

**Item #5**

District of Columbia
Bowie
College Park
Frederick County
Gaithersburg
Greenbelt
Montgomery County
Prince George's County
Rockville
Takoma Park
Alexandria
Arlington County
Fairfax
Fairfax County
Falls Church
Loudoun County
Manassas
Manassas Park
Prince William County

MEMORANDUM

Date: June 15, 2005

To: Transportation Planning Board

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

Re: Air Quality Conformity Determination for the 2004
Constrained Long Range Plan (CLRP) and the FY2005-2010
Transportation Improvement Program (TIP)

Attached is the conformity determination made by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for the 2004 CLRP and the FY2005-2010 TIP for both the one-hour and the eight-hour ozone and CO standards. Also attached is correspondence related to comments made by EarthJustice to FHWA/FTA on the conformity determination.

Attachment



U.S. Department
of Transportation

Federal Transit Administration
Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103
215-656-7100
215-656-7260 (fax)

Federal Highway Administration
DC Division
1990 K Street, N.W., Suite 510
Washington, DC 20006
202-219-3536
202-219-3545 (fax)

June 14, 2005

Honorable Phil Mendelson, 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: Air Quality Conformity Determination – Washington Metropolitan Area 2004 Constrained Long Range Plan and FY 2005-2010 Metropolitan Transportation Improvement Program

Dear Chairman Mendelson:

The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have completed our review of the Air Quality Conformity Determination of the 2004 Constrained Long Range Plan (CLRP) and FY 2005-2010 Metropolitan Transportation Improvement Program (MTIP) for the Washington Metropolitan Area adopted by the Transportation Planning Board (TPB) on November 17, 2004. Our review has been coordinated with the FHWA Maryland and Virginia Division offices, and the Environmental Protection Agency (EPA) Region III Office.

The metropolitan Washington D.C. area is currently both a severe 1-hour and moderate 8-hour non-attainment area for ozone and a maintenance area for carbon monoxide (CO). The EPA conformity rule provides for the option of conducting a conformity analysis prior to the setting of new mobile budgets using the existing 1-hour budgets to demonstrate conformity under the 8-hour standard. This finding covers the 1-hour and 8-hour ozone and CO standards.

FHWA/FTA has determined that the 2004 CLRP and FY 2005-2010 MTIP submitted on December 14, 2004, conform to the region's State Implementation Plans, and that the conformity determination has been performed in accordance with the Transportation Conformity Rule (40 CFR Part 93).

EPA, in letters to FHWA's District of Columbia Division dated February 15, 2005 for the 1-hour conformity determination and April 14, 2005 for the 8-hour standard to the air quality conformity (enclosures), acknowledges its review and includes technical documentation that supports the conformity finding of the region's 2004 CLRP and FY 2005-2010 MTIP. EPA's technical support document deferred the questions of modeling acceptability and fiscal constraint to FHWA/FTA.

Mr. Phil Mendelson

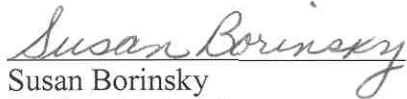
Re: Air Quality Conformity Determination, Washington Metropolitan Area

Page 2

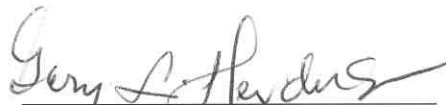
We find the travel demand model to be acceptable for regional conformity analysis. Based on our review of funds available and reasonably expected to be available, as well as projected expenditures in the 2004 CLRP and FY 2005-2010 MTIP, we also find, in accordance with 23 USC Section 134, 49 USC Section 5303, and 23 CFR Part 450, that the fiscal constraint requirements have been met.

As you know, this conformity determination does not constitute a Federal agency project-related approval. Any questions concerning this conformity determination should be directed to Sandra Jackson, of the FHWA District of Columbia Division, at (202) 219-3521, Deborah Burns of the FTA Washington, D.C. Metropolitan Office, at (202) 219-3565, or Tony Tarone, of the FTA Region III Office, at (215) 656-7061.

Sincerely,



Susan Borinsky
Regional Administrator
Federal Transit Administration



Gary L. Henderson
Division Administrator
Federal Highway Administration

Enclosures

cc: Dan Tangherlini, District of Columbia Division of Transportation
Richard White, Washington Metropolitan Area Transit Authority
JoAnne Sorenson, Northern Virginia District Office, VDOT
Kellie Gaver, Maryland Department of Transportation
Sherry Ways, FHWA Maryland Division
Uwanna Bellinger, FHWA Virginia Division
Brian Glenn, FTA Washington DC Metropolitan Office
Martin Kotsch, EPA Region III
Gloria M. Shepherd, FHWA Office of Planning
Charlie Goodman, FTA Office of Planning and Environment
Copies to: file, chron, Burns, Destra, Tarone, McFadden-Roberts, Kampf



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

February 15, 2005

Mr. Gary L. Henderson
Divisional Administrator
Federal Highway Administration,
District of Columbia Division
1900 K Street, NW, Suite 510
Washington, D.C. 20002

Dear Mr. Henderson:

The United States Environmental Protection Agency, Region III has reviewed the Conformity Determination for the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program (TIP) as adopted by the National Capital Region Transportation Planning Board (TPB) and submitted to us by the Federal Highway Administration (FHWA) on January 22, 2004. EPA has reviewed the Conformity Determination in accordance with the procedures and criteria of the Transportation Conformity Rule contained in 40 CFR part 93, sections 93.106, 93.108, 93.110, 93.111, 93.112, 93.113(b), 93.113(c) and 93.118.

Based upon our review, we concur with the Conformity Determination for the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program as adopted by the National Capital Region Transportation Planning Board. Enclosed please find a copy of our detailed evaluation entitled, "Technical Support Document for Review of the Conformity Determination of the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program." It should be noted that in our technical support document we are deferring to the FHWA on the question of whether the modeling is acceptable and whether the Plan and TIP are fiscally constrained. Therefore, our concurrence on the overall conformity determination is predicated upon FHWA determining that the modeling is acceptable and that the Plan and TIP are fiscally constrained.

Please feel free to call Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch at (215) 814-2076 or Martin T. Kotsch, at (215) 814-3335 to discuss this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith M. Katz".

