

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

June 14, 2007

TO: Transportation Planning Board

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

RE: Letters Sent/Received Since the May 16th TPB Meeting

The attached letters were sent/received since the May 16th TPB meeting. The letters will be reviewed under Agenda #5 of the June 20th TPB agenda.

Attachments

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

_____)	
ENVIRONMENTAL DEFENSE and)	
SIERRA CLUB, Inc.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	07-cv-1480-AW
UNITED STATES DEPARTMENT OF)	
TRANSPORTATION, et al.,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS’ NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE OF COUNTS 9-13, 15, AND 37
AGAINST MPO DEFENDANTS PURSUANT TO RULE 41(a)(1)(i)**

Plaintiffs hereby give notice of their dismissal of Counts 9-13, 15, and 37 against Defendants Metropolitan Washington Council of Governments, Vincent C. Gray, National Capital Region Transportation Planning Board, and Catherine Hudgins (collectively, “MPO Defendants”) pursuant to Federal Rule of Civil Procedure 41(a)(1)(i). Plaintiffs state as follows:

1. This case was transferred from the District Court for the District of Columbia on May 17, 2007.
2. This case was docketed in this Court on June 5, 2007.
3. MPO Defendants have not filed an answer to Plaintiffs' claims against them.
4. MPO Defendants have filed a motion to dismiss, but not a motion for summary judgment.

5. The filing of a motion to dismiss does not terminate Plaintiffs' right of dismissal by notice. In re Microsoft Corp. Antitrust Litig., 332 F. Supp. 2d 890, 895 (D. Md. 2004) (internal quotations omitted); see Finley Lines Jt. Prot. Bd. Unit 200, Broth. Ry. Carmen, a Div. of Transp. Communications Union v. Norfolk So. Corp., 109 F.3d 993, 995-97 (4th Cir. 1997) (concluding that a motion to dismiss in lieu of an answer or motion for summary judgment, even when supported by extraneous materials, does not terminate a plaintiff's right to dismiss his claims under Rule 41(a)(1)(i)).
6. Plaintiffs meet the requirements of Federal Rule of Civil Procedure 41(a)(1)(i) and are, therefore, entitled to dismiss voluntarily without prejudice their claims against MPO Defendants.

DATED: June 13, 2007

Respectfully submitted,

/s/ William J. Chen, Jr.
William J. Chen, Jr. (Federal Bar. No. 02086)
200A Monroe Street, Suite 300
Rockville, MD 20850
Phone: 301-279-9500
Fax: 301-294-5195

Hope Babcock, Director
Erik Bluemel, Staff Attorney
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Phone: 202-662-9535
Fax: 202-662-9634

Robert E. Yuhnke
Robert E. Yuhnke & Associates
2910 Country Road 67
Boulder, CO 80303
Phone: 303-499-0425
*Counsel for Plaintiffs Environmental Defense
and Sierra Club*



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

14685 Avion Parkway
Chantilly, VA 20151
(703) 383-VDOT (8368)

DAVID S. EKERN, P.E.
COMMISSIONER

June 13, 2007

National Capital Region
Transportation Improvement Program Amendment

The Honorable Catherine Hudgins
Chairman, National Capital Region
Transportation Planning Board
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E.; Suite 300
Washington, DC 20002-4201

Dear Chairman Hudgins:

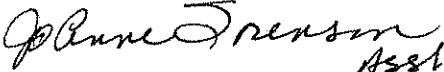
VDOT's Northern Virginia District Office requests amending the FY 2007-2012 Transportation Improvement Program (TIP) to add one interstate project. This project is categorically exempt from the air quality conformity analysis. VDOT requests this amendment be approved by the TPB Committee at its meeting on June 20, 2007.

VDOT Interstate Project:

- Interstate 66 – Improve Horizontal Alignment at Nutley Street Exit, Fairfax County. This amendment adds a new project for correcting a safety deficiency at the Nutley Street exit. Project funding will place \$125K in FY07 preliminary engineering and \$502K in FY09 construction using Federal STP/HES funds.

Upon approval of this amendment, please furnish copies of the approval to Ms. Jo Anne Sorenson (VDOT's Northern Virginia office) and to Mr. Chad Tucker in VDOT's Transportation and Mobility Planning Division in Richmond. Thank you for your consideration of and action on this request.

