

# **National Capital Region Transportation Planning Board**

777 North Capitol Street, N.E., Suite 300, Washington, D.C. 20002-4290 (202) 962-3310 Fax: (202) 962-3202 TDD: (202) 962-3213

## **Item #5**

### **MEMORANDUM**

**November 9, 2006**

**TO:** Transportation Planning Board

**FROM:** Ronald F. Kirby  
Director, Department of  
Transportation Planning

**RE:** Letters Sent/Received Since the October 18<sup>th</sup> TPB Meeting

The attached letters were sent/received since the October 18<sup>th</sup> TPB meeting. The letters will be reviewed under Agenda #5 of the November 15<sup>th</sup> TPB agenda.

Attachments

## **National Capital Region Transportation Planning Board**

777 North Capitol Street, N.E., Suite 300, Washington, D.C. 20002-4290 (202) 962-3310 Fax: (202) 962-3202

November 7, 2006

The Honorable Phil Mendelson  
Chairman  
Metropolitan Washington Air Quality Committee  
777 North Capitol Street, NE  
Washington, DC 20002 – 4239

Dear Chairman Mendelson:

The National Capital Region Transportation Planning Board (TPB) is pleased to transmit to the Metropolitan Washington Air Quality Committee (MWAQC) the attached table of mobile source emissions data prepared for use in the development of the 8-hour ozone state air quality implementation plan (SIP). Building upon the TPB's July 12, 2006 transmittal of mobile source emissions inventory results, this table incorporates estimates of emissions benefits of transportation measure commitments which are in the region's 'severe area 1-hour ozone SIP' to yield draft 2008 and 2009 mobile emissions budgets for volatile organic compounds (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions.

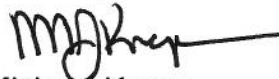
These data are being formally transmitted by the TPB to MWAQC today because the 2008 and 2009 estimates of 'mobile emissions inventories less SIP-committed measures' represent the basis for establishing new motor vehicle emissions budgets in the SIP. These new emissions budgets will, in turn, be used by the TPB in future air quality conformity determinations. Reviewing the data in the table, the TPB's July 12, 2006 transmittal of the primary emissions inventory data provides the starting point for the forecast emissions levels. Emissions benefits for the transportation control measures (TCM)s and the Vehicle Technology measures in the table reflect estimates prepared by TPB staff as part of the air quality conformity assessment of the 2006 Constrained Long Range Plan (CLRP) and the FY2007 – 12 Transportation Improvement Program (TIP), which was adopted by the TPB on October 18, 2006. Subtraction of the SIP-committed measures from the base inventory levels yields the draft mobile budgets.

According to EPA's conformity regulations the motor vehicle emissions budget represents "... that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan.....allocated to highway and transit vehicle use and emissions." The regulations state further that EPA will not find a

submitted motor vehicle emissions budget to be adequate for transportation conformity purposes unless "The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance..." and "... is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision...". The TPB believes that the attached 2008 and 2009 motor vehicle emissions estimates, in conjunction with the emissions benefits from the SIP-committed measures, provide the basis for establishing motor vehicle emissions budgets that will comply with these EPA regulations.

The TPB looks forward to continuing the close technical and policy working relationships with MWAQC as we move forward in meeting remaining requirements for SIP planning.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Knapp", with a long horizontal stroke extending to the right.

Michael Knapp  
Chair, National Capital Region  
Transportation Planning Board

**Summary Table - Calculation Of  
Mobile Source Emissions Budgets For the 8-Hour Ozone SIP**

	2008		2009	
	VOC	NOx	VOC	NOx
	Tons/day			
Mobile Source Inventory	70.98	160.30	66.68	146.53
TCMs	0.11	0.25	0.10	0.22
Vehicle Technology Based Measures	0.08	0.24	0.08	0.23
Net	70.79	159.81	66.50	146.08
 Draft Mobile Source Budgets	 <b>70.8</b>	 <b>159.8</b>	 <b>66.5</b>	 <b>146.1</b>

## **NOTICE OF INTENT TO COMMENCE CIVIL ACTION TO REMEDY VIOLATION OF THE CLEAN AIR ACT**

Pursuant to 42 U.S.C. Section 7604(b)(1), Environmental Defense and the Sierra Club, on behalf of themselves and their members, hereby give notice of their intent to commence a civil action against Mary Peters, in her capacity as the Secretary of Transportation, for approving the Inter-county Connector Project ("ICC Project"), a major highway project linking I-95 in Prince Georges County, Maryland, with I-370 and I-270 in Montgomery County, Maryland, on May 29, 2006, see 71 Fed. Reg. 36,164 (June 23, 2006), and against the Secretary of Transportation and the National Capital Region Transportation Planning Board, acting as the designated metropolitan planning organization pursuant to 23 U.S.C. § 134(d), for approving the Transportation Improvement Program that programmed funds for the ICC Project in violation of the Clean Air Act (CAA). In the event such violations have not been remedied within 60 days following receipt of this Notice, the parties intend to commence a civil action to remedy such violations of the Act. As further specified below, the Secretary has approved the ICC Project, and the Transportation Improvement Program allocating federal funds for the ICC Project in violation of requirements of the Act and implementing regulations prohibiting approval by the Secretary of Transportation of any transportation project that will cause or contribute to violations of the National Ambient Air Quality standards.

