents are low-income. By contrast, residents of the communities to the east of the I-5 freeway tend to be wealthier.

79. The majority of the manufactured home community residents are elderly with limited mobility and/or disabilities and/or living on social security disability or fixed incomes. Approximately two-thirds of the residents of the manufactured home community are over the age of 65. Additionally, approximately one-third of the residents cannot drive.

80. Residents of the manufactured home community are up to fifty percent low-income.

81. The Safeway Grocery is the only grocery store on Hayden Island selling fresh food and providing prescription medication.

82. Hayden Island residents, including the heavy proportion of elderly residents in the manufactured home community, must leave the Island for medical services. No services for medical emergencies exist on the Island.

83. “During the 1970s, pollutant concentrations in the Portland-Vancouver area exceeded the standards for carbon monoxide on one out of every three days, and ozone levels were often as high as 50 percent over the federal standard.” Today, the region is a maintenance area for carbon monoxide, which requires special considerations for new emissions.

84. The Portland maintenance plan requires a showing that new sources of emissions will not cause or contribute to a violation of air quality standards.

B. The Columbia River Crossing Project

85. The Interstate Highway 5 (I-5) Columbia River Crossing project (CRC or the proposed project) will affect a five-mile section of the I-5 corridor between Portland, Oregon and Vancouver, Washington.

86. The Columbia River Crossing project will extend from north of Columbia Boulevard in North Portland to Washington State Route 500 in northern Vancouver.

87. The project alternative selected for implementation calls for: 1) the construction of three new structures over the Columbia River and a new multi-modal bridge carrying light rail transit, local traffic, pedestrians and bicyclists; 2) reconstruction of seven highway interchanges including on Hayden Island and local street enhancements; 3) composite deck truss bridge design; 4) a toll on vehicles using the I-5 crossing; and 5) extension of light rail in both Oregon and Washington.

88. The Columbia River Crossing project is a major federal action, which will significantly affect the quality of the environment. As a result, defendants prepared an environmental impact statement for the project

C. The Draft Environmental Impact Statement for the Project.

89. On May 2, 2008, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and state and local entities released for public comment a Draft Environmental Impact Statement (EIS) for the proposed project pursuant to the National Environmental Policy Act, 42 U.S.C. § 4322(2)(c).

90. The Purpose and Need for the project is to address present and future travel demand and mobility needs in the Columbia River Crossing Bridge Influence Area. The needs to be addressed by the project include: 1) increased travel demand and congestion; 2) impaired freight movement; 3) limited public transportation operation connectivity, and reliability; 4) safety and vulnerability to incidents; 5) substandard bicycle and pedestrian facilities; and 6) seismic vulnerability.

91. The project is intended to: “a) improve travel safety and traffic operations on the Interstate 5 crossing’s bridges and associated interchanges; b) improve connectivity, reliability, travel times and operations of public transportation modal alternatives in the BIA; c) improve highway freight mobility and address interstate travel and commerce needs in the BIA; and d) improve the Interstate 5 river crossing’s structural integrity.”

92. In the Draft EIS, the project was described as lasting up to six years.

93. The Draft EIS analyzed five alternatives.

94. Alternative 1, the no build alternative, would involve no system changes beyond those identified as likely to receive funding in the Metro and southwest Washington regional transportation plans.

95. Alternative 2 and Alternative 3 are similar proposals that include the construction of a “replacement” crossing.

96. Alternative 2, replacement crossing with bus rapid transit, would replace the I-5 Bridge with new bridge structures consisting of a lane for bus rapid transit and a lane for foot and bicycle traffic (possibly located on a separate structure).

97. Alternative 3, replacement crossing with light rail, would replace the I-5 Bridge with new bridge structures consisting of a lane for light rail and a lane for foot and bicycle traffic (possibly located on a separate structure).

98. Alternatives 4 and 5 are similar to one another in that they call for a “supplemental” crossing.

99. Alternative 4, supplemental crossing with bus rapid transit, would consist of a new bridge for southbound vehicles with a lane for rapid bust transit and the existing Bridge would be re-striped for northbound traffic and include a lane for pedestrians and bicycles.