Judith M. Katz, Director
Air Protection Division

Enclosure

cc: Valencia Thomson (FHWA, MD)
Sandra Jackson (FHWA, DC)
Ed Sundra (FHWA, VA)
Howard Simons (MDOT)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

February 14, 2005

SUBJECT: Technical Support Document for Review of the Conformity Determination of the 2004 Constrained Long Range Plan and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program

FROM: 
Martin T. Kotsch, P.E. (3AP23)

TO: Administrative Record of EPA's Review of the Conformity Determination of the 2004 Constrained Long Range Plan and the FY 200-2010 Metropolitan Washington Transportation Improvement Program

THRU: Carol Febbo, Chief 
Energy, Radiation and Indoor Environment Branch (3AP23)

The purpose of this document is to review the November 17, 2004 air quality conformity determination of the 2004 Constrained Long Range Plan (CLRP) and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program (TIP) prepared by the Metropolitan Washington Council of Governments, National Capital Region Transportation Planning Board (TPB). The TIP and CLRP conformity determination entitled, "Air Quality Conformity Determination of the 2004 Constrained Long Range Plan and the FY2004-2009 Transportation Improvement Program for the Washington Metropolitan Region" was submitted to the Environmental Protection Agency (EPA) on December 21, 2004 by the District of Columbia Division of the United States Federal Highway Administration (FHWA).

The conformity determination was reviewed in accordance with the procedures and criteria of the Transportation Conformity Rule, 40 CFR Part 93, Sections 93.106, 93.108, 93.110, 93.111, 93.112, 93.113(b), 93.113(c) and 93.118.

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

SECTION of 40 CFR Part 93	CRITERIA	Y/ N	COMMENTS
93.110	<p>Is the conformity determination based upon the latest planning assumptions?</p> <p>(a) Is the conformity determination, with respect to all other applicable criteria in §§93.111 - 93.118, based upon the most recent planning assumptions in force at the time of the conformity determination?</p> <p>(b) Are the assumptions derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other designated agency? Is the conformity determination based upon the latest assumptions about current and future background concentrations?</p>	Y	<p>(a) & (b) The conformity determination is based upon latest planning assumptions in force and approved by the TPB at the time of the determination. The assumptions include:</p> <p>1) Travel Demand Modeling Assumptions: - Use of newer Version 2.1D travel demand model process -New travel survey data incorporated. - Development of new forecast years for analysis</p> <p>2) Emissions Model Assumptions: MOBILE6.2 modeled emissions factors were developed for years; 2005, 2015, 2025, 2030 for Ozone and 2007, 2016, 2025, 2030 for CO</p> <p>3)Emissions Factor Assumptions -Enhanced I/M was assumed in DC, MD, VA -Low emission vehicle program was modeled -No oxygenated fuels were assumed for wintertime -Tier 2 / low sulfur vehicle controls were modeled</p> <p>4) Vehicle Registration Data: 2002 data for Maryland, DC and Virginia</p> <p>5) Land Activity Assumptions (growth forecasts): -In November, 2004 Round 6.4A forecasts were approved by the TPB for use in the conformity determination. As a result, household data as well as employment data have been updated. New growth figures between 2005 and 2030 used in this determination are shown below: -Household: 27% increase -Employment: 37% increase</p>

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

93.110	<p>(c) Are any changes in the transit operating policies (including fares and service levels) and assumed transit ridership discussed in the determination?</p> <p>(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.</p> <p>(e) Does the conformity determination use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented?</p> <p>(f) Are key assumptions specified and included in the draft documents and supporting materials used for the interagency and public consultation required by §93.105?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>(c) Transit policies such as frequency and hours of operation were updated from the last conformity determination</p> <p>(d) Transit ridership and services were adjusted to reflect increased fares from several providers within the affected region. No changes in bridge tolls are anticipated at this time</p> <p>(e) All of the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.</p> <p>(f) Appendix A of the conformity determination provides key assumptions for this conformity determination. This document and its earlier drafts were developed through the interagency and public consultation process detailed in the chart on pages A8-A9 of Appendix A.</p>
93.111	Is the conformity determination based upon the latest emissions model?	Y	This conformity determination used the mobile emissions model: MOBILE6.2, the latest EPA emissions model available to do the emissions analysis.

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

93.112	Did the MPO make the conformity determination according to the consultation procedures of the conformity rule or the state's conformity SIP?	Y	<p>Consultation procedures were followed in accordance to the TPB consultation procedures. These procedures are based on the procedures of the Federal Conformity Rule.</p> <p><u>Interagency Consultation</u> The TPB has consulted with all appropriate agencies. This includes the District of Columbia Environmental Regulation Administration, Maryland Department of the Environment, Maryland Department of Transportation, Maryland Office of Planning, Virginia Department of Environmental Quality, Virginia Department of Transportation, Federal Highway Administration, EPA, and county representatives of the counties of the Metropolitan Washington D.C. area.</p> <p><u>Public Consultation</u> The TPB has provided opportunities for public comment on the TIP and the CLRP. The public was invited to comment on the proposed TIP and CLRP amendments between April 10, 2004 and May 16, 2004. On October 1, 2004 the TPB released for public comment, the draft air conformity analysis for the TIP and CLRP for thirty days. Several public comments relevant to air quality that were received are summarized below:</p> <p>1) Several comments stated that the proposed Inter County Connector Project in Maryland would have adverse air quality impacts and was not sufficiently developed to allow a complete air quality analysis. The MPO responded by indicating that the ICC was analyzed in the conformity analysis by including both potential alignments for the project and showing that with either alignment selected that the TIP /Plan would still conform .</p> <p>2) Several comments were received that stated that the transportation modeling was flawed and therefore the air quality modeling results were also flawed. The MPO responded that the modeling effort was acceptable based on as a statistical analysis of the model results compared with "observed" data. The MPO also indicated that they have an ongoing effort to continually to improve the model as new and better data becomes available. EPA notes,</p>
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		<p>however, that the comments and the TPB responses provided raise issues and contain technical analyses that require expert judgement that is in the domain of FHWA, rather than EPA. EPA therefore will defer to the judgement of the FHWA to make a final determination of the adequacy of the TPB responses to these comments on the modeling in FHWA's review of the Plan and TIP.</p> <p>3) Several comments were made concerning whether the Plan and TIP were fiscally constrained. The MPO provided a detailed response which indicated that they believed that the Plan and TIP met the fiscal constraint requirements based on their analysis. EPA notes, however, that the comments and the TPB responses provided raise issues and contain technical analyses that require expert judgement that is in the domain of FHWA, rather than EPA. EPA therefore will defer to the judgement of the FHWA to make a final determination of the adequacy of the TPB responses to these comments on the Fiscal constraint of the Plan and TIP in FHWA's review of the Plan and TIP.</p>
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Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