Pursuant to the Clean Air Act, 42 U.S.C. §7407(d)(1), the Administrator of the U.S. Environmental Protection Agency has designated Prince Georges and Montgomery Counties, Maryland, the area where the ICC Project is located, as part of the Washington, DC-MD-VA nonattainment area for the pollutant "PM2.5" (particulate matter with an aerodynamic diameter equal to or less than 2.5 microns in size). 40 C.F.R. § 81.321. See 70 Fed. Reg. 979 (January 5, 2005). Because the area is designated nonattainment for PM2.5, the Clean Air Act requires that any transportation project and transportation improvement program approved or funded by the Secretary of Transportation in the area must first be shown to satisfy the conformity requirements of the Act. 42 U.S.C. §7506(c)(5).

The statutory provisions relevant to this Notice prohibit the Department of Transportation, as a Federal agency, from "approv[ing], accept[ing] or fund[ing] any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter." 42 U.S.C. §7506(c)(2). "Conformity to an implementation plan means—(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and (B) that such activities will not—(i) cause or contribute to any new violation of any standard in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area." 42 U.S.C. §7506(c)(1).

**NOTICE OF INTENT TO COMMENCE CIVIL ACTION  
TO REMEDY VIOLATIONS OF THE CLEAN AIR ACT**

**October 20, 2006**

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EPA has promulgated regulations establishing criteria and procedures that the Secretary must satisfy when making the required showing that emissions from a federally funded or approved highway project will not cause or contribute to any new violation of any standard, or increase the frequency or severity of any existing violation. 40 C.F.R. §§ 93.116 and 93.123. The Secretary has approved the ICC Project without making the findings required by the Act and § 93.116 based upon the criteria required by § 93.123(b) and (c), and related EPA regulations. The failure to make findings required by the applicable criteria include, but are not limited to, the failure to determine the current background concentration of PM<sub>2.5</sub> at appropriate receptor locations in the area substantially affected by the project, the failure to determine future background concentrations, the failure to use available emissions factors to determine the ratio between current and future emissions, and the failure to apply emissions factors in the ratio of current to future traffic. Credible and relevant evidence available to the Secretary demonstrates that emissions from the proposed ICC Project will add emissions in an area where the National Ambient Air Quality Standard for PM<sub>2.5</sub> is being violated, or nearly violated, and that adding further emissions will cause or contribute to ambient air quality in violation of the National Ambient Air Quality Standard.

The Secretary of Transportation and the National Capital Region Transportation Planning Board, acting as the designated metropolitan planning organization pursuant to 23 U.S.C. § 134(d), violated the Clean Air Act by approving the Transportation Improvement Program for the National Capital Region because it allocates federal funds for the ICC Project which does not satisfy the statutory and regulatory requirements for a conforming transportation project pursuant to 42 U.S.C. § 7506(c) and regulations implementing the Act.

These violations are continuing until such actions are taken as are necessary to remedy the violations.

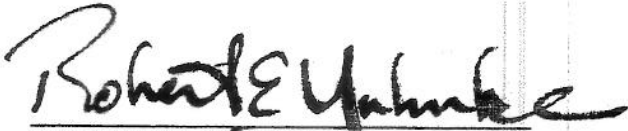
The above-named organizations intend to commence a civil action to enforce the legal duties described in this letter unless the approval for the ICC Project is withdrawn and funding commitments for the Project removed from the Transportation Improvement Program, or the findings required by the Act and applicable regulations have been made within sixty days of the postmark date of this Notice.

The undersigned attorneys are acting as legal counsel for the above-named organizations in this matter. Any communications should be addressed to the undersigned as follows: Hope Babcock and Erik Bluemel, Institute For Public Representation, Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C. 20001; 202-662-9535.

A copy of any written correspondence should be forwarded to Robert E. Yuhnke, 2910 County

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Road 67, Boulder, Colorado 80303; 303-499-0425.



**ROBERT E. YUHNKE**  
Robert E. Yuhnke & Associates

*October 20, 2006*



**HOPE BABCOCK**  
Director, IPR

ON BEHALF OF:

Environmental Defense  
Sixth Floor  
1650 Connecticut Avenue, N.W.  
Washington, D.C. 20009

Sierra Club  
85 Second Street, Second Floor  
San Francisco, California 94105-3441

# Regulatory Announcement

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## Transportation Conformity Final Rule: $PM_{2.5}$ and $PM_{10}$ Hot-Spot Analyses in Project-Level Transportation Conformity Determinations for the $PM_{2.5}$ and $PM_{10}$ National Ambient Air Quality Standards

*EPA is finalizing the criteria for determining which transportation projects must undergo a local air quality analysis (i.e., a "hot-spot analysis") as part of conformity determinations in areas not meeting  $PM_{2.5}$  (particulate matter smaller than 2.5 micrometers in diameter) air quality standards. This final rule also streamlines existing hot-spot requirements in  $PM_{10}$  areas. A "hot-spot analysis" is an estimation of pollutant concentrations in a localized area resulting from the use or operation of a transportation project, and a comparison of those concentrations to the National Ambient Air Quality Standards (NAAQS).*

### Key Elements of the Final Rule

- This rule requires that  $PM_{2.5}$  hot-spot analyses be performed only for new transportation projects with significant diesel traffic. Examples of such "projects of air quality concern" include intermodal freight or bus terminals, and major highway projects and congested intersections involving significant diesel traffic. No hot-spot analyses will be required for most projects in  $PM_{2.5}$



areas, because most projects are not an air quality concern. This final rule also streamlines existing PM<sub>10</sub> hot-spot requirements in a similar way.