100. Alternative 5, supplemental crossing with light rail, would construct new bridge for southbound traffic with a lane for light rail and the existing Bridge would be re-striped for northbound traffic with a lane for pedestrians and bicyclists.

1. Air Quality

101. The Draft EIS acknowledges that the construction of the Columbia River Crossing will impact local air quality in the following ways: 1) the generation of dust from demolition, site clearing, excavating, and grading activities; 2) direct exhaust emissions from

construction equipment; 3) increased congestion on the mainline highway and local streets in the project area; 4) increased idling times; 5) reduced travel speeds; 6) potential demolition of structures containing lead or asbestos; and 7) pollution from the construction of concrete structures or asphalt paving.

102. The Draft EIS does not quantify these emissions and their impact on air quality or assess the resulting impacts to the health of local citizens or provide any analysis of these air emissions at any particular sites within the project area.

103. The Draft EIS recognizes that the highest potential for air quality impacts is near the bridge landing in Vancouver and on Hayden Island. No site-specific analysis of the air quality impacts or impacts to human health in these areas is provided.

104. The Draft EIS notes that certain sites within the project area will be used for construction staging. These sites are not disclosed.

105. Potential air emissions at the construction staging sites and their impact on air quality is not disclosed or analyzed in the Draft EIS. Instead, the Draft EIS notes that “[a]ll discussion of construction staging” was considered to be “conceptual.”

106. On February 29, 2008, the Federal Highway Administration and Federal Transit Administration approved the air quality conformity determination provided by the Metro Council for the Portland metropolitan area. This determination concluded that the proposed Columbia River Crossing project would not cause or contribute to air quality standard violations in the Portland metropolitan area.

107. Part of the air quality conformity analysis included the preparation of “hot-spot” analyses.

108. Hot-spot analyses were prepared for six intersections to determine the project's impact on air quality *once built*. None of the intersections analyzed were on Hayden Island.

109. These hot-spot analyses fail to consider the impacts to air quality from *construction activities* associated with the Columbia River Crossing, including the potential impacts to Hayden Island and its low-income residents.

110. The Draft EIS explains that certain sources of air pollution “such as concrete mix and asphalt plants, are generally required to obtain an air permit from either Oregon DEQ or the Southwest Clean Air Agency (SWCAA), and to comply with regulations for controlling dust and other pollutant emissions.” The Draft EIS does not discuss whether these permits have been applied for or how many such permits will be necessary. These permits are not listed in the appendix of permits and authorizations for the project.

2. Hayden Island Community Health and Welfare

111. Environmental justice communities include minority or low-income communities.

112. The Draft EIS considers Hayden Island to be comprised of only one community and designates that community as seven percent low-income. This conclusion is based on the 2008 Environmental Justice Technical Report, which set forth the methodology for determining whether and where environmental justice communities reside within the project area.

113. The Environmental Justice Technical Report relied upon census data from 2000 to locate low-income and minority communities in the project area. The Report concluded that “[e]ight neighborhoods within the Portland subareas contain block groups with greater than 20 percent of residents living below the federal poverty line.”

114. The Report did not identify Hayden Island as among the Oregon communities with 20 percent or more of the residents living below the federal poverty line. The map of

census block data in the Report indicates that there are, in fact, two block groups on Hayden Island. One is 11-20% below poverty, and the other, which includes the manufactured home community represented by plaintiffs, is 21-30% below poverty.

115. Defendants conclusion that an environmental justice community does not exist on Hayden Island conflicts with the available census block data. Furthermore, defendants did not conduct any surveys of manufactured home community on Hayden Island for the purposes of collecting demographic data and/or identifying low-income communities.

116. The majority of businesses that would be displaced by the Columbia River Crossing are on Hayden Island, the Island would have the second loudest noise impacts in the project area, and the alternatives would require the acquisition of between 20-21 acres for the project on Hayden Island.

117. One of the businesses that would be displaced by the project is the Safeway grocery store. Safeway is the only source of fresh grocery foods and the only pharmacy on the Island.

118. The replacement crossings project alternatives (Alternatives 2 and 3) would result in the displacement of the Safeway grocery.

119. The Draft EIS explains that for the supplemental crossings (Alternatives 4 and 5) to avoid displacing the Safeway would “require substantial exceptions to highway design.” In other places, the Draft EIS notes that “[e]ach of the 4 alternatives would displace the Safeway.”