Sincerely,


Dennis C. Morrison
District Administrator
VDOT – Northern Virginia District
Asst. Dist. Engr. for

cc: Ms. Diane Mitchell, VDOT-PD (w/ attach.)
Ms. Deborah Grant, VDOT-PD “
Ms. Jo Anne Sorenson, VDOT-NoVA “
Mr. Bud Siegel, PE, VDOT-NoVA “
Mr. Robert McDonald, PE, VDOT- NoVA “

**NORTHERN VIRGINIA
TRANSPORTATION IMPROVEMENT PROGRAM
CAPITAL COSTS (in \$1,000)**

PROPOSED TIP AMENDMENT - 6/13/2007

FY 2007-12

Changes to existing entries are noted in bold.

Agency Project ID	Facility, Location, Description	Phase	Prev	Annual Element FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	Program Total FY 07-12	Funding Source	Funding Shares	
												Fed/stllo	
81321	Facility: Route 66 Improve Horizontal Alignment From: at Nutley Street Exit To: Rte 243 Jurisdiction: Fairfax County											80%	20%
	Reason for Amendment Air Quality												
		P.E.	0	\$125	0	0	0	0	0	0	\$627	Fed - STP/HES	
		ROW	0	0	0	0	0	0	0	0			
		Const	0	0	0	\$502	0	0	0	0			
	Description: Improve safety at guardrail placement on I-66 at Nutley Street exit. New project and adds \$125K to PE in FY07 and \$502K to CN in FY09 using STP/HES funds. Project is categorically exempt from an air quality conformity analysis.												

Note: The following funding definitions apply:

1. Fed BR is Bridge Replacement funds
2. Fed AC NH is advanced construction of NH funds.
3. Fed STP is Surface Transportation Program funds.
4. Fed DEMO is Federal Demonstration funds.
5. Fed HPD is TEA-21 High Priority

COMMONWEALTH of VIRGINIA

MULTIMODAL PLANNING OFFICE

June 7, 2007

Mr. Ronald Kirby
National Capital Regional Transportation Planning Board
777 North Capitol Street, NE
Suite 300
Washington, D.C. 20002

RE: ~~FY-2007 Multimodal Planning Grant Program~~

Dear Mr. Kirby:

I am pleased to inform you that the National Capital Regional Transportation Planning Board grant proposal for the Transportation/Land Use Connections Program project was selected to receive a Multimodal Planning Grant. Projects selected for this program may be completed by agency staff or your consultant. However, please note that in order to use a consultant that you already have on-board, the services must have been procured in accordance with the Virginia Public Procurement Act (VPPA) using a federally approved procedure and the project must be within the scope of services for which the consultant was hired. Additionally, the pre-award audit documentation must be approved by VDOT. If you plan to procure new consultant services for this project, they must be procured using the VPPA and federally approved procedure. You are encouraged to use VDOT's Guidelines for the Procurement and Management of Professional Services which is both consistent with VPPA and approved by the Federal Highway Administration (FHWA). VDOT's Guidelines for the Procurement and Management of Professional Services can be found on-line at: http://www.vdot.virginia.gov/business/resources/Updates_2005-Manual_clean%20copy_061130.pdf Attached are an overview of VDOT's procedures for securing consultant services and a recommended consultant procurement Fiscal Year 2008 timeline for your reference.

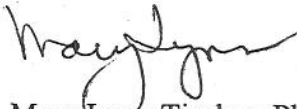
Expenditures must be consistent with the use of Title 23 CFR Part 420 and your FY-08 UPWP/CIP must be amended to include providing the 10% match for the project. VDOT will coordinate getting final approval of the grants from FHWA. Upon final approval from FHWA, the Multimodal Planning Grant agreement will be sent to you for signature. We anticipate that this process will take approximately five months.

Mr. Kirby
June 7, 2007
Page Two

As you begin the scoping process please include only the projects proposed for the Cities of Alexandria, Falls Church, Manassas Park and Loudoun County and Fairfax County (land use and project review).

One aim of this Program is to share innovation and educate others. Please plan to present project results and lessons learned at a transportation forum. Information regarding this presentation will be sent to you at a later date. Please feel free to contact the Multimodal Planning Grant Coordinator, Herbert Pegram at (804) 786-2865.