- The streamlined approach in this final rule will ensure that transportation and air quality agencies in PM<sub>2.5</sub> and PM<sub>10</sub> areas use their resources efficiently, while achieving clean air goals.
- In both PM<sub>2.5</sub> and PM<sub>10</sub> areas, a quantitative hot-spot analysis is not required until EPA issues a new motor vehicle emissions model capable of estimating local emissions as well as future hot-spot modeling guidance. Qualitative analyses will apply in the interim.
- This rule extends an existing flexibility by allowing the U.S. Department of Transportation to make “categorical hot-spot findings,” which would waive PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot reviews for categories of projects where modeling shows that there is no air quality concern.

## **Background**

Transportation conformity is a Clean Air Act requirement that ensures that federally supported highway and transit projects are consistent with (“conform to”) the purpose of a state air quality implementation plan (SIP). Conformity ensures that public health is protected by early consideration of transportation decisions in cities with air quality challenges.

This final rule is part of EPA’s implementation of the current PM<sub>2.5</sub> standards. The final rule is a result of two proposed rulemakings in November 2003 and December 2004. EPA received comments from state and local transportation and air quality agencies, environmental and transportation interest groups, and private citizens. EPA has worked closely with DOT in the development of this final rule.

## **Health and Environmental Impacts**

By focusing requirements on transportation projects of air quality concern, this rule ensures that conformity is practicably implemented and that conformity will help achieve the Clean Air Act’s public health and environmental goals.

## **For More Information**

You can access the final rule and related documents on EPA's Office of Transportation and Air Quality web site at: [www.epa.gov/otaq/transp/conform/conf-regs.htm](http://www.epa.gov/otaq/transp/conform/conf-regs.htm). For further information about the final rule, please contact:

Meg Patulski  
U.S. Environmental Protection Agency  
Transportation and Regional Programs Division  
2000 Traverwood Drive  
Ann Arbor, MI 48105  
(734) 214-4842  
E-mail: [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov)

or

Rudy Kapichak  
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# Federal Register

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**Friday,  
March 10, 2006**

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## **Part III**

# **Environmental Protection Agency**

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**40 CFR Part 93**

**PM<sub>2.5</sub> and PM<sub>10</sub> Hot-Spot Analyses in  
Project-Level Transportation Conformity  
Determinations for the New PM<sub>2.5</sub> and  
Existing PM<sub>10</sub> National Ambient Air  
Quality Standards; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 93**

[EPA-HQ-OAR-2003-0049, FRL-8039-5]

RIN 2060-AN02

**PM<sub>2.5</sub> and PM<sub>10</sub> Hot-Spot Analyses in Project-Level Transportation Conformity Determinations for the New PM<sub>2.5</sub> and Existing PM<sub>10</sub> National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the criteria for determining which transportation projects must be analyzed for local particle emissions impacts in PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas. This rule establishes requirements in PM<sub>2.5</sub> areas and revises existing requirements in PM<sub>10</sub> areas. If required, an analysis of local particle emissions impacts is done as part of a transportation project's conformity determination. EPA is requiring a local particle emissions impacts analysis for certain transportation projects to ensure that these projects do not adversely impact the national ambient air quality standards and human health. The Clean Air Act requires federally supported highway and transit projects to be consistent with ("conform to") the purpose of a state air quality implementation plan. EPA has consulted with the Department of Transportation (DOT) on the development of this final rule, and DOT concurs with its content.

**DATES:** The final rule is effective April 5, 2006, for good cause found as explained in this rule.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0049. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Meg Patulski, Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, telephone number: (734) 214-4842, fax number: (734) 214-4052, e-mail address: [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov); or Rudy Kapichak, Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, telephone number: (734) 214-4574, fax number: (734) 214-4052, e-mail address: [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Background
- III. PM<sub>2.5</sub> Hot-spot Analyses
- IV. PM<sub>10</sub> Hot-spot Analyses
- V. Projects of Air Quality Concern and General Requirements for PM<sub>2.5</sub> and PM<sub>10</sub> Hot-spot Analyses
- VI. Timing of Quantitative PM<sub>2.5</sub> and PM<sub>10</sub> Hot-spot Analyses and Development of Future Guidance
- VII. Categorical PM<sub>2.5</sub> and PM<sub>10</sub> Hot-spot Findings
- VIII. Minor Change for Exempt Projects Regarding Compliance With PM<sub>2.5</sub> SIP Control Measures
- IX. How Does Today's Final Rule Affect Conformity SIPs?
- X. Statutory and Executive Order Reviews

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government .....	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government .....	State transportation and air quality agencies.

Category	Examples of regulated entities
Federal government ..	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Copies of This Document?*

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OAR-2003-0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center. See the **ADDRESSES** section above. You may have to pay a reasonable fee for copying docket materials.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's transportation conformity Web site at <http://www.epa.gov/otag/transp/tragconf.htm>. You may also access this document electronically under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through the Federal Docket Management System (FDMS), located at <http://www.regulations.gov>. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available

electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in B.1. of this section. Once in the FDMS electronic docket system, select "Advanced Search-Docket Search," then enter the appropriate docket identification number (which is EPA-HQ-OAR-2003-0049) in the "docket ID" field and click "submit".

## II. Background

### A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>),<sup>1</sup> carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or "standards").

