

## **ITEM 8 - Action**

April 16, 2008

Approval of a Contingency Course of Action for the Air Quality Conformity Assessment for the 2008 CLRP and FY 2009-2014 TIP which Does Not Rely on Funding From the Northern Virginia Transportation Authority (NVTA)

### **Staff**

**Recommendation:** Adopt Resolution R22-2008 to approve a contingency course of action for the air quality conformity assessment for the 2008 CLRP and FY 2009-2014 TIP which does not rely on NVTA funding.

**Issues:** None

**Background:** At the February 20 meeting, the Board approved the major projects submitted for inclusion in the air quality conformity assessment for the 2008 CLRP and FY 2009-2014 TIP. On February 29, the Virginia Supreme Court declared that the taxing ability of the NVTA was unconstitutional. Unless the Virginia General Assembly acts by June to restore this NVTA funding, certain projects approved by the TPB on February 20 for inclusion in the conformity assessment will have to be delayed or removed entirely from the 2008 CLRP and FY 2009 -2014 TIP. Due to the uncertainty of the NVTA funding for some of the projects approved by the TPB on February 20, the Board will be briefed on a contingency course of action for the conformity assessment for the 2008

CLRP and FY 2009 -2014 TIP which does not rely on NVTA funding, as described in the attached memorandum.

NATIONAL CAPITAL REGION TRANSPORTATION PLANNING BOARD  
777 NORTH CAPITOL STREET, N.E.,  
WASHINGTON, D.C. 20002-4239

RESOLUTION TO APPROVE  
A CONTINGENCY COURSE OF ACTION  
FOR THE AIR QUALITY CONFORMITY ANALYSIS FOR  
THE 2008 CONSTRAINED LONG RANGE PLAN (CLRP) AND  
FY 2009-2014 TRANSPORTATION IMPROVEMENT PROGRAM (TIP)  
WHICH DOES NOT RELY ON FUNDING FROM THE NORTHERN VIRGINIA  
TRANSPORTATION AUTHORITY (NVTA)

**WHEREAS**, the National Capital Region Transportation Planning Board (TPB), as the metropolitan planning organization for the Washington Metropolitan Area, has the responsibility under the provisions of Safe, Accountable, Flexible, and Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU) for developing and carrying out a continuing, cooperative and comprehensive transportation planning process for the Metropolitan Area; and

**WHEREAS**, on February 20, 2008, the TPB adopted resolution R15-2008 approving a set of project submissions, some of which include Northern Virginia Transportation Authority (NVTA) funded projects, for inclusion in the air quality conformity assessment for the 2008 CLRP and FY 2009-2014 TIP ; and

**WHEREAS**, the schedule calls for the TPB to release the 2008 CLRP, the FY 2009 -2014 TIP and conformity assessment for public comment in June and for adoption in July; and

**WHEREAS**, on February 29, 2008 the Virginia Supreme Court declared that the taxing ability of the NVTA was unconstitutional; and

**WHEREAS**, in the attached letter of March 6, 2008 to the Virginia Department of Transportation (VDOT), the Virginia Division of the Federal Highway Administration (FHWA) states that any amendments to the CLRP or TIP must reflect the current revenue situation in order to meet federal fiscal constraint requirements, which means that unless the Virginia General Assembly acts by June to restore NVTA funding, certain projects approved by the TPB on February 20 for inclusion in the conformity assessment will have to be delayed or removed entirely from the 2008 CLRP and FY 2009 -2014 TIP; and

**WHEREAS**, in the attached letter of March 17, 2008 to Virginia Division of FHWA, VDOT expresses confidence that the Virginia General Assembly will, in the near future, provide a funding mechanism for raising additional transportation revenues for Northern Virginia; and

**WHEREAS**, if the NVTA funding has been restored by the Commonwealth by June, the

TPB will release the 2008 CLRP, the FY 2009 -2014 TIP and conformity assessment with the projects as approved on February 20 for public comment as scheduled originally; and

**WHEREAS**, due to the uncertainty of the NVTA funding for some of the projects approved by the TPB on February 20, a contingency course of action is required for the conformity assessment for the 2008 CLRP and FY 2009 -2014 TIP; and