CRITERIA APPLICABLE ONLY TO THE CLRP

93.106(a) (1)	Are the horizon years correct?	Y	Conformity was demonstrated for the years 2005, 2015, 2025, and 2030 for Ozone and 2007, 2016, 2025, 2030 for CO.
93.106(a) (2)(i)	Does the plan quantify and document the demographic and employment factors influencing transportation demand?	Y	Pages 18- 19 of the conformity determination summarizes population, employment, and households for the Metropolitan Washington D.C. area. These forecasts were based upon the Round 6.4A. forecast.
93.106(a) (2)(ii)	Is the highway and transit system adequately described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years?	Y	Appendix B, page B-3 of the conformity determination shows that there are: 1 significant new project (ICC), 7 facility widening projects, and 1 new construction starts.
93.108	Is the transportation plan fiscally constrained?		Several comments were made during the public comment period concerning whether the Plan and TIP were fiscally constrained. The MPO provided a detailed response which indicated that they believed that the Plan and TIP met the fiscal constraint requirements based on their analysis. EPA notes, however, that the comments and the TPB responses provided raise issues and contain technical analyses that require expert judgement that is in the domain of FHWA, rather than EPA. EPA therefore will defer to the judgement of the FHWA to make a final determination of whether the Plan and TIP are fiscally constrained

93.113(b)	Are TCM's being implemented in a timely manner?	Y	All the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.
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Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

CRITERIA APPLICABLE ONLY TO THE CLRP

93.118	For areas with SIP Budgets: is the Transportation Plan, TIP or Project consistent with the motor vehicle emissions budget(s) in the applicable SIP?	Y	<p>Analysis for Ozone:</p> <p>EPA has determined that the 2005 Rate of Progress (ROP) budgets are the applicable budgets for transportation conformity purposes for the first analysis year. The TPB had presented their conformity analysis against both the revised attainment demonstration and the new ROP budgets. Thus, They have demonstrated conformity against the applicable 2005 ROP budgets</p> <p>As a result of the Inter County Connector Project in Maryland, two analyses were run for the milestone years of 2015, 2025 and 2030, utilizing the two alternative routes proposed for the project which will produce two slightly different emission results depending on the final route alternative chosen.</p> <p>Based on their analysis, the CLRP is consistent with those VOC and NOx budgets for the mobile budget year of 2005.</p> <p>Analysis for CO:</p> <p>We also have concurred with the demonstration that the CLRP is consistent with the applicable CO budget in the CO Maintenance Plan. This budget was approved on January 30, 1996. The specific data are as follows:</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td colspan="2"><u>2005 Mobile Budget:</u></td> <td colspan="2"><u>2005 Analysis Year Emissions</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>91.47 T/D (VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (NOx)</td> <td></td> <td>218.13 T/D (NOx)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget:</u></td> <td colspan="2"><u>2007 Analysis Year Emissions</u></td> </tr> <tr> <td>1671.7 T/D (CO)</td> <td></td> <td>825.98 T/D (CO)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="4" style="text-align: center;"><u>ICC Alternative 1 Included</u></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2015 Analysis Year Emissions</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>48.3 T/D(VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (Nox)</td> <td></td> <td>79.3T/D (Nox)</td> <td></td> </tr> </table>	<u>2005 Mobile Budget:</u>		<u>2005 Analysis Year Emissions</u>		98.1 T/D (VOC)		91.47 T/D (VOC)		237.4 T/D (NOx)		218.13 T/D (NOx)						<u>2005 Mobile Budget:</u>		<u>2007 Analysis Year Emissions</u>		1671.7 T/D (CO)		825.98 T/D (CO)						<u>ICC Alternative 1 Included</u>								<u>2005 Mobile Budget</u>		<u>2015 Analysis Year Emissions</u>		98.1 T/D (VOC)		48.3 T/D(VOC)		237.4 T/D (Nox)		79.3T/D (Nox)	
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ICC Alternative 2 Included

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2005 Mobile Budget 2016 Analysis Year Emissions

1671.5 T/D (CO) 774.2 T/D (CO)

ICC Alternative 1 Included

2005 Mobile Budget 2025 Analysis Year Emissions

98.1 T/D (VOC) 48.3 T/D(VOC)
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ICC Alternative 2 Included

2005 Mobile Budget 2025 Analysis Year Emissions

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ICC Alternative 1 Included

2005 Mobile Budget 2030 Analysis Year Emissions

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ICC Alternative 2 Included

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Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program																															
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93.113(c)	Are TCM's being implemented in a timely manner?	Y	All the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.																												
93.118	For areas with SIP Budgets: is the Transportation Plan, TIP or Project consistent with the motor vehicle emissions budget(s) in the applicable SIP?	Y	<p>Analysis for ozone:</p> <p>EPA has determined that the 2005 Rate of Progress (ROP) budgets are the applicable budgets for transportation conformity purposes. The TPB had presented their conformity analysis against both the revised attainment demonstration and the new ROP budgets. Thus, They have demonstrated conformity against the applicable 2005 ROP budgets</p> <p>Based on their analysis, the TIP is consistent with those VOC and NOx budgets for all analysis years for the 2005 ROP Plan budgets.</p> <p>Analysis for CO:</p> <p>We also have concurred with the demonstration that the TIP is consistent with the applicable CO budget in the CO Maintenance Plan. This budget was approved on January 30, 1996. The specific data are as follows:</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td colspan="4" style="text-align: center;">2005 RATE OF PROGRESS BUDGETS</td> </tr> <tr> <td style="text-align: center;"><u>2005 Mobile Budget:</u></td> <td style="text-align: center;"><u>2005 Analysis Year Emissions</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">98.1.5 T/D (VOC)</td> <td style="text-align: center;">97.4 T/D (VOC)</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">237.4 T/D (NOx)</td> <td style="text-align: center;">234.7 T/D (NOx)</td> <td></td> <td></td> </tr> <tr> <td colspan="4" style="text-align: center;"> </td> </tr> <tr> <td style="text-align: center;"><u>2005 Mobile Budget:</u></td> <td style="text-align: center;"><u>2007 Analysis Year Emissions</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">1671.7 T/D (CO)</td> <td style="text-align: center;">989.5 T/D (CO)</td> <td></td> <td></td> </tr> </table>	2005 RATE OF PROGRESS BUDGETS				<u>2005 Mobile Budget:</u>	<u>2005 Analysis Year Emissions</u>			98.1.5 T/D (VOC)	97.4 T/D (VOC)			237.4 T/D (NOx)	234.7 T/D (NOx)							<u>2005 Mobile Budget:</u>	<u>2007 Analysis Year Emissions</u>			1671.7 T/D (CO)	989.5 T/D (CO)		
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CONCLUSION