### B. What Is the History of the Transportation Conformity Rule?

EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

More recently, on July 1, 2004, EPA published a final rule (69 FR 40004) that amended the conformity rule to accomplish three objectives. The final rule:

- Provided conformity procedures for state and local agencies under the new ozone and PM<sub>2.5</sub> air quality standards;

- Incorporated existing EPA and DOT federal guidance into the conformity rule consistent with a March 2, 1999 U.S. Court of Appeals decision; and
- Streamlined and improved the conformity rule.

The July 1, 2004 final rule incorporated most of the provisions from the November 5, 2003 proposal for conformity under the new ozone and PM<sub>2.5</sub> standards (68 FR 62690). EPA is conducting its conformity rulemakings in the context of EPA's broader strategies for implementing the new ozone and PM<sub>2.5</sub> standards.

Finally, on May 6, 2005, EPA promulgated a final rule entitled, "Transportation Conformity Rule Amendments for the New PM<sub>2.5</sub> National Ambient Air Quality Standard: PM<sub>2.5</sub> Precursors" (70 FR 24280). This final rule specified the transportation-related PM<sub>2.5</sub> precursors and when they apply in transportation conformity determinations in PM<sub>2.5</sub> nonattainment and maintenance areas.

### C. Why Are We Issuing This Final Rule?

In the November 2003 proposal, EPA presented two options concerning hot-spot analyses in PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas. EPA received substantial comment on this portion of the November 2003 proposal. After considering these comments, EPA, in consultation with the U.S. Department of Transportation (DOT), issued a supplemental notice of proposed rulemaking on December 13, 2004 (69 FR 72140) which requested further public comment on additional options for PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot requirements and those options presented in the original November 2003 proposal. In developing today's final rule, EPA considered all of the comments received on PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot analysis requirements both in response to the original November 2003 proposal as well as the December 2004 supplemental proposal. EPA received over 5,400 sets of comments on the two proposals from state and local transportation and air quality agencies, environmental groups, transportation advocates, and the general public.

EPA has consulted with DOT, our Federal partner in implementing the transportation conformity regulation, in developing the final rule, and DOT concurs with its content. Please see Sections III. and IV. for more information regarding how this final rule impacts project-level conformity determinations in PM<sub>2.5</sub> and PM<sub>10</sub> areas, including those for projects that are currently under development.

## III. PM<sub>2.5</sub> Hot-spot Analyses

### A. Background

#### 1. What Is a Hot-spot Analysis?

A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations resulting from a new transportation project and a comparison of those concentrations to the relevant air quality standard. A hot-spot analysis assesses the air quality impacts on a scale smaller than an entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals. Such an analysis is a means of demonstrating that a transportation project meets Clean Air Act conformity requirements to support state and local air quality goals with respect to potential localized air quality impacts.

Prior to today's final rule, the conformity rule required some type of hot-spot analysis for all FHWA and FTA funded or approved non-exempt transportation projects in CO and PM<sub>10</sub> nonattainment and maintenance areas (40 CFR 93.116 and 93.123). This requirement applied for all project-level conformity determinations that occur both before and after a SIP is submitted for the CO or PM<sub>10</sub> air quality standards.

EPA established the type of hot-spot analysis—either quantitative or qualitative—based on the potential impact of a given project or project location on the air quality standards, so that more rigorous quantitative analyses are only required when necessary to meet statutory requirements. Since the original November 24, 1993 conformity rule, EPA has required quantitative analyses for projects that have the highest potential to impact the CO air quality standards (*i.e.*, "projects of air quality concern"). The conformity rule also has detailed projects that have the highest potential to impact the PM<sub>10</sub> standards, including new or expanded bus and rail terminals or transfer points involving diesel vehicles. These projects of air quality concern would be subject to quantitative hot-spot analyses once the tools and EPA's future modeling guidance are available. In contrast, more streamlined, qualitative hot-spot analyses have been required for all other projects.

Such a tiered approach was intended to utilize state and local resources in an efficient manner while meeting statutory requirements. Quantitative hot-spot analyses use dispersion modeling to determine the potential air quality impact of motor vehicle emissions associated with a highway or

<sup>1</sup> Section 93.102(b)(1) of the conformity rule defines PM<sub>2.5</sub> and PM<sub>10</sub> as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

transit project. Qualitative hot-spot analyses involve more streamlined reviews of local factors such as local monitoring data near a proposed project.

EPA notes, however, that quantitative PM<sub>10</sub> hot-spot analyses have not yet been required for projects of air quality concern due to a lack of EPA modeling guidance and appropriate methods. Section 93.123(b)(4) of the conformity rule states that the requirements for quantitative PM<sub>10</sub> hot-spot analyses will not take effect until EPA releases modeling guidance and announces in the **Federal Register** that these requirements are in effect, which EPA has not yet done.

Today's final rule does not impact the existing CO hot-spot requirements; however, the final rule revises the PM<sub>10</sub> hot-spot requirements as discussed in Sections IV. and V.

## 2. Proposed Options

EPA proposed several options for how PM<sub>2.5</sub> hot-spot requirements would apply for project-level conformity determinations in PM<sub>2.5</sub> nonattainment and maintenance areas. In general, these options were proposed to apply during the time periods before and after a PM<sub>2.5</sub> SIP is submitted. EPA is repeating in today's action the descriptions of the previously proposed options to assist in discussing the final rule and responses to comments. EPA noted in its proposals that hot-spot analyses would be based only on directly emitted PM<sub>2.5</sub> attributable to an individual transportation project, since secondary particles formed through PM<sub>2.5</sub> precursors take several hours to form in the atmosphere, giving emissions time to disperse beyond the immediate area of concern for localized analyses.