**WHEREAS**, in the attached letter of April 10, 2008, VDOT requests that the TPB have a contingency course of action for the 2008 CLRP and FY 2009-2014 TIP, with the following two components: (1) that TPB adopt an FY 2009 -2014 TIP in July so the VDOT portion of the TIP can be included in the new FY 2009 VDOT State Transportation Improvement Program (STIP) which needs to be approved by the FHWA and FTA by September of this year when the current STIP expires, and (2) that TPB conduct a conformity assessment for the 2008 CLRP and FY 2009 -2014 TIP with an alternative set of project inputs that do not depend on NVTA funding; and

**WHEREAS**, a contingency course of action for the conformity assessment for the 2008 CLRP and FY 2009 -2014 TIP with the two components requested by VDOT is described in detail in the attached memorandum to the TPB of April 10, 2008 ; and

**WHEREAS**, on April 16, 2008, the TPB was briefed on the contingency course of action and schedule, and the contingency set of project submissions that remove from the 2008 CLRP and FY 2009-2014 TIP those project inputs approved by the TPB in February which are dependent on NVTA funding and for which funding may no longer be reasonably expected to be available; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the National Capital Region Transportation Planning Board approves the contingency course of action and schedule described in the attached memorandum of April 10 2008, and the contingency set of project submissions for inclusion in the air quality conformity assessment for the 2008 CLRP and FY 2009-2014 TIP, as described in the attachment to the VDOT letter of April 10, 2008.



U. S. Department  
of Transportation

Virginia Division  
(804) 775-3320

400 N. 8<sup>th</sup> Street, Rm. 750  
Richmond, VA 23219

**Federal Highway  
Administration**

March 6, 2008

Marsha Fiol, Division Administrator  
Transportation and Mobility Planning Division  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219

Dear Ms. Fiol,

On Friday, February 29, 2008 the Virginia Supreme Court declared that the taxing ability granted to the regional transportation authorities in the Hampton Roads and Northern Virginia regions of the Commonwealth of Virginia during the 2007 Virginia General Assembly is unconstitutional. The Virginia Division of the Federal Highway Administration wishes to clarify the impact that this ruling may have on the transportation plans and programs in these regions.

As you know, federal transportation planning regulations require that metropolitan transportation plans, metropolitan transportation improvement programs (TIPs), and the statewide transportation improvement program (STIP) demonstrate fiscal constraint as to how projects therein will be implemented using funding sources that are reasonably expected to be available. The recent court ruling regarding the regional authorities established in Hampton Roads and Northern Virginia calls into question the availability of future revenues from these entities that may have been used to fiscally constrain metropolitan transportation plans, TIPs, and subsequently, the STIP.

In cases in which the FHWA and the FTA have found a metropolitan transportation plan, TIP, or the STIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced, the FHWA and the FTA will not withdraw the original determination of fiscal constraint on these planning documents. However, in such cases, federal action will not be taken on an updated or amended plan that does not reflect the changed revenue situation. Updates or amendments to a TIP, or the STIP would be acceptable as long as they do not include the removed or reduced sources of funding.

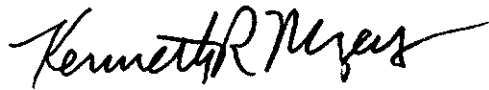
Federal actions include planning and conformity findings on plans and programs and approval of amendments to the STIP. If a plan, TIP or STIP lists revenues from these authorities as funding sources for projects therein, federal action will not be taken on these documents or projects therein until an alternative funding source is identified or the project is removed from the plan or program. Until federal action is deemed necessary on these documents, the fiscal constraint determination previously made is still considered valid.

An amendment is a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). An amendment requires public review and comment, redemonstration of fiscal constraint, or a conformity determination.

In summary, any amendments to the plans or programs must reflect the current revenue situation in order to meet Federal fiscal constraint requirements.

FHWA is committed to working cooperatively with the state and the MPOs to implement the statewide and metropolitan planning processes in Virginia. If you have additional questions please contact Kenneth Myers of my staff at (804) 775-3353.