Pursuant to FHWA's December 21, 2004 request, we have reviewed the transportation conformity determination for the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program prepared by the Metropolitan Washington Council of Governments, National Capital Region Transportation Planning Board. We have determined that the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program meet the requirements of the federal conformity rule. Therefore, we recommend that EPA concur with the transportation conformity determination for the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 14 2005

Mr. Gary L. Henderson
Divisional Administrator
Federal Highway Administration,
District of Columbia Division
1900 K Street, NW, Suite 510
Washington, D.C. 20002

Dear Mr. Henderson:

The United States Environmental Protection Agency, Region III has reviewed the 8-Hour Conformity Determination for the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program (TIP) as adopted by the National Capital Region Transportation Planning Board (TPB) and submitted to us by the Federal Highway Administration (FHWA) on March 15, 2005. EPA has reviewed the Conformity Determination in accordance with the procedures and criteria of the Transportation Conformity Rule contained in 40 CFR part 93, sections 93.106, 93.108, 93.110, 93.111, 93.112, 93.113(b), 93.113(c) and 93.118.

Based upon our review, we concur with the 8-Hour Conformity Determination for the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington TIP as adopted by the National Capital Region TPB. Enclosed please find a copy of our detailed evaluation entitled, "Technical Support Document for Review of the 8-Hour Conformity Determination of the 2004 Constrained Long-Range Plan and the FY 2005-2010 Metropolitan Washington TIP." It should be noted that in our technical support document we are again deferring to the FHWA on the question of whether the Plan and TIP are fiscally constrained. Therefore, our concurrence on the overall conformity determination is predicated upon FHWA determining that the Plan and TIP are fiscally constrained.

Please feel free to call Carol Febbo, Chief, Energy, Radiation and Indoor Environment Branch at (215) 814-2076 or Martin T. Kotsch, at (215) 814-3335 to discuss this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith M. Katz".

Judith M. Katz, Director
Air Protection Division

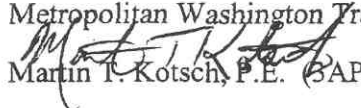
Enclosure

cc: Neel Vanikar (FHWA, MD)
Sandra Jackson (FHWA, DC)
Ed Sundra (FHWA, VA)
Howard Simons (MDOT)
Diane Franks (MDE)
Jim Sydnor (VDEQ)
Joan Rohlfs (MWAQC)

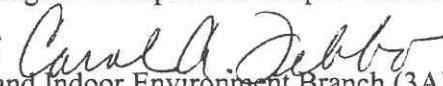
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

April 6, 2005

SUBJECT: Technical Support Document for Review of the 8-Hour Conformity
Determination of the 2004 Constrained Long Range Plan and the FY 2005-2010
Metropolitan Washington Transportation Improvement Program

FROM:  Martin T. Kotsch, P.E. (3AP23)

TO: Administrative Record of EPA's Review of the 8-Hour Conformity
Determination of the 2004 Constrained Long Range Plan and the FY 2005-2010
Metropolitan Washington Transportation Improvement Program

THRU: Carol Febbo, Chief  Carol Febbo
Energy, Radiation and Indoor Environment Branch (3AP23)

The purpose of this document is to review the January 19, 2005 air quality 8-hour ozone conformity determination of the 2004 Constrained Long Range Plan (CLRP) and the FY 2005-2010 Metropolitan Washington Transportation Improvement Program (TIP) prepared by the Metropolitan Washington Council of Governments, National Capital Region Transportation Planning Board (TPB). The TIP and CLRP conformity determination entitled, "Supplement to the Air Quality Conformity Determination of the 2004 Constrained Long Range Plan and the FY2004-2009 Transportation Improvement Program for the Washington Metropolitan Region" was submitted to the Environmental Protection Agency (EPA) on March 15, 2005 by the District of Columbia Division of the United States Federal Highway Administration (FHWA).

The Metropolitan Washington D.C. Area is currently both a severe 1-hour and moderate 8-hour non-attainment area for ozone. This conformity determination only covers the 8-hour standard as the area recently demonstrated conformity for the 1-hour standard under a separate action. For the 8-hour conformity analysis, the 2005 Attainment SIP budgets for the 1-hour standard are applicable for use in the 8-hour conformity analysis per 93.109(e) of the conformity rule since there are no current adequate or approved 8-hour mobile budgets. As a small piece of the previous geographical 1-hour non-attainment area (Stafford County, VA) is now in another non-

attainment area, (Fredericksburg, VA) the previous 1-hour budget for 2005 could have been reduced to reflect the new smaller 8-hour non-attainment area. However the area chose to continue to include Stafford County in its travel demand analysis and emissions analysis, which is permissible under the conformity rule until such time that new SIPs for the smaller 8-hour non-attainment area with new mobile budgets are submitted and either find adequate or approved by EPA.

The conformity determination was reviewed in accordance with the procedures and criteria of the Transportation Conformity Rule, 40 CFR Part 93, Sections 93.106, 93.108, 93.110, 93.111, 93.112, 93.113(b), 93.113(c) and 93.118.