Sincerely,



Mary Lynn Tischer, PhD
Director

Commonwealth's Multimodal Transportation Planning Office

Consultant Procurement

Fiscal Year 2008 Timeline

Tasks	Month 1		Month 2			Month 3			Month 4			Month 5			Month 6										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
RFP & SOW approved by MMO & FHWA	1	2																							
Advertisement of RFP	3	4																							
Develop Expressions of Interest (EOI)	4	7																							
Establish Consultant Selection Committee	3	6																							
Committee Evaluates EOI's	8	8																							
Committee meets to discuss short list	8	9																							
Consultants Prepare Presentations	9	10																							
Consultants Presentations	11	11																							
Committee Selects Consultant	11	11																							
Contract Development / Negotiations	11	14																							
Pre-award Audit	15	18																							
Contract Execution	19	19																							

* Allow up to 5 months of new fiscal year to procure a consultant. Leaving 13 months to complete project.

**Transportation Planning Program
Overview
Procedures for Securing Consultant Services**

- A. The following procedures will assist the Grant Recipient's with the procurement of consultant services for projects of or above \$30,000. Please keep in mind that this process can take four to six months.**
1. Advertisement of a Request for Proposal (RFP)
 - The RFP should state that it is a solicitation for an expression of interest (EOI) and needs to contain a **brief** scope of work. The RFP needs to specify that the EOI should include the required qualifications and documentations and no more than five pages of additional information.
 - The RFP is to be submitted through the Commonwealth's Multimodal Office to FHWA for review and approval of the scope of work.
 - The RFP should be advertised for at least **14 calendar days** however, to provide a response opportunity to the maximum number of interested parties. A **four-week** cut off date is recommended.
 2. Selection Process
 - The selection committee needs to consist of representatives from the grant recipient and local jurisdiction. The Multimodal Office and FHWA may be offered an opportunity to serve on the committee.
 - The committee may use VDOT selection criteria and a scoring sheet.
 - Each EOI shall be independently evaluated and scored by each selection committee member. (This task should be completed with-in **two week** of receipt of the RFP)
 - The committee needs to meet to discuss the scoring and prepare a short list of three firms to be interviewed.
 3. Consultant Presentations
 - The Grant Recipient should allow the consultants a minimum of **one to two weeks** to prepare for their presentations.
 - The selection committee will conduct consultant presentations.
 - The committee will discuss and evaluate the presentations and make a selection.
 - The selection of a consultant can be made **one to two days** after presentations are given.
 4. Contract Negotiation
 - The selection committee meets with the consultant to discuss the scope of work.

- The consultant will develop a detailed scope by task to include man hours, hourly rate, overhead, pay burden, net fee (profit), non-salary direct cost, etc. **These are all the items needed for approval from a pre-award audit.**
 - The consultant submits the detailed scope of work to the Grant Recipient for approval.
 - The contract negotiations must be completed within a month after the selection of the consultant.
5. Pre-award Audit
- The Grant Recipient sends the necessary consultant information to the Multimodal Transportation Planning (MTP) project manager to review and forward to the External and Construction Audit Division (ECAD) for a pre-award audit approval.
 - The MTP project manager will notify the Grant Recipient when a pre-award audit has been approved.
 - A pre-award audit approval by the External and Construction Audit Division (ECAD) can take up to **30 days** to obtain assuming everything is in order.
6. Contract Implementation
- A Memorandum of Agreement (MOA) will be prepared between the Grant Recipient and consultant and must include state and federal required provisions. The agreement may be on a lump sum or on a unit cost (hourly rate) basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by VDOT which shall be determined by the pre award audit required in the Federal Surface Transportation Program Funds Agreement.
 - The MOA is executed after approval of the pre-award audit.
- B. Grant Recipient's requiring the use of professional services that the anticipated fee is expected to be \$30,000 or less is authorized to procure such services in the following manner.**
1. Develop a scope of work and proposed schedule for the project.
 2. Select from a list of firms which have performed similar services over the previous two biennium's or which are available to perform a specialty service that appear to be most qualified to render the required services.
 3. Solicit interest from firms to determine their current personnel's qualifications, experience, workload, capacity, and ability to perform the scope of work and meet the proposed schedule. Written documentation of the interview must be made a part

of the project file. It shall include the names and addresses of the firms contacted, the description of the required services, the names of the persons requesting and receiving the information, and the date the information was obtained.