Sincerely,



*for* Roberto Fonseca-Martinez  
Division Administrator

CC: Ms. Diane Mitchell, VDOT Programming Division  
Mr. Dennis Heuer, VDOT Hampton Roads District  
Mr. Morteza Salehi, VDOT Northern Virginia District  
Mr. Author Collins, Hampton Roads Planning District Commission  
Mr. Ronald Kirby, Metropolitan Washington Council of Governments



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219-2000

David S. Ekern, P.E.  
COMMISSIONER

March 17, 2008

Mr. Roberto Fonseca-Martinez  
Virginia Division Administrator  
Federal Highway Administration  
400 N. 8<sup>th</sup> Street, Room 750  
Richmond, VA 23219

Dear Mr. Martinez:

Thank you for your recent response to VDOT regarding the impact of the recent Virginia Supreme Court decision related to the unconstitutionality of regional transportation authorities levying taxes.

While we are certainly disappointed in the ruling and are concerned about the impact on the Commonwealth and the Metropolitan Planning Organizations' (MPOs) ability to amend their metropolitan plans, transportation improvement programs, and the statewide transportation improvement program, we are confident that the General Assembly will, in the near future, provide a funding mechanism for raising additional transportation revenues for these regions. The General Assembly's resolve to provide additional transportation revenues is evidenced by their action taken last year.

We appreciate your commitment to working with the Commonwealth and the MPOs to implement statewide and metropolitan planning processes in Virginia.

Sincerely,

A handwritten signature in cursive script that reads "David S. Ekern".

David S. Ekern, P.E.  
Commissioner

- c:
- Mr. Paul D. Fraim, Hampton Roads MPO Chairman
  - Mr. Phil Mendleson, National Capitol Transportation Planning Board Chairman
  - Mr. Kenneth R. Myers, FHWA
  - The Honorable Pierce R. Homer, Virginia Secretary of Transportation
  - Mr. Richard L. Walton, Jr., Chief Policy, Planning, and the Environment
  - Ms. Marsha C. Fiol, VDOT Planning Division
  - Ms. Diane Mitchell, VDOT Programming Division
  - Mr. Dennis Heuer, VDOT Hampton Roads District
  - Mr. Morteza Salehi, VDOT Northern Virginia District
  - Mr. Author Collins, Hampton Roads Planning District Commission
  - Mr. Ronald Kirby, Metropolitan Washington Council of Governments



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF TRANSPORTATION

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

DAVID S. EKERN, P.E.  
COMMISSIONER

April 10, 2008

National Capital Region  
Transportation Improvement Program Amendment.

The Honorable Phil Mendelson, 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 Mendelson:

In keeping with the TPB discussions on March 19, 2008, regarding the proposed changes to the previously approved (February 20, 2008) air quality conformity inputs for the 2008 CLRP/FY 2009-2014 TIP, the Virginia Department of Transportation (VDOT) submits the attached list of changes. The changes to the previously approved conformity inputs stem from the February 29, 2008 Virginia Supreme Court ruling that has, at the present time, impacted the funding available to the Northern Virginia Transportation Authority (NVTA) to advance transportation improvements projects/programs. Due to the uncertainty of the NVTA funding for some of the projects approved by the TPB on February 20, VDOT requests that TPB have a contingency course of action for the conformity assessment for the 2008 CLRP and FY 2009-2014 TIP.

Firstly, VDOT requests that the TPB take steps to adopt an FY 2009-2014 TIP in July so the VDOT portion of the TIP can be included in the new FY 2009 VDOT State Transportation Improvement Program (STIP) which needs to be approved by the FHWA and FTA by September of this year when the current STIP expires. This could be accomplished by releasing for public comment in June a FY 2009-2014 TIP that utilizes the conformity determination for the 2007 CLRP and FY 2008-2013 TIP approved by the TPB in January 2008 and only includes project funding and timing changes that do not affect conformity.