120. Mitigation for the loss of the Safeway is “design changes still under study or potentially mitigated through relocation assistance that would allow the grocery store to move elsewhere on Hayden Island prior to project construction.”

121. The Draft EIS also notes that project construction will affect emergency responses on Hayden Island. The mitigation to address the inability of emergency vehicles to access Hayden Island in a timely fashion is the future development of a Safety and Security Management Plan.

122. The Draft EIS also acknowledges that the noise impacts on Hayden Island will be the second greatest in the project area. The Draft EIS explains that vibrations will also result from the construction activities. The Draft EIS does not quantify these impacts on Hayden Island or provide an analysis of them.

D. Comments on the Draft Environmental Impact Statement.

123. Plaintiffs, including Hayden Island Livability Project, Hayden Island Manufactured Home Community Homeowners Association, OPAL and their members submitted written comments and testified at meetings regarding the Draft EIS and their concerns with the proposed project.

124. The comments from Hayden Island residents raise concerns that the project will have the greatest impacts on the Island and its communities, but that the Draft EIS insufficiently characterized these impacts. They asked for specific mitigation measures for the construction impacts such as the use of low-sulfur diesel fuel and application of EPA's non-road diesel rule.

125. Residents of the Island also recommended that the project proponents update information on Hayden Island's population and demographics in the Final EIS. The population data in the Draft EIS failed to account for the particular characteristics of the manufactured home community, which represents the majority of the Island's residents and the community most adversely impacted by the project. This resulted in an inaccurate portrayal of the manufactured

home community's median family income and home value. It also misrepresents the community demographics.

126. Residents raised concerns regarding the ability of seniors and handicapped residents to get to the light rail station without an additional form of transportation, raised concerns about having to get on the highway and pay a toll in order to go grocery shopping, raised concerns about the ability of emergency vehicles to access the Island, and requested access to Marine Drive directly from the Island.

127. Region 10 of the Environmental Protection Agency (EPA) submitted comments explaining concerns about the need for project-related air quality analysis for air toxics, diesel exhaust and particulate matter, especially near roadway concentrations. The agency also recommended inclusion of additional information in the air quality section "on the duration, nature of, and special extent of construction impacts on air quality" as well as a discussion of potential health impacts and the affected populations and other potential mitigation strategies.

128. EPA also commented on the need for identification, analysis, disclosure, and mitigation for environmental justice communities in and near the project area. The agency explained the need for further consideration of environmental justice concerns from air quality, noise, neighborhood safety, and economic burden. EPA concluded that direct and indirect impacts will likely affect low-income, elderly, and disabled populations disproportionately.

129. EPA expressed concern about the failure to identify mitigation measures to address impacts to susceptible individuals, populations, and raised the need for specific receptor locations to be designated for monitoring of the project's impacts. The agency recommended consideration of a mitigation measure that would include shuttle service to assist with

transportation needs during construction and in the long-term for disabled and elderly individuals impacted by project construction within their communities.

E. Selection of the Locally Preferred Alternative.

130. The publication of the Draft EIS was followed by the adoption of the Locally Preferred Alternative in July 2008. The Locally Preferred Alternative was chosen based on the analysis in the Draft EIS, recommendations from a Task Force of local citizens and agency officials, and public comments on the Draft EIS.

131. The Locally Preferred Alternative includes: 1) a new river crossing over the Columbia River and I-5 highway improvements such as bicycle and pedestrian improvements; extension of the light rail from the Expo Center to Clark College; 2) a new toll on motorists using the river crossing; and 3) other transportation demand and system management measures.

132. The Locally Preferred Alternative is a refined version of Alternative 3 from the Draft EIS and includes two design options and a construction phasing option. The Locally Preferred Alternative provides for the construction of a bridge from Hayden Island to north Portland, but during a later phase of the project construction.