The following five options were proposed for PM<sub>2.5</sub> hot-spot requirements for individual projects in PM<sub>2.5</sub> areas prior to the submission of a PM<sub>2.5</sub> SIP (December 13, 2004, 69 FR 72144):

- *Options 1 and 2:* Do not apply any PM<sub>2.5</sub> hot-spot analysis requirements for any PM<sub>2.5</sub> area before the submission of the PM<sub>2.5</sub> SIP<sup>2</sup>;
- *Option 3:* Apply the existing conformity rule's PM<sub>10</sub> hot-spot analysis requirements with respect to PM<sub>2.5</sub> in all PM<sub>2.5</sub> areas;
- *Option 4:* Apply the existing conformity rule's PM<sub>10</sub> hot-spot analysis

requirements with respect to PM<sub>2.5</sub>, unless the EPA Regional Administrator or state air agency finds that localized PM<sub>2.5</sub> violations are not a concern for a given PM<sub>2.5</sub> area; or

- *Option 5:* Apply the existing conformity rule's PM<sub>10</sub> hot-spot analysis requirements with respect to PM<sub>2.5</sub>, only if the EPA Regional Administrator or state air agency finds that localized PM<sub>2.5</sub> violations are a concern for a given PM<sub>2.5</sub> area.

EPA proposed that an EPA or state air agency finding under Options 4 and 5 that PM<sub>2.5</sub> localized violations are or are not a concern prior to PM<sub>2.5</sub> SIP submission would be based on a case-by-case review of local factors for a given PM<sub>2.5</sub> area. EPA requested information from commenters about whether sufficient local information was available to make such findings.

EPA also proposed three options for project-level conformity determinations after the submission of a PM<sub>2.5</sub> SIP (December 13, 2004, 69 FR 72145):

- *Option A:* Do not apply any PM<sub>2.5</sub> hot-spot analysis requirements for any PM<sub>2.5</sub> area (*i.e.*, Option 1 from the November 2003 proposal);
- *Option B:* Only require quantitative PM<sub>2.5</sub> hot-spot analyses for projects at those types of locations that the PM<sub>2.5</sub> SIP identifies as a localized PM<sub>2.5</sub> air quality concern for a given area (*i.e.*, Option 2 from the November 2003 proposal). No quantitative or qualitative analyses would be required for any projects in other types of locations, or in PM<sub>2.5</sub> areas where the SIP does not identify types of locations as a localized PM<sub>2.5</sub> air quality concern; or
- *Option C:* Apply the existing conformity rule's PM<sub>10</sub> hot-spot analysis requirements with respect to PM<sub>2.5</sub> for all projects in PM<sub>2.5</sub> areas, with a minor addition.

Under Option C, EPA proposed to add a new criterion that would require that quantitative analyses also be performed at those types of project locations that the PM<sub>2.5</sub> SIP identifies as a PM<sub>2.5</sub> hot-spot concern. See the November 5, 2003 proposal (68 FR 62712–62713) and the December 13, 2004 supplemental proposal (69 FR 72144–72149) for further information on all of the proposed options.

For options involving hot-spot analyses, EPA proposed to not require quantitative PM<sub>2.5</sub> hot-spot analyses until EPA releases its future modeling guidance, consistent with the existing provision for PM<sub>10</sub> analyses in § 93.123(b)(4). EPA also proposed to extend to PM<sub>2.5</sub> areas the existing conformity rule's flexibility in § 93.123(b)(3) for DOT to make categorical hot-spot findings to further

streamline analysis requirements when modeling shows that additional analyses are not necessary to meet Clean Air Act requirements for a given project.

Last, EPA requested comments on all of the proposed options, and invited commenters to submit any data or other information about the proposed options, including whether state and local agencies would have information available for implementation. In developing this final rule, EPA considered all of the comments and information submitted for the November 2003 and December 2004 proposals. The December 2004 supplemental proposal also included proposed regulatory text that combined various PM<sub>2.5</sub> and PM<sub>10</sub> hot-spot options as illustrative examples, and EPA noted that any combination of the proposed PM<sub>2.5</sub> or PM<sub>10</sub> hot-spot options could be included in the final rule.

### B. Description of Final Rule

In summary, EPA is finalizing a hybrid of some of the proposed options by:

Being generally consistent with Options 3 (for the period before a SIP is submitted) and C (for the period after a SIP is submitted) for projects of localized air quality concern, and

- Providing the flexibility from other proposed options to eliminate qualitative hot-spot analyses for all projects not of air quality concern.

The final rule requires quantitative PM<sub>2.5</sub> hot-spot analyses only for projects of air quality concern, and qualitative hot-spot analyses would be done for these projects before EPA releases its future modeling guidance and announces that quantitative PM<sub>2.5</sub> hot-spot analyses are required under § 93.123(b)(4). EPA specifies in § 93.123(b)(1) that projects of air quality concern are highway and transit projects that involve significant levels of diesel vehicle traffic, or any other project that is identified in the PM<sub>2.5</sub> SIP as a localized concern.