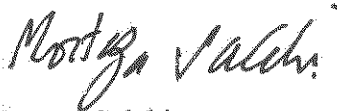
Dear Chairman Mendelson:  
April 10, 2008

Secondly, VDOT requests that the TPB develop an alternative set of conformity inputs and conformity analyses for the 2008 CLRP/FY 2009-2014 TIP which would not include any projects depending on NVTA's funding. The projects in the attached list were previously included in the conformity inputs for the 2008 CLRP/FY 2009-2014 TIP and depended, wholly or in part, on NVTA funds. After having reviewed the NVTA list of proposed projects and examined the potential for alternative sources of funding, NVTA member jurisdiction staffs have provided VDOT the attached list of projects whose implementation has either been delayed or rendered uncertain at this time. The NVTA is scheduled to review the attached list of changes at their meeting later this afternoon. On behalf of all of the Northern Virginia jurisdictions and agencies, VDOT requests that TPB reflect the changes on the attached list in its contingency air quality conformity analysis for the 2008 CLRP/FY 2009-2014 TIP.

VDOT notes that the TPB will provide a public comment period once the air quality conformity analysis has been completed and prior to adopting the CLRP and TIP updates. We understand that the conformity analysis for the 2008 CLRP and associated FY 2009-2014 TIP update with this revised set of projects will not be ready for TPB approval in July, as per the previous schedule. VDOT was informed that the air quality conformity analysis will be ready for public comment in September and TPB's approval by October of this year. VDOT recognizes that extra time will be needed to conduct this conformity analysis and looks forward to the adoption of the new CLRP and TIP in October of this year should the contingency course of action be required.

Should you have any questions on the attached list, please do not hesitate to contact Ms. Jo Anne Sorenson, VDOT's Assistant District Engineer for Planning and Development.

Sincerely,



Morteza Salehi  
District Administrator  
VDOT – Northern Virginia District

cc: Ms. Jo Anne Sorenson, VDOT- ADE, TPD (w/ attach.)  
Ms. Marsha Fiol, VDOT- TMPD “  
Ms. Dianne Mitchell, VDOT – PD “  
Mr. William Cuttler, VDOT – ADE, PE “  
Mr. John Lynch, VDOT- L&D “  
Ms. Helen Cuervo, VDOT - ADE “  
Mr. Farid Bigdeli, VDOT - ADE “  
Ms. Renee Hamilton, VDOT - ADE “  
Mr. Robert McDonald, VDOT-TPS “

## Proposed Changes To The Conformity Inputs For The 2008 CLRP/FY 2009-2014 TIP

### Highway Projects:

#### City of Alexandria:

1. Eisenhower Avenue widening. Delayed; 2009 to 2011

#### Fairfax County:

2. Fairfax County Parkway/Fair Lakes Interchange. Delayed; 2010 to 2011
3. Springfield Connectivity Study Recommendations Delayed; 2011 to 2014

#### City of Fairfax:

4. Northbound Chain Bridge Road/Willow Crescent Dr. - construct new intersection Delayed; 2009 to 2010

#### Loudoun County:

5. Construction of South Collector Road (Purcellville) from Route 690 to Route 7. Delayed; 2011 to 2015.
6. Construction of Route 15 Bypass interchange at Edwards Ferry Road. Delayed; 2015 to 2020.
7. Construction of Route 7/Route 659 interchange. Delayed; 2015 to 2020.
8. Widening of Route 15 from Evergreen Mill Road to the Leesburg City Limits. Delayed; 2011 to 2015.

#### Prince William County:

9. Widening of Route 1 (Neabsco Mills Road to Featherstone Road). Delayed; 2013. Change project to PE only.
10. Widening of Route 28 (Fitzwater Drive to Vint Hill Road). Drop from CLRP/Conformity.
11. Widening of Prince William County Parkway (Hoadly Road to Old Bridge Road). Delayed; 2013. Change project to PE only.
12. Widening of Prince William County Parkway (Old Bridge Road to Minnieville Road). Delayed; 2013. Change project to PE only.
13. Widening of Minnieville Road (Spriggs Road to Route 234). Delayed (2012 to 2013)
14. Construction of University Boulevard (Hombaker Road to Wellington Road). Drop from CLRP

**Proposed Changes To The Conformity Inputs For The 2008 CLR/FY 2009-2014 TIP**

**Transit Projects:**

City of Alexandria:

1. Potomac Yards Transitway.

Delayed; 2011 to 2013

Arlington County/Fairfax County:

2. Columbia Pike Streetcar project.

Delayed; 2014 to 2016

Fairfax County:

3. Fairfax Connector buses (reduced from 76 to 35).
4. Engineering Proving Grounds (EPG) Park-and-Ride Lot
5. Springfield Central Business District (CBD) Park-and-Ride Lot

Delayed; 2010 to 2011.  
Delayed; 2011 to 2013  
Delayed; 2011 to 2014

Loudoun County:

6. Sterling-Ashburn Park-and-Ride Lot

Delayed; 2010 to 2012.