F. The Final Environmental Impact Statement for the Project.

133. On September 23, 2011, defendants filed a Final EIS with the Council on Environmental Quality.

134. The Final EIS includes an analysis of the Locally Preferred Alternative compared to the no-build and other Draft EIS alternatives; environmental impacts of the alternatives and mitigation measures; and responses to comments on the Draft EIS from agencies, tribes, and the public. In evaluating the construction phasing option of the Locally Preferred Alternative, the Final EIS considers building part of the project in an initial phase and construction of the

remaining elements at a later date. The Final EIS explains that the phasing construction options “are numerous” but “the actual phasing cannot be known until the precise timing and availability of funding are finalized.”

135. The Final EIS is substantially different from the Draft EIS. The public was provided with only 30 days from September 23, 2011 to October 23, 2011 to comment on the Final EIS and the more than 25 technical reports accompanying the EIS.

1. Air Quality

136. Like the Draft EIS, the Final EIS does not quantify, disclose, or analyze the air emissions from the construction of the Columbia River Crossing and the impact of these emissions on air quality and human health on Hayden Island.

137. The Final EIS identifies three major staging sites for the construction of the Columbia River Crossing. These sites are: 1) the 5.6 acre site of the Thunderbird Hotel on Hayden Island; 2) a 52-acre site along state route 501 near the Port of Vancouver’s terminal 3 called the “Port of Vancouver Parcel 1A site;” and 3) the 2.6 acre site at the Red Lion Quay Inn site in Vancouver.

138. The Final EIS notes that the western boundary of the Thunderbird Hotel site along Azalea Drive is within 50 feet of the manufactured home community on Hayden Island.

139. The Final EIS does not quantify, disclose, or analyze the air emissions that are expected to occur at these major staging sites.

140. Defendants did not provide an analysis or opportunity for comment on the location of the construction sites or the impacts to air quality at the major staging sites before selecting the three sites that are disclosed in the Final EIS.

141. On September 20, 2010, the FHWA and FTA obtained federal approval for a conformity determination for Metro's 2035 Regional Transportation Plan (RTP) and the 2008-2011 Metropolitan Transportation Improvement Plan (MTIP). This determination did not include any "hot-spot" analyses of the air quality impacts from the construction of the project.

142. The Final EIS explains that "construction activities are not expected to last more than 5 years at any given site" and thus a hot-spot analysis is not required for construction sites pursuant to 40 C.F.R. 93.123(c)(5).

143. The Final EIS relies upon an air quality study undertaken in Chicago to conclude that construction of the proposed project is not expected to cause any air quality violations. Chicago is not a maintenance area for carbon monoxide. Carbon monoxide emissions were not studied in the Chicago study.

2. Hayden Island Community Health and Welfare

144. The Final EIS includes an updated technical report on environmental justice.

145. The 2011 Environmental Justice report uses the same block group data as the 2008 Environmental Justice report to determine which groups are "low-income" for every community except for those on Hayden Island. On Hayden Island the report considers the entire Island and not the block group data. Exhibit 3-9 versus Exhibit 2-2.

146. No effort was made to survey the residents of the manufactured home community to determine the demographics of their neighborhood.

147. The report notes two forms of mitigation measures for environmental justice communities: 1) relocation assistance for community members who are displaced and 2) assistance for paying the highway tolls.

148. The 2011 Environmental Justice report includes a timeline for construction activities that states that 4 years are needed to build the new bridges, 1 1/2 to 4 years are needed to build each interchange on Hayden Island, 1 1/2 years are required to demolish the old bridges, and that the whole project will take 6.3 years.

149. The Final EIS notes that more than half of the land acquired for the project and more than half of the commercial uses that will be displaced are on Hayden Island.

150. The Final EIS explains that the “[c]onstruction of the [Locally Preferred Alternative] would displace the Safeway grocery store and pharmacy, which are the only grocery store and pharmacy on the island and are important community resources and employers.”

151. The Final EIS fails to take a hard look at the impacts to residents of the manufactured home community members from the loss of the Safeway grocery store.

152. The only mitigation measures discussed for the loss of the store are the possibility that Safeway may relocate on the Island, that a Target may be constructed on the Island that “could include a grocery and a pharmacy,” and that once built, the Columbia River Crossing itself will facilitate access to other stores by the bridge from Hayden Island to North Portland or Vancouver.