EPA considered several factors in focusing on projects involving significant numbers of diesel vehicles in developing today's final rule. For example, PM<sub>2.5</sub> and PM<sub>10</sub> diesel emission factors are significantly higher than gasoline vehicles on a per-vehicle basis. In addition, studies in proximity of vehicular traffic tend to show that elevated PM<sub>2.5</sub> concentrations occur near diesel vehicle operations, but show less consistent evidence near locations with high gasoline vehicle operations. See Section V. for more information regarding how and why EPA defined projects of air quality concern in the final rule.

<sup>2</sup>Options 1 and 2 were originally proposed in the November 5, 2003 notice as well (68 FR 62712). Option 1 would have not required any PM<sub>2.5</sub> hot-spot requirement at any time before or after a PM<sub>2.5</sub> SIP is submitted. Option 2 also would not require PM<sub>2.5</sub> hot-spot analyses prior to a PM<sub>2.5</sub> SIP submission, and then only if the SIP identified types of projects or locations of air quality concern for a given area.

believes that all of the procedural requirements, e.g., docketing, hearing and comment periods, of section 307(d) have been complied with during the course of this rulemaking.

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: February 23, 2006.

Stephen L. Johnson, Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.101 [Amended]

2. Section 93.101 is amended in the first sentence of the definition for “Hot-spot analysis” by removing “CO and PM10” and adding in its place “CO, PM10, and/or PM2.5”.

§ 93.105 [Amended]

3. Section 93.105 is amended by removing paragraph (c)(1)(v) and redesignating paragraphs (c)(1)(vi) and (vii) as paragraphs (c)(1)(v) and (vi).

4. Section 93.109 is amended as follows:

a. In Table 1 of paragraph (b), revising both entries for “§ 93.116”;

b. By redesignating paragraphs (i)(1) and (2) as paragraphs (i)(2) and (3) and adding new paragraph (i)(1);

c. In paragraph (j) by removing “CO and PM10” and adding in its place “CO, PM10, and PM2.5”;

d. In paragraph (k) by removing “CO and PM10” and adding in its place “CO, PM10, and PM2.5”; and

e. In paragraph (l)(1) by removing “CO and PM10” and adding in its place “CO, PM10, and PM2.5”.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

\* \* \* \* \*

(b) \* \* \*

TABLE 1.—CONFORMITY CRITERIA

Table with 5 columns and 1 row. Row 1: § 93.116 ..... CO, PM10, and PM2.5 hot-spots.

TABLE 1.—CONFORMITY CRITERIA— Continued

Table with 5 columns and 2 rows. Row 1: § 93.116 ..... CO, PM10, and PM2.5 hot-spots. Row 2: \* \* \* \* \*

\* \* \* \* \*

(i) \* \* \* (1) FHWA/FTA projects in PM2.5 nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

\* \* \* \* \*

5. In § 93.116, the section heading and paragraph (a) are revised to read as follows:

§ 93.116 Criteria and procedures: Localized CO, PM10, and PM2.5 violations (hot-spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM10, and/or PM2.5 violations or increase the frequency or severity of any existing CO, PM10, and/or PM2.5 violations in CO, PM10, and PM2.5 nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM10 and PM2.5 nonattainment and maintenance areas for FHWA/FTA projects that are not identified in § 93.123(b)(1). This criterion is satisfied for all other FHWA/FTA projects in CO, PM10 and PM2.5 nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

\* \* \* \* \*

6. Section 93.123 is amended as follows:

a. Revising the section heading;

b. Amending the first sentence in paragraph (a)(1) introductory text by removing “CO and PM10” and adding in its place “CO, PM10, and PM2.5”;

c. Amending paragraph (b) by:

i. Revising the paragraph heading;

ii. Revising paragraphs (b)(1)(i), (ii) and (iii), and adding new paragraphs (b)(1)(iv) and (v); and

iii. Revising paragraphs (b)(2) and (b)(3);

d. Amending paragraph (c)(4) by removing “PM10 or CO” in the first sentence and adding in its place “CO, PM10, or PM2.5”; and

e. Amending paragraph (c)(5) by removing “CO and PM10” in the first sentence and adding in its place “CO, PM10, and PM2.5”.

§ 93.123 Procedures for determining localized CO, PM10, and PM2.5 concentrations (hot-spot analysis).

\* \* \* \* \*

(b) PM10 and PM2.5 hot-spot analyses. (1) \* \* \*

(i) New or expanded highway projects that have a significant number of or significant increase in diesel vehicles;

(ii) Projects affecting intersections that are at Level-of-Service D, E, or F with a significant number of diesel vehicles, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(iii) New bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

(iv) Expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(v) Projects in or affecting locations, areas, or categories of sites which are identified in the PM10 or PM2.5 applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not available, the demonstration required by § 93.116 for projects described in paragraph (b)(1) of this section must be based on a qualitative consideration of local factors.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that § 93.116 is met without further hot-spot analysis for any project described in paragraph (b)(1) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given PM2.5 or PM10 nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

\* \* \* \* \*

§ 93.125 [Amended]

7. Section 93.125(a) is amended by removing “PM10 or CO” in the first sentence and adding in its place “CO, PM10, or PM2.5”.

§ 93.126 [Amended]

8. Section 93.126 is amended in footnote 1 by removing “PM10” and adding in its place “PM10 and PM2.5”.

**§ 93.127 [Amended]**

■ 9. Section 93.127 is amended as follows:

■ a. Amending the second sentence by removing “or PM<sub>10</sub>”.