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

SECTION of 40 CFR Part 93	CRITERIA	Y/ N	COMMENTS
93.110	<p>Is the conformity determination based upon the latest planning assumptions?</p> <p>(a) <i>Is the conformity determination, with respect to all other applicable criteria in §§93.111 - 93.118, based upon the most recent planning assumptions in force at the time of the conformity determination?</i></p> <p>(b) <i>Are the assumptions derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other designated agency? Is the conformity determination based upon the latest assumptions about current and future background concentrations?</i></p>	Y	<p>(a) & (b) The conformity determination is based upon latest planning assumptions in force and approved by the TPB at the time of the determination. The assumptions include:</p> <p>1) Travel Demand Modeling Assumptions: - Use of newer Version 2.1D travel demand model process -New travel survey data incorporated. - Development of new forecast years for analysis</p> <p>2) Emissions Model Assumptions: MOBILE6.2 modeled emissions factors were developed for years; 2010, 2015, 2025, 2030 for Ozone.</p> <p>3)Emissions Factor Assumptions -Enhanced I/M was assumed in DC, MD, VA -Low emission vehicle program was modeled -No oxygenated fuels were assumed for wintertime -Tier 2 / low sulfur vehicle controls were modeled</p> <p>4) Vehicle Registration Data: 2002 data for Maryland, DC and Virginia</p> <p>5) Land Activity Assumptions (growth forecasts): -In November, 2004 Round 6.4A forecasts were approved by the TPB for use in the conformity determination. As a result, household data as well as employment data have been updated. New growth figures between 2005 and 2030 used in this determination are shown below: -Household: 27% increase -Employment: 37% increase</p>

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

93.110	<p>(c) Are any changes in the transit operating policies (including fares and service levels) and assumed transit ridership discussed in the determination?</p> <p>(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.</p> <p>(e) Does the conformity determination use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented?</p> <p>(f) Are key assumptions specified and included in the draft documents and supporting materials used for the interagency and public consultation required by §93.105?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>(c) Transit policies such as frequency and hours of operation were updated from the last conformity determination</p> <p>(d) Transit ridership and services were adjusted to reflect increased fares from several providers within the affected region. No changes in bridge tolls are anticipated at this time</p> <p>(e) All of the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.</p> <p>(f) Appendix A of the conformity determination provides key assumptions for this conformity determination. This document and its earlier drafts were developed through the interagency and public consultation process detailed in the chart on pages A8-A9 of Appendix A.</p>
93.111	Is the conformity determination based upon the latest emissions model?	Y	This conformity determination used the mobile emissions model: MOBILE6.2, the latest EPA emissions model available to do the emissions analysis.

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

GENERAL CRITERIA APPLICABLE TO THE TIP AND CLRP

93.112	Did the MPO make the conformity determination according to the consultation procedures of the conformity rule or the state's conformity SIP?	Y	<p>Consultation procedures were followed in accordance to the TPB consultation procedures. These procedures are based on the procedures of the Federal Conformity Rule.</p> <p><u>Interagency Consultation</u> The TPB has consulted with all appropriate agencies. This includes the District of Columbia Environmental Regulation Administration, Maryland Department of the Environment, Maryland Department of Transportation, Maryland Office of Planning, Virginia Department of Environmental Quality, Virginia Department of Transportation, Federal Highway Administration, EPA, and county representatives of the counties of the Metropolitan Washington D.C. area.</p> <p><u>Public Consultation</u> The TPB has provided opportunities for public comment on the TIP and the CLRP. The public was invited to comment on the proposed TIP and CLRP amendments between April 10, 2004 and May 16, 2004. On December 10, 2004 the TPB released for public comment, the draft air conformity analysis for the TIP and CLRP for thirty days. Two public comments relevant to air quality that were received are summarized below:</p> <ol style="list-style-type: none"> 1. One member of the technical advisory committee to the Metropolitan Washington Air Quality Committee (MWAQC) questioned why the Transportation Emission Reduction Measures (TERMs) were not included in the draft conformity determination for 2010. The MPO responded by indicating the TERMS were still being analyzed at that time for their impact on emissions in 2010 and were later added to the final draft 2. An additional comment was given by MWAQC which urged the continued development and implementation of TERMS in the future to provide emission benefits, in particular to support attainment of the 8-hour standard.
93.106(a) (1)	Are the horizon years correct?	Y	Conformity was demonstrated for the years: 2010, 2015, 2025 and 2030 for Ozone.

Evaluation of the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program

CRITERIA APPLICABLE ONLY TO THE CLRP

93.106(a) (2)(i)	Does the plan quantify and document the demographic and employment factors influencing transportation demand?	Y	Pages 18- 19 of the conformity determination summarizes population, employment, and households for the Metropolitan Washington D.C. area. These forecasts were based upon the Round 6.4A. forecast.
93.106(a) (2)(ii)	Is the highway and transit system adequately described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years?	Y	Attachment C of the conformity determination lists the projects and provides a description of the projects anticipated to be completed during the evaluation period of the conformity analysis
93.108	Is the transportation plan fiscally constrained?		Several comments were made during the previous public comment period during the 1-hour conformity determination concerning whether the Plan and TIP were fiscally constrained. The MPO provided a detailed response which indicated that they believed that the Plan and TIP met the fiscal constraint requirements based on their analysis. EPA still notes, however, that the comments and the TPB responses provided raise issues and contain technical analyses that require expert judgement that is in the domain of FHWA, rather than EPA. EPA therefore will continue to defer to the judgement of the FHWA to make a final determination of whether the Plan and TIP are fiscally constrained
93.113(b)	Are TCM's being implemented in a timely manner?	Y	All the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.