153. The Final EIS acknowledges that the project construction will impact emergency response services on Hayden Island. For two years, “[d]rivers from Hayden Island would cross the current northbound I-5 bridge, exit to SR 14 eastbound, make a U-turn at Columbia House Boulevard, and return via SR 14 westbound to I-5 northbound.” North Jantzen Drive on Hayden Island, the only road that leads from the freeway to the manufactured home community, could also be closed for nearly a year.

154. The Final EIS notes that I-5 is an important north-south access route for emergency service responders and the only access route to and from Hayden Island. The Final EIS fails to take a hard look at the impacts to Hayden Island residents from the loss of timely emergency medical services and access on and off the Island during project construction.

155. The mitigation proposed for delays in emergency response services as a result of construction includes monitoring by emergency responders of the response times and if delays are unacceptable a meeting to develop solutions for better detour route communication.

156. The EIS also notes that the DEQ Noise Source Standards may be exceeded at locations adjacent to the community. The EIS fails to take a hard look at the noise impacts and vibrations on Hayden Island from the Columbia River Crossing construction. No site-specific information is provided or analyzed regarding these impacts in the Final EIS or Environmental Justice report.

157. In responding to the comments of Hayden Island residents on the Draft EIS, defendants failed to address concerns about the impacts of the construction on the Island and its residents. Instead, the comments state a general commitment to mitigating the impacts of the project and directs the community to Chapter 3 of the Final EIS. Chapter 3 of the Final EIS is 460 pages long.

158. In response to public comments about the shortcomings of the data used to describe and analyze the neighborhoods on Hayden Island, defendants failed to explain why they did not use census block group data from Hayden Island or data collected by the City of Portland on Hayden Island in the analyses for the Columbia River Crossing project.

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G. Comments on the Final Environmental Impact Statement.

159. Residents of the manufactured home community on Hayden Island submitted comments on the Final EIS and participated in public and community meetings regarding the Final EIS.

160. The manufactured home community on Hayden Island raised concerns that air pollution to the community will be high during the years of construction and that more information and analysis is needed on the impacts of the construction and the final decision needs to include mitigation measures, such as a respiratory clinic. The community explained the need for hot-spot analyses for construction activities on the Island including at the staging site.

161. Residents commented on the lack of analysis in the Final EIS concerning the Thunderbird Hotel, which is identified as a potential major staging site for project construction activities. The Thunderbird Hotel is a former landfill and former site of an auto service station, and is suspected to contain pre-existing contamination. Local residents expressed concern that the EISs did not include any data on testing of the site and that the Final EIS failed to adequately analyze cumulative health impacts from using the Thunderbird Hotel as the staging area.

162. Hayden Island residents also expressed concerns about the lack of analysis and mitigation measures for noise and vibration pollution from the project construction for manufactured home residents. The high proportion of elderly and disabled manufactured home residents makes the population more susceptible to chronic noise impacts. Additionally, the Final EIS failed to analyze impacts of vibrations from project construction on homes, in particular, manufactured homes not secured to a foundation.

163. Hayden Island residents commented that the manufactured home community was not surveyed separate from the other communities on the island and that the manufactured home

community is an environmental justice community. Residents of the manufactured home community conducted their own residential survey and determined that approximately fifty percent of the community households are low-income, earning less than \$20,000 per year. The results of the survey were summarized in HILP's comments.

164. Local residents of Hayden Island raised concerns about the loss of the Safeway grocery store on the Island and requested a more detailed analysis of the impacts of this loss on their community. The comments raise concerns that the Final EIS failed to analyze alternatives to avoid the loss of the Safeway and mischaracterized this loss as not affecting a resource of importance to low-income populations. They commented that the construction of a Target will not adequately replace the Safeway because Target only has a marginal fresh meats and produce section.

165. Furthermore, Hayden Island residents commented that the arterial bridge to North Portland needs to be moved to the first stages of construction in order to ensure accessibility for emergency responders to the Island. The comments critique the Final EIS's failure to consider an alternative that would ensure emergency medical access to the Island and access on and off the Island or access without life threatening delays.

166. On October 24, 2011, the EPA also submitted comments on the Final EIS. These comments explain that in consideration of the many unknowns of the proposed project, construction is expected to exceed five years.

167. Additionally, EPA noted that the long-term construction emissions necessitate identifying sensitive receptors to measure emissions, in particular for individuals exposed to the long-term impacts in the core construction areas.