■ b. Adding a new sentence after the second sentence to read as follows: “The local effects of projects with respect to PM<sub>10</sub> and PM<sub>2.5</sub> concentrations must be considered and a hot-spot analysis performed prior to

making a project-level conformity determination, if a project in Table 3 also meets the criteria in § 93.123(b)(1).”

[FR Doc. 06-2178 Filed 3-6-06; 9:21 am]

**BILLING CODE 6560-50-P**





**Maryland Department of Transportation**  
The Secretary's Office

**Robert L. Ehrlich, Jr.**  
Governor

**Michael S. Steele**  
Lt. Governor

**Robert L. Flanagan**  
Secretary

**James F. Ports, Jr.**  
Deputy Secretary

October 25, 2006

Mr. Michael Knapp  
Chairman  
National Capital Region Transportation Planning Board  
777 North Capital Street, N.E. Suite 300  
Washington, D.C. 20002-4290

Dear Chairman Knapp:

I was disappointed to see the article in *The Examiner* "Officials say region must plan better." While I am sure some of the quotes in the article were taken out of context, I think the article painted an unfavorable picture on the States' efforts in transportation funding in the Washington Region. I am also disappointed that the numbers quoted lump Maryland in with DC and Virginia, which negatively skews Maryland's aggressive effort at funding transportation in the region.

First, I would like to point out as indicated above that taking the total State revenues in the Constrained Long Range Plan (CLRP) table and dividing it by the total revenues to come up with thirty-four percent participation by the State in the overall CLRP effort is very misleading. Since Virginia functions differently than Maryland and has a larger local participation, taking the total State revenues significantly lowers Maryland's base forty-two percent State contribution. Maryland's local contribution is only eighteen percent, as opposed to Virginia's local contribution, which is thirty-five percent. I am disappointed that more of an effort was not made to explain the differences in how the regions' operate. With State contributions for the Inter-County Connector, Woodrow Wilson Bridge, BiCounty Transitway, Corridor Cities Transitway, the MARC system and one hundred percent of Maryland's share for the Washington Metropolitan Area Transit Authority coming from the State, it is disappointing not to see Maryland getting the credit it deserves when it comes to funding transportation in the Washington region.

As you may be aware, the Maryland Department of Transportation is currently meeting with elected officials as part of a Transit Funding bill enacted last session. Our first meeting was held on Friday, October 20. Visit <http://www.mdot.state.md.us/Planning/index.html> for our presentation at that first meeting, which outlines the transit systems in Maryland, our historical and current funding investment in transit and an outline of the federal program and the competitiveness and requirements of the New Starts Program.

My telephone number is \_\_\_\_\_  
Toll Free Number 1-888-713-1414, TTY Users Call Via MD Relay  
7201 Corporate Center Drive, Hanover, Maryland 21076

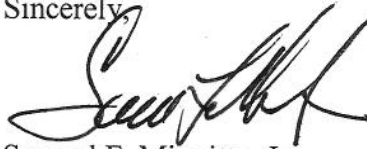


Mr. Michael Knapp  
Page Two

As you can see in the presentation, Maryland makes a substantial investment in operating and capital costs for transit. In addition, Maryland is the only State in the country that supports two extremely large transit systems with no local funding. I think the perspective of how we have come together as a region and tackled the challenges the region faces, with shrinking federal funds and the competitive New Starts process, would have been much more effective. The States' attentive efforts and accomplishments in funding transportation investments in the region are to be commended. I strongly disagree that we "are the piece in the middle that isn't getting it done."

Maryland is successfully partnering with locals to get projects done sooner and stretch resources and investments to reach the maximum number of our citizens. The article was disheartening and a misrepresentation of the facts. Whether it is a State or local process, our regional efforts are responsive, responsible and comprehensive in planning for the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel F. Minnitte, Jr.", written in a cursive style.

Samuel F. Minnitte, Jr.  
Director, Office of Planning

**EXAMINER**.COM

## LOCAL

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### Officials say region must plan better

Christy Goodman, The Examiner  
Oct 19, 2006 5:00 AM (21 days ago)  
Current rank: # **1,540** of 6,601 articles

**WASHINGTON** - The region must better plan its development and transit in order to cut back on mounting traffic and secure future funding, according to regional officials.

Congestion in the metropolitan area could double by 2030 if localities do not work together toward a larger regional growth plan, said members of the Transportation Planning Board at a Wednesday news conference. The board is comprised of elected and transportation officials from 19 area jurisdictions.

State revenue for transportation projects in the region has decreased from 43 percent to 32 percent over the past three years, while local funding has increased from 11 percent to 17 percent, said Catherine Hudgins, a Fairfax County supervisor. Tolls and private funding have increased from 1 to 7 percent during the same time period.

Very few projects are being added to the region's long-term plan for transportation projects unless the project is supported by local or private funding, Hudgins said. The regional plan is required in order to receive federal funding toward transportation improvements.

"Everything we are doing is coming from tolls or local bonding. The state is barely able to keep up with maintenance and projects they have. ... We have to recalibrate our thinking here. Is this the future? It certainly looks like it right now," said Ronald Kirby, transportation planning director for the region.

In addition to the local and private funding, localities must sign onto and act on a regional plan to direct residential growth near job centers and approve growth around transit, said Michael Knapp, a Montgomery County council member and TPB chair.