**Evaluation of the 2005 Constrained Long Range Plan and the FY 2005-2010 Metropolitan
Washington Transportation Improvement Program**

CRITERIA APPLICABLE ONLY TO THE CLRP

93.118	For areas with SIP Budgets: is the Transportation Plan, TIP or Project consistent with the motor vehicle emissions budget(s) in the applicable SIP?	Y	<p>EPA has determined that the 2005 Rate of Progress (ROP) budgets are the applicable budgets for transportation conformity purposes for the first analysis year. The TPB had presented their conformity analysis against both the revised attainment demonstration and the new ROP budgets. Thus, They have demonstrated conformity against the applicable 2005 ROP budgets</p> <p>Based on their analysis, the CLRP is consistent with those VOC and NOx budgets for the mobile budget year of 2005.</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td colspan="2"><u>2005 Mobile Budget:</u></td> <td colspan="2"><u>2010 Analysis Year</u></td> </tr> <tr> <td>98.1. T/D (VOC)</td> <td></td> <td>60.37 T/D (VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (NOx)</td> <td></td> <td>125.61 T/D (NOx)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2015 Analysis Year</u></td> </tr> <tr> <td>98.1. T/D (VOC)</td> <td></td> <td>44.39 T/D(VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (Nox)</td> <td></td> <td>72.89/D (Nox)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2025 Analysis Year</u></td> </tr> <tr> <td>98.1. T/D (VOC)</td> <td></td> <td>35.48 T/D(VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (Nox)</td> <td></td> <td>36.82 T/D (Nox)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2030 Analysis Year</u></td> </tr> <tr> <td>98.1. T/D (VOC)</td> <td></td> <td>36.23 T/D(VOC)</td> <td></td> </tr> <tr> <td>37.4 T/D (Nox)</td> <td></td> <td>34.82T/D (Nox)</td> <td></td> </tr> </table>	<u>2005 Mobile Budget:</u>		<u>2010 Analysis Year</u>		98.1. T/D (VOC)		60.37 T/D (VOC)		237.4 T/D (NOx)		125.61 T/D (NOx)						<u>2005 Mobile Budget</u>		<u>2015 Analysis Year</u>		98.1. T/D (VOC)		44.39 T/D(VOC)		237.4 T/D (Nox)		72.89/D (Nox)						<u>2005 Mobile Budget</u>		<u>2025 Analysis Year</u>		98.1. T/D (VOC)		35.48 T/D(VOC)		237.4 T/D (Nox)		36.82 T/D (Nox)						<u>2005 Mobile Budget</u>		<u>2030 Analysis Year</u>		98.1. T/D (VOC)		36.23 T/D(VOC)		37.4 T/D (Nox)		34.82T/D (Nox)	
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**Evaluation of the 20. Constrained Long Range Plan and the FY. 05-2010 Metropolitan
Washington Transportation Improvement Program**

CRITERIA APPLICABLE ONLY TO THE TIP

93.113(c)	Are TCM's being implemented in a timely manner?	Y	All the TCMs listed in the Phase II Attainment Plan for the Metropolitan Washington D.C. area have been implemented. The latest information regarding TCMs and other implementation plan measures effectiveness have been used.																																																												
93.118	For areas with SIP Budgets: is the Transportation Plan, TIP or Project consistent with the motor vehicle emissions budget(s) in the applicable SIP?	Y	<p>Analysis for ozone:</p> <p>EPA has determined that the 2005 Rate of Progress (ROP) budgets are the applicable budgets for transportation conformity purposes. The TPB had presented their conformity analysis against both the revised attainment demonstration and the new ROP budgets. Thus, They have demonstrated conformity against the applicable 2005 ROP budgets</p> <p>Based on their analysis, the TIP is consistent with those VOC and NOx budgets for all analysis years for the 2005 ROP Plan budgets.</p> <table border="0" style="width: 100%;"> <tr> <td colspan="2"><u>2005 Mobile Budget:</u></td> <td colspan="2"><u>2010 Analysis Year</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>60.37 T/D (VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (NOx)</td> <td></td> <td>125.61 T/D (NOx)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2015 Analysis Year</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>44.39 T/D(VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (Nox)</td> <td></td> <td>36.82 T/D (Nox)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2025 Analysis Year</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>35.48 T/D(VOC)</td> <td></td> </tr> <tr> <td>237.4 T/D (Nox)</td> <td></td> <td>36.82 T/D (Nox)</td> <td></td> </tr> <tr><td colspan="4"> </td></tr> <tr> <td colspan="2"><u>2005 Mobile Budget</u></td> <td colspan="2"><u>2030 Analysis Year</u></td> </tr> <tr> <td>98.1 T/D (VOC)</td> <td></td> <td>36.23 T/D(VOC)</td> <td></td> </tr> <tr> <td>37.4 T/D (Nox)</td> <td></td> <td>34.82T/D (Nox)</td> <td></td> </tr> </table>	<u>2005 Mobile Budget:</u>		<u>2010 Analysis Year</u>		98.1 T/D (VOC)		60.37 T/D (VOC)		237.4 T/D (NOx)		125.61 T/D (NOx)						<u>2005 Mobile Budget</u>		<u>2015 Analysis Year</u>		98.1 T/D (VOC)		44.39 T/D(VOC)		237.4 T/D (Nox)		36.82 T/D (Nox)						<u>2005 Mobile Budget</u>		<u>2025 Analysis Year</u>		98.1 T/D (VOC)		35.48 T/D(VOC)		237.4 T/D (Nox)		36.82 T/D (Nox)						<u>2005 Mobile Budget</u>		<u>2030 Analysis Year</u>		98.1 T/D (VOC)		36.23 T/D(VOC)		37.4 T/D (Nox)		34.82T/D (Nox)	
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CONCLUSION

Pursuant to FHWA's March 15, 2005 request, we have reviewed the transportation 8-hour conformity determination for the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program prepared by the Metropolitan Washington Council of Governments, National Capital Region Transportation Planning Board. We have determined that the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program meet the requirements of the federal conformity rule. Therefore, we recommend that EPA concur with the transportation 8-hour conformity determination for the 2004 Constrained Long Range Plan and the FY2005-2010 Metropolitan Washington Transportation Improvement Program.



June 13, 2005

District of Columbia
Bowie
College Park
Frederick County
Gaithersburg
Greenbelt
Montgomery County
Prince George's County
Rockville
Takoma Park
Alexandria
Arlington County
Fairfax
Fairfax County
Falls Church
Loudoun County
Manassas
Manassas Park
Prince William County

Mr. David Baron
EarthJustice
1625 Massachusetts Ave., N.W.
Suite 702
Washington DC 20036-2212

Re: Response to Letters of January 18, 2005 and March 9, 2005 on the Conformity Determination for the 2004 Constrained Long Range Transportation Plan (CLRP) and the FY 2005-2010 Transportation Improvement Program(TIP) for the National Capital Region

Dear Mr. Baron:

By copy of a letter to you of April 25, 2005, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have asked that the TPB respond to you directly on the specific concerns raised in your letters of January 18, 2005 and March 9, 2005 on the above-referenced conformity determination, adopted by the National Capital Region Transportation Planning Board (TPB) on November 17, 2004. On behalf of the TPB, I am pleased to provide the following responses to the comments made in your letters.