V R E:

7. Seven locomotives for the Virginia Railway Express. (Replacement locomotives)

Delayed; 2010 to later.

# 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

## MEMORANDUM

April 10, 2008

**TO:** Transportation Planning Board

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

**SUBJECT:** A Contingency Course of Action for the 2008 CLRP and FY 2009-2014  
TIP Conformity Assessment

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### Background

On February 20, 2008, the TPB approved a set of project submissions for inclusion in the air quality conformity assessment for the 2008 CLRP and FY 2009 -2014 TIP. The draft 2008 CLRP, TIP and conformity assessment are scheduled to be released for public comment in June and adopted by the TPB on July 16.

On February 29, the Virginia Supreme Court declared that the taxing ability of the Northern Virginia Transportation Authority (NVTA) was unconstitutional. Unless the Virginia General Assembly acts by June to restore this NVTA funding, certain projects approved by the TPB on February 20 for inclusion in the conformity assessment will have to be delayed or removed entirely from the 2008 CLRP and FY 2009 -2014 TIP. Due to the uncertainty of the NVTA funding for some of the projects approved by the TPB on February 20, we need a contingency course of action for the conformity assessment for the 2008 CLRP and FY 2009 -2014 TIP.

### Original Course of Action

The original course of action utilizes the conformity inputs and schedule approved by the TPB at its February 20 meeting, including all of the NVTA funded projects and the BRAC projects. This conformity analysis will be ready to be released for public comment in June and adopted in July, along with the 2008 CLRP and FY 2009 -2014 TIP. By June, we will know if the NVTA funding has been restored by the Commonwealth. If this funding has been restored, the TPB will be able to proceed in accordance with the original conformity analysis and schedule. If not, we will need a contingency course of action.

## Contingency Course of Action

The TPB needs to adopt an FY 2009 -2014 TIP in July so the VDOT portion of the TIP can be included in the FY 2009 VDOT State Transportation Improvement Program (STIP). VDOT did not develop a FY 2008 STIP and is currently working on having a new FY 2009 STIP approved by the FHWA and FTA by September of this year when the current STIP expires. DDOT and MDOT also need to be able to proceed with an FY 2009-2014 TIP in accordance with the original schedule. In order to accomplish these objectives, the contingency course of action will have two components:

(1) Utilizing the conformity determination for the 2007 CLRP and FY 2008-2013 TIP approved by the TPB in January 2008, create an FY 2009-2014 TIP that can be released for public comment in June and adopted in July. This TIP will not include any of the project updates affecting conformity that were submitted for the 2008 CLRP and FY 2009 -2014 TIP conformity assessment, but will include all project funding and timing changes that do not affect conformity. Adopting this FY 2009-2014 TIP in July will allow VDOT to meet the September deadline to have a FY 2009 STIP adopted for the state, and will also allow DDOT and MDOT to proceed with a FY 2009-2014 TIP on the original schedule.

( 2) Remove from the proposed 2008 CLRP and FY 2009-2014 TIP those project inputs approved by the TPB in February which are dependent on NVTA funding and for which full funding may no longer be reasonably expected to be available. The TPB will be asked to approve this list of changes to the project submissions for the conformity assessment of the 2008 CLRP at its April 16 meeting. This conformity assessment, the 2008 CLRP and amended FY 2009-2014 TIP will be ready for public release in September, and for adoption by the TPB in October. Once the conformity determination for the 2008 CLRP and amended FY 2009-2014 TIP is approved by FHWA and FTA (likely in early December), DDOT, MDOT and VDOT will be able to amend their FY 2009 STIPs to incorporate updates, changes and new projects.