- Up to \$5,000 – Solicit interest verbally from a minimum of one source.
 - Over \$5,000 to \$15,000 – Solicit interest verbally or in writing from a minimum of three sources.
 - Over \$15,000 to \$30,000 – Solicit interest in writing from a minimum of four sources.
 - Advertising in the Virginia Business Opportunities (VBO) is optional up to \$30,000, but encouraged over \$15,000.
4. Rank the firms in the order deemed most qualified and include written documentation of the reasons for the ranking in the project file. Past performance on prior projects should be considered.
 5. Negotiate a fee for the service with the first ranked firm. If negotiations fail to obtain a satisfactory agreement which is advantageous to the Grant Recipient and at a fair and reasonable fee, negotiations shall be formally terminated and the second ranked firm shall be selected for negotiation. This procedure shall be continued until a contract can be negotiated at a fair and reasonable fee for work to be performed.
 6. A Memorandum of Agreement is prepared between the Grant Recipient and the consultant which includes state and federal required provisions. The agreement may be on a lump sum or on a unit cost (hourly rate) basis and the overhead rates, average salary rates and fixed fee shall be within the range normally accepted by VDOT and shall be determined by the pre award audit required in the Federal Surface Transportation Program Funds Agreement.
 7. The agreement shall not be executed until VDOT's pre award audit has been completed. Any cost incurred prior to the execution of the agreement shall not be reimbursed by the Commonwealth's Multimodal Transportation Planning Office.
 8. Documentation of this process must be submitted to the Multimodal Transportation Planning Office project manager.



COMMONWEALTH of VIRGINIA

Office of the Governor

P.O. Box 1475
Richmond, Virginia 23218

Pierce R. Homer
Secretary of Transportation

(804) 786-8032
Fax: (804) 786-6683
TTY: (800) 828-1120

May 30, 2007

The Honorable John D. Porcari
Secretary of Transportation
7201 Corporate Center Drive
Hanover Maryland 21076

Dear Secretary Porcari:

Thank you for your recent letter regarding periodic meetings of an Executive Committee of the Metropolitan Area Transportation Operations Committee.

It would be a pleasure to participate in such periodic meetings. I also agree that your timeframe of once or twice a year is reasonable. Perhaps these meetings can be scheduled to occur either before or after Interstate Air Quality Committee meetings held at the Hall of States.

Thank you again for your letter and meeting invitation. I look forward to working with you on transportation improvements in the Washington Metropolitan Area.

Sincerely,

A handwritten signature in cursive script that reads "Pierce R. Homer".
Pierce R. Homer

PRH:ah

Copy: Mr. John Catoe
Mr. Ron Kirby
Mr. Emeka Moneme
Mr. John Contestabile



Maryland Department of Transportation
The Secretary's Office

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

John D. Porcari
Secretary

Beverly K. Swaim-Staley
Deputy Secretary

May 8, 2007

John Catoe, General Manager
Washington Metropolitan Area Authority
600 5th Street, NW
Washington, DC 20001

**SECRETARY OF TRANSPORTATION
RECEIVED**

MAY 15 2007

Pierce R. Homer, Secretary
Virginia Department of Transportation
202 North Ninth Street
Richmond, Virginia 23218

Ron Kirby, Director
Transportation Planning
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E., Suite 300
Washington, DC 20002-4239

Emeka Moneme, Director
District of Columbia
Department of Transportation
2000 14th Street, NW
6th Floor
Washington, DC 20009

Dear Secretary Homer and Messrs. Catoe, Kirby, and Moneme:

I would like to acknowledge the fine work that our respective staff have done in framing the "Metropolitan Area Transportation Operations Committee" (MATOC). The agreement we all recently signed represents a milestone in regional coordination and cooperation, addressing how we might better work together on major transportation incidents.

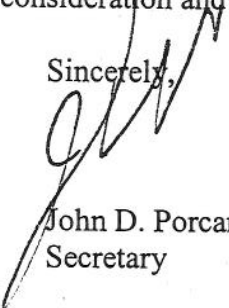
That agreement calls for each of us to name members of our staff to a "Steering Committee" who will guide the development of this concept and provide direction to the Washington Council of Governments (COG) and any consultants assisting in this endeavor. The Steering Committee is certainly needed to work through all of the inevitable details associated with this effort.

Secretary Homer and Messrs. Catoe, Kirby, and Moneme
Page Two

Nevertheless, I suggest that we, as the executive sponsors of this effort, have a key role to play. I believe it is worth our attention to come along side the Steering committee and support this important work. Therefore, I ask that we come together to form a MATOC "Executive Committee", meeting periodically (once or twice per year) to review the progress of this effort and provide executive input.