168. Due to environmental justice concerns, the EPA recommended that available health data be provided to characterize baseline conditions in affected neighborhoods as well as to inform mitigation efforts.

H. Issuance of the Record of Decision

169. On December 7, 2011, defendants issued the Record of Decision (ROD) for the project. The FHWA and FTA approved and adopted the Locally Approved Alternative in the Final EIS as the Selected Alternative for the project.

1. Air Quality

170. Defendants admit that the project will take more than five years to complete, but decided not to undertake “hot-spot analyses” for carbon monoxide or particulate matter related to the construction activities.

171. Defendants decided that “project construction activities at any one site are not expected to last more than 5 years. Thus, a CO hot-spot analysis was not conducted.” The ROD explains that if “construction at any one staging site is expected to last more than 5 years, a hot-spot analysis will be completed.”

172. No hot-spot analyses were performed in selecting the sites for staging major project construction activities.

173. Baseline air quality data for the construction site on Hayden Island was not provided and no commitment was made to monitor for air toxins. The ROD clarifies that air quality receptors will not be used for monitoring the air emissions from the project construction.

174. The majority of the other “mitigation measures” for the impacts to air quality from the construction are compliance with state law or will be determined in the future. No final air permits were provided along with the ROD.

2. Hayden Island Community Health and Welfare.

175. The manufactured home community on Hayden Island was not considered to be an environmental justice community for purposes of the project.

176. The ROD notes that “[t]here would be no displacement of households within the Hayden Island Manufactured Home Community and thus the Project did not conduct a separate demographic survey” of that community.

177. Defendants do not respond to the survey results summarized by HILP in its comments regarding the economic status of the residents of the manufactured home community on Hayden Island.

178. As a result, there are not any specific environmental justice related mitigation measures required for the project that would benefit the manufactured home community residents on Hayden Island.

179. The ROD concludes that “adverse impacts such as unmitigated noise impacts, traffic impacts, visual impacts, and displacements will not have a high, adverse, and disproportionate effect on environmental justice populations.”

180. The NEPA documents fail to take a hard look at whether the construction activities themselves will have a disproportionate effect on any environmental justice communities. Instead, the ROD focuses on residential displacements and whether they are disproportionate.

181. The project was not redesigned to maintain the Safeway on Hayden Island. Instead, defendants decided to “encourage Safeway to relocate on Hayden Island,” and notes that “a large Target store [is] currently under development on the Island, and it will provide limited

groceries and a pharmacy, helping minimize, but not eliminate, the impact of a potential Safeway closure.”

182. The mitigation for the loss of the Safeway is to “[p]urchase property at fair market value and provide relocation assistance” and to “[p]rovide on-site notice and information regarding the closure of the bottle return center, including directions to other locations”

183. The ROD explained that “[a]fter publication of the DEIS, the City of Portland adopted the Hayden Island Plan which calls for access to and from the island without using I-5.”

184. Among the mitigation measures for the Columbia River Crossing is a potential community enhancement fund that will require legislative approval to establish either “a project specific community enhancement fund” or “a regional fund established by the state to benefit the neighborhoods and communities in close proximity to I-5 and the Project area.”

185. The ROD also provides for transponders to help low-income residents with the highway tolls.

186. Since the publication of the ROD, defendants have presented information estimating that the proposed Columbia River Crossing project will cost between 3.2 to 3.6 billion dollars and will be built in eight stages. The bridge from Hayden Island to North Portland will take two years to construct and will be built in an early phase of the project but not necessarily the first phase.

187. Defendants provided notice in the Federal Register on January 5, 2012 about the final decision for the Columbia River Crossing project and provided that any claims for judicial review must be filed by July 3, 2012. 77 Fed. Reg. 531 (Jan. 5, 2012).

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PLAINTIFFS' CLAIMS FOR RELIEF

AIR QUALITY CLAIMS

Claim One – Violations of the National Environmental Policy Act and the Act's Implementing Regulations with Respect to Air Quality.