Comment: "TPB has failed to respond to the very specific deficiencies we raised, and has offered nothing to demonstrate that the TIP and CLRP provide adequate funding for the existing metro area transportation system. Instead, TPB relies heavily on the Metro Matters funding agreement and the recommendations of the Metro funding panel sponsored by the agency to identify potential funding sources. Neither addresses immediate deficiencies in the regional transit system, and neither provides the requisite specific plans of action for ensuring that all the necessary funds will be available within the timeframe shown in the financial plan."

Response: Contrary to the assertion in the comment quoted above, the demonstration of fiscal constraint for the 2004 CLRP and FY2005-2010 TIP does not rely in any way on the Metro Matters funding agreement or on the recommendations of the Metro Funding Panel. The fact that the CLRP does not provide all of the funding requested by the Washington Metropolitan Area Transit Authority (WMATA) has been addressed by the TPB in successive CLRP updates and amendments, beginning in the year 2000, through the imposition of a constraint on transit ridership growth, as discussed below.¹

¹ A more detailed description of the transit ridership constraint procedure and its application in the air quality conformity analysis is provided in an attachment to this letter.

Mr. David Baron

June 13, 2005

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In conducting the air quality conformity analysis for the 2000 CLRP, the TPB explicitly accounted for the funding uncertainties affecting the Metrorail system capacity and levels of service beyond 2005. The demand analysis methodology for conformity uses a "transit ridership constraint" under which future ridership levels for trips to or through the core are constrained to 2005 levels for the analysis years of 2015, 2020 and 2030. The constrained transit ridership growth results in more automobile trips, VMT, and emissions levels. This constraint explicitly recognizes the funding shortfall facing Metro and fulfills the requirement of Section 450.322 (b)(11) of the Metropolitan Planning Rule that the CLRP shall "include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue". FHWA and FTA approved the conformity determination for the 2000 CLRP in January 2001.

In documenting the 2000 CLRP, the TPB reported on funding challenges facing Metro and on the results of implementing the transit ridership constraint. (See "2000 Update to the Financially Constrained Long Range Transportation Plan for the National Capital Region," pp 5-5 & 5-6, at www.mwcog.org under transportation/publications/CLRP/TIP.) In early 2001, the TPB published a brochure, "A System in Crisis: The Funding Shortfall for the Washington Area Transportation System," along with its *Region* magazine annual report to inform the public and elected officials in the region about these funding needs.

In developing the 2003 CLRP, the TPB conducted an updated financial analysis that forecasted revenues and costs for operating and maintaining the existing transportation system and for expanding it over the entire 27-year planning period. (See "2003 Update to the Financially Constrained Long-Range Transportation Plan for the National Capital Region", pp 2-6 through 2-10, at www.mwcog.org under transportation/publications/CLRP/TIP.) The 2003 CLRP financial analysis showed that "the requests by WMATA for operating, preservation, and system access and capacity are nearly funded over the 27-year period", but that "these aggregate expenditures and revenues do not fully address year-by-year expenditure requirements relative to year-by-year availability of revenues." Consequently, for the air quality conformity analysis for the 2003 CLRP, the TPB again explicitly accounted for the funding uncertainties affecting the Metrorail system capacity and levels of service beyond 2005 with the transit ridership constraint. On December 17, 2003, the TPB adopted the 2003 CLRP, and on February 23, 2004, FHWA and FTA approved the conformity determination.

During 2004, WMATA and the region's jurisdictions took significant steps to identify and commit specific funding for Metro's near-term needs in the Metro Matters program, and to address longer term needs through a Metro Funding Panel. The 2004 CLRP and FY 2005-2010 TIP were approved by the TPB on November 17, 2004. Because the air quality conformity analysis for the plan

began on September 9, 2004, before the Metro Matters funding agreement was approved by the WMATA Board (on October 21, 2004) and before the Metro Funding Panel completed its report (on January 6, 2005), the TPB once again accounted for the funding uncertainties affecting the Metrorail system capacity and levels of service beyond 2005 with the transit ridership constraint.

At the February 16, 2005 TPB meeting, a letter was distributed from WMATA regarding this ridership constraint. The WMATA letter states:

“ Since this constraint was imposed on the model, the 6000 Series rail cars have been ordered and the Metro Matters program has been adopted, which will purchase 120 more rail cars. With the receipt of these cars, the Metrorail system will have capacity to accommodate ridership growth through 2010. Therefore, we are asking that TPB change the capacity constraint on the core Metrorail system from 2005 to 2010.”

Based on WMATA's request, for the upcoming 2005 CLRP and FY 2006-2011 TIP the TPB will change the ridership constraint to 2010, which will still recognize the Metro funding uncertainties beyond 2010.

Comment: “The comments we previously submitted to TPB demonstrate that neither the TIP nor CLRP assure adequate maintenance of the existing Metro system and other transportation systems. See 23 CFR 450.324(e)(TIP financial plan must show that projects can be implemented with existing and proposed revenue sources “while the existing transportation system is being adequately operated and maintained.”).”

Response: Requirements for operation, maintenance and repairs of the WMATA system are addressed through WMATA's annual budget process. Article VIII of the WMATA Compact dealing with annual budgets includes the following requirement with regard to the current expense budget:

“The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration, operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.”

For the 2003 financial analysis, WMATA submitted cost estimates for operating, preserving, and expanding the transit system over the 27 year time-frame of the CLRP. For the operating costs, the total funding estimated to be available for the CLRP was 94 percent of the total requested by WMATA. The TPB concluded

that this level of funding provided the appropriate framework under the CLRP for the development of annual WMATA budgets. The WMATA annual operating and maintenance budget is negotiated and agreed upon each year by WMATA and its funding jurisdictions, with the anticipated operating and maintenance costs and fare revenues brought into balance with the available subsidy funding. The WMATA jurisdictions have historically fully funded WMATA's operating and maintenance subsidy as determined through this annual budget process.