Once the plan is in action, localities can go back to the states, saying, "We are doing as much as we can at the local level. We are doing as much as we can at the regional level. You guys are the piece in the middle that isn't getting done," Knapp said.

TPB approved \$250,000 for experts and consultants to help localities begin to better plan their areas.

*cgoodman@dcexaminer.com*  
*Examiner*

washingtonpost.com

## Tired of Waiting on States, Counties Fund Roads on Their Own

By Eric M. Weiss

Washington Post Staff Writer

Tuesday, November 7, 2006; B01

Local governments in the Washington region have given up on getting additional state money for major transportation projects and are instead going into debt to embark on an unprecedented half-billion-dollar road-building boom to try to ease some of the area's worst jams.

In most cases, the money will go to build or expand roads that are the responsibility of the state governments in Richmond and Annapolis, which have failed to fund projects promised for years.

"We're tired of waiting around," said Steven A. Silverman (D-At Large), a member of the Montgomery County Council. "Our people are crying for relief, and we want to provide it."

Montgomery officials agreed in April to put up \$160 million to accelerate state road projects. Prince William County is placing a \$300 million bond before voters today that would improve Route 1, Route 28 and several other roads. Loudoun County has \$51 million on the ballot -- the county's first transportation bond -- that would expand such roads as Routes 7 and 50.

Fairfax County is in the middle of a \$160 million construction plan that voters approved two years ago.

"This is the great state shift -- or the great state shaft," said Gerald E. Connolly (D), chairman of the Fairfax Board of Supervisors. "You are seeing that in Loudoun, Prince William and Fairfax -- all of us are taking on more debt because of the state's failure to invest in any fashion."

Funding and building roads locally have advantages. County governments can be quicker, less bureaucratic and more responsive to changing needs. Local funding also ensures that tax money will be spent where it originates rather than being spread across a state.

But local construction plans are isolated and work against a growing regional desire to coordinate development. The results might be new highways and wider roads but even worse bottlenecks.

Virginia Transportation Secretary Pierce R. Homer said the growing role of local governments in road-building makes it more difficult for state officials to keep an eye on the big picture. "The state has a responsibility to ensure that major transportation corridors are developed in a coordinated fashion," he said. "Without adequate state resources, that state role is diminished or in some cases nonexistent."

Prince William, for instance, is spending \$42 million to widen Linton Hall Road, the main connector between several new housing developments, such as Sudley Manor, and major commuter routes. On Friday, workers graded part of the road as construction trucks rumbled in and out of the new housing sites.

But no matter how many lanes the county adds, Linton Hall commuters will still run into one of the biggest bottlenecks in the region, at Route 29 and Interstate 66. A state project to redo the interchange has been a top Northern Virginia priority, but a lack of funding has delayed it for years. The state now has the \$182 million interchange penciled in for construction -- beginning in 2013.

"They're just moving the traffic from one place to another. You still can't get on 29," said Jim Lemmon, 44, of Prince William, buying coffee Friday morning at a Wi-Not Stop on Linton Hall Road. "The state's not going to do anything about it. They make promises they can't keep, and we're the ones who have to live with it."

Increasing local investment in transportation projects is part of a long-term trend away from traditional state sources. Political leaders in Virginia and Maryland, as well as in several other states across the country, plan to fund highways with tolls or through the private sector. Major projects such as expanding the Capital Beltway, for example, will be financed largely through a combination of the two.

A recent study required by the federal government of how the Washington region plans to pay for road and transit improvements through 2030 illustrates a clear change. Three years ago, the study showed state governments, including the District, paying for 43 percent of transportation funding, with local governments contributing 11 percent. But a revision of the plan released last month showed the state share plummeting to 32 percent and the local share increasing to 17 percent. The same analysis showed toll revenues rising from 1 percent to 7 percent. The federal contribution held steady at 27 percent.

"This is a harbinger," said Ronald F. Kirby, transportation planning director for the Metropolitan Washington Council of Governments, which conducted the study. "It's a recognition that the states can't keep up. So Plan B is tolls and local bonds. We better get used to that because that's the way it's heading."

In Virginia, the state government is supposed to pay for and maintain almost every road in the commonwealth. Under Virginia's six-year construction plan, the state is spending \$795 million less than last year as more money is shifted to road maintenance. Legislators debated dozens of plans to increase transportation funding for most of 2006, including during a special session of the General Assembly in September, but they couldn't agree on any.

In Maryland, highways and major roads are built and maintained by officials in Annapolis, with local governments paying for local streets. Its six-year plan for new transportation projects is also shrinking -- \$500 million less is included than six years ago.

Maryland Transportation Secretary Robert L. Flanagan said the state came up with a plan two years ago to add \$238 million a year for projects. But he said there is a lot of "catch-up" to be done on roads and rail.

"We can talk philosophically about what is the state's responsibility versus what is a local responsibility," he said. "As long as we're working together, it's a better approach."

In the Washington region, fast-growing Prince William is becoming the king of road-building, doing it on a bigger scale than any jurisdiction. When the state continued to delay money for the Prince William Parkway, for example, the county built the four-lane highway itself. To keep up with the work, the county created a transportation department this year.

Craig S. Gerhart, the county's executive, said political leaders are not happy to spend the money, but they came to realize that Richmond was not going to come through.

"People can argue about a lot of things, but at the end of the day it takes money to build roads, and they don't have any money," he said. "We can't be successful as a community with a failed transportation network."

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