Given the importance of this effort, its visibility within the region and its potential funding and operational ramifications, I urge you to support this proposal. Should you wish to discuss this, please contact Mr. John Contestabile, Acting Assistant Secretary for Administration, at 410-865-1120. I look forward to your consideration and support.

Sincerely,



John D. Porcari
Secretary

cc: Mr. John Contestabile, Acting Assistant Secretary for Administration, Maryland
Department of Transportation
Mr. Soumya S. Dey, P.E., Interim Associate Director, District Department of
Transportation, Traffic Services Administration
Mr. Andrew Meese, Principal Transportation Planner, Metropolitan Washington Council
of Governments National Capital Region Transportation Planning Board
Mr. W. Mark Miller, Emergency Planning-Operations Coordinator, Washington
Metropolitan Area Transit Authority



U.S. Department
of Transportation

Federal Transit Administration
Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103
215-656-7100

Federal Highway Administration
DC Division
1990 K Street, N.W., Suite 510
Washington, DC 20006
202-219-3536

MAY 29 2007

Honorable Catherine M. Hudgins, Chairman
National Capital Region Transportation Planning Board
c/o Mr. Ronald Kirby, Director of Transportation Planning
Metropolitan Washington Council of Governments
777 North Capital Street, NW, Suite 300
Washington, D.C. 20002-4201

Re: FY 2008 Unified Planning Work Program

Dear Chairman Hudgins:

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have completed a review of the proposed FY 2008 Unified Planning Work Program (UPWP) for the Washington, D.C. urbanized area, which includes the administration of Metropolitan Planning Program and State Planning and Research Program activities.

In accordance with the Final FHWA/FTA Rulemaking: Statewide and Metropolitan Transportation Planning, 23 CFR Parts 450 and 500; 49 CFR Part 613, we find that all appropriate transportation related planning work is included in the UPWP effective July 1, 2007. The UPWP for the National Capital Region Transportation Planning Board is hereby approved.

FHWA/FTA actions beginning July 1, 2007, will require SAFETEA-LU compliance of the metropolitan planning documents that are being approved. Per SAFETEA-LU, the July 1st compliance date applies to all State, MPO, and FHWA/FTA actions on long-range transportation plans and programs taken on or after July 1, 2007 (i.e., updates, amendments, STIP approvals, and conformity determinations are subject to this provision).

Our authorization is subject to the availability of Federal funds for transportation planning activities in the urbanized area.

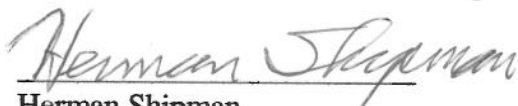
**MOVING THE
AMERICAN
ECONOMY**

General Comments:

- Continue with transportation plans that will include operational and management strategies to improve the performance of existing transportation facilities and to relieve congestion in order to maximize the safety and mobility of people and goods.
- Give explicit consideration to major issues such as fiscal constraint, guidance for linking transportation planning & NEPA, and the development of coordinated public transit-human services transportation plans.
- Planning cycles address the new four-year cycles for metropolitan transportation plans within non-attainment areas and five-year cycles apply for metropolitan transportation plans within attainment areas. The STIPs and MPO TIPs must be updated at least every four years, and cover a period of no less than four years.
- Security and safety are now separated into two different planning factors to add emphasis to each. The final rulemaking encourages the transportation planning process to be consistent with applicable security plans, programs, and projects. Long-range statewide and metropolitan transportation plans should include a security element that incorporates or summarizes the priorities, goals, or projects contained and set forth in other transit safety and security planning and review processes.

Any questions concerning this approval action should be directed to Sandra Jackson, of the FHWA District of Columbia Division, at (202) 219-3521, or Deborah Burns, of the FTA Washington, DC Metropolitan Office, at (202) 219-3565.

Sincerely,



Herman Shipman
Acting Regional Administrator
Federal Transit Administration



Mark R. Kehrli
Division Administrator
Federal Highway Administration

Enclosure

cc: Kwame Arhin, FHWA, MD w/ attachment
Unwanna Dabney, FHWA, VA w/attachment
Michele Destra, FTA
Joanne Sorenson, VDOT
Lyn Erickson, MDOT
Mark Rawlings, DDOT
Jason Harrington, WMATA