188. Plaintiffs incorporate by reference all preceding paragraphs.

189. Defendants violated the National Environmental Policy Act in developing and approving the Columbia River Crossing Project by failing to: (1) disclose and take a hard look at the impacts to air quality from the construction of the Columbia River Crossing; (2) take a hard look at the site specific impacts to air quality from construction activities before deciding on the project design and the staging locations for construction activities; (3) respond adequately to Hayden Island residents' concerns and comments about the impacts to their air quality from the construction activities on the Island; and (4) disclose to the public or provide an opportunity for the public to comment on the sites that will be used to stage major construction activities.

Claim Two – Failure to Prepare a “Hot-Spot” Analysis in Violation of 40 C.F.R. § 93.123(c)(5), the Clean Air Act Consistency Requirements, the Federal-Aid to Highways Act, and the Administrative Procedure Act.

190. Plaintiffs incorporate by reference all preceding paragraphs.

191. Defendants arbitrarily failed to ensure that the construction emissions on Hayden Island will not cause or contribute to violations of air quality standards as required by the Clean Air Act consistency requirements, 40 C.F.R. § 93.123, 42 U.S.C. § 7506(c)(1)(B), and the Federal-Aid to Highways Act, 23 U.S.C. § 109(j), and acted contrary to 40 C.F.R. § 93.123(c)(5) by failing to perform a “hot-spot” analysis.

COMMUNITY HEALTH AND WELFARE CLAIMS

Claim Three – Arbitrary and Capricious Failure to Consider the Manufactured Home Community on Hayden Island as a Low-Income Community

192. Plaintiffs incorporate by reference all preceding paragraphs.

193. Defendants' determination that no environmental justice community existed on Hayden Island is arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2) for the following reasons: 1) defendants' decision to rely on census tract data, instead of census block data, masked the low-income status of the manufactured home community on Hayden Island; 2) it conflicted with the methodology used to identify all other environmental justice communities in Oregon and Washington; 3) it conflicted with agency procedure, guidance and policy; and 4) it conflicted with demographic data provided by local residents during the public comment period.

194. As a result, Hayden Island was not considered to have any environmental justice communities despite the fact that the block group in which the Hayden Island manufactured home community is located was at least 21 to 30% below poverty in 2000, and 50% below poverty based on the residents' own survey results.

195. In light of the information presented regarding the demographics of the manufactured home community on Hayden Island, it was arbitrary and capricious for defendants to fail to conduct a direct survey of its residents or otherwise follow agency procedures for assessing the demographics of the manufactured home community on Hayden Island.

**Claim Four – Violations of the National Environmental Policy Act and the Act's
Implementing Regulations with Respect to Impacts to Human Health and the
Livability of Hayden Island**

196. Plaintiffs incorporate by reference all preceding paragraphs.

197. Defendants violated the National Environmental Policy Act in developing and approving the Columbia River Crossing project by failing to: (1) take a hard look at the direct impacts of the proposed project to Hayden Island residents from the loss of the Safeway, which

provides the only source of fresh produce and meats on the Island, the denial of access to timely emergency medical services during particular stages of the project construction, and the noise and vibrations from the project; (2) consider a reasonable range of alternatives for the project including one that would have preserved the Safeway on Hayden Island and ensured continuous emergency medical services and access on and off the Island throughout the project's construction; (3) apply appropriate measures to mitigate the impacts of the Columbia River Crossing project construction on residents of manufactured home community on Hayden Island; and (4) respond adequately to Hayden Island residents' concerns and comments on the construction impacts on their community.

PLAINTIFFS' PRAYER FOR RELIEF

Plaintiffs respectfully requests this Court enter an order:

1. Declaring that Defendants violated the National Environmental Policy Act, the Administrative Procedure Act, and the Clean Air Act consistency requirements and the hot-spot analyses requirements for construction activities in 40 C.F.R. § 93.123(c)(5);
2. Setting aside and remanding the Record of Decision for the Columbia River Crossing;
3. Enjoining Defendants, their agents and employees, and all persons acting in participation and concert with them, from taking any further steps toward the construction of the proposed Columbia River Crossing project unless and until their violations of federal law have been corrected;
4. Awarding Plaintiffs their reasonable attorneys' fees and costs associated with this litigation pursuant to 28 U.S.C. § 2412 or other authority; and
5. Granting Plaintiffs such other relief as this Court deems just and equitable.

Respectfully submitted this 2d day of July, 2012.

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