At the June 18, 2003 TPB meeting, this commitment to funding the annual operating expenses was discussed. Some specific statements as recorded in the minutes included:

"Ms. Kaiser (Board member from the Maryland Department of Transportation) ... said that operating expenses are handled on a year-to-year basis. She said that when Maryland's share of the bill comes in, it will pay that share of the bill."

"Vice Chairman Hanley (Board member from Fairfax County) reiterated Mr. Zimmerman's point that operating expenses should be the least of the region's worries regarding WMATA funding. She emphasized that when the local governments get their WMATA bills, they pay them."

In projecting the growth in WMATA's funding needs from 2005 to 2015, the January 6, 2005 Metro funding panel report assumes that the year to year operating and maintenance expenses will be funded as currently and that the new dedicated funding will be primarily for core capacity enhancement projects:

"The operating projections are based upon the following assumptions:

- Cost Recovery -- WMATA will maintain its current 57 percent cost recovery (i.e., proportion of operating expenses met from revenues-fares, parking fees and other ancillary operating revenues)...
- Maintenance of Effort -- the baseline operating projections assume that WMATA's funding partners will continue to meet basic subsidy requirements of the existing system and its planned extensions. ...

Under these assumptions, new dedicated funding primarily will serve to cover the subsidy requirements of core capacity enhancement projects needed to serve expanded demand for the current system."

Until new dedicated funding for WMATA is identified, TPB and WMATA are expected to continue to impose the transit ridership constraint in the conformity analysis for the CLRP to reflect the limitations on transit system capacity resulting from the shortfall in funding.

Comment: "...with respect to plans for funding MetroAccess in the future the Panel merely "recommends a concerted effort, perhaps involving the formation of a new panel with expertise on this issue to focus on existing federal, state and local social service funding." TPB cannot rely on mere recommendations for funding MetroAccess without identifying a specific plan of action for ensuring that the necessary funds will be available within the timeframe shown in the financial plan."

Response: As noted in the previous response, requirements for operation, maintenance, and repairs of the WMATA system are addressed through WMATA's annual budget process. These requirements include MetroAccess. The WMATA jurisdictions have historically fully funded WMATA's operating and maintenance subsidy as determined through this annual budget process.

In January 2004, the TPB transmitted to the WMATA Board the TPB Access for All Committee's recommendations for transit services for people with disabilities. A key recommendation called for a study of MetroAccess to examine if there are more cost-effective ways to better serve the greatest number of people with disabilities with the current budget. In March 2005, the TPB amended the current FY 2005 Unified Planning Work Program (UPWP) and approved the FY 2006 UPWP as requested by WMATA to conduct this study. The study, which is scheduled for completion in December 2005, will examine innovative approaches to improving MetroAccess, including contracting practices and coordination opportunities. It will recommend cost-effective ways for MetroAccess and other regional paratransit services to better serve more people with disabilities.

Comment: "There is no available or committed funding identified for the Metro system security improvements WMATA says are necessary."

Response: WMATA is addressing the security improvements it says are necessary through a variety of initiatives, many of which are outside the current CLRP and TIP processes, including seeking federal Homeland Security and other federal or state funding.

Comment: "The TIP and CLRP fail to provide for other aspects of the existing transportation system, including \$300 million in "emergency" bridge repairs needed in the District of Columbia. TPB, *Time to Act – The National Capital Region's Six-Year Transportation Funding Needs, 2005-2010* (Feb. 2004)."

Response: The FY 2005-2010 TIP as adopted by the TPB on November 17, 2004 includes \$365 million in funding for 65 bridge projects in the District of Columbia. These maintenance and repair projects are programmed with over \$215 million in federal Bridge Replacement and Rehabilitation Program funds, plus over \$140 million in Interstate Maintenance, National Highway System, and Surface Transportation Funds. (In addition, over \$300 million in Special Project

Mr. David Baron

June 13, 2005

Page 6

funds are programmed for the 11th Street Bridge and Interchange Replacement and for modifying or reconstructing the South Capitol Street Bridge.)

The TPB appreciates your interest in the conformity determination for the 2004 CLRP and FY 2005-2010 TIP.

Sincerely,

A handwritten signature in cursive script that reads "Ronald F. Kirby".

Ronald F. Kirby
Director, Department of
Transportation Planning

cc: Gary Henderson
Division Administrator
Federal Highway Administration

Susan Borinsky
Regional Administrator
Federal Transit Administration

Attachment

**DESCRIPTION OF THE TRANSIT RIDERSHIP CONSTRAINT USED IN
THE AIR QUALITY CONFORMITY ANALYSIS OF THE FINANCIALLY
CONSTRAINED LONG-RANGE TRANSPORTATION PLAN (CLRP) FOR
THE NATIONAL CAPITAL REGION**

June 13, 2005

Why Was the Transit Ridership Constraint Developed?

As required under current federal regulations, the region has updated the financially constrained long-range plan (CLRP) every three years, in 1994, 1997, 2000, and 2003. It has also amended the CLRP in other years, most recently in 2004. For each three-year update, a financial analysis is conducted to ensure that the plan is financially realistic with respect to expected transportation costs and revenues and only includes new facilities that can be funded while maintaining the existing transportation system. The projects submitted for the plan must be “constrained” to the revenues that are reasonably expected to be available.

For the 2000 CLRP update, the Washington Metropolitan Area Transit Authority (WMATA) estimated the costs for preserving the transit system and to accommodate Metrorail ridership growth over the 25-year time frame of the plan. In the Spring of 2000, WMATA submitted these funding requests for consideration in the financial analysis of the CLRP. Because the \$1.5 billion requested for the rail cars and station improvements to accommodate the projected Metrorail ridership was not funded in the CLRP,¹ WMATA expressed concern that the transit system would be unable to accommodate the significant ridership increases previously forecast between 2000 and 2020.

To address the fact that funding was not identified to accommodate all of the projected ridership growth, a method was required to limit the projected ridership to be consistent with the available funding for the capacity improvements. WMATA and TPB staff developed a travel demand analysis methodology to “constrain” transit ridership into and through the core area, the most congested part of the system, after 2005. In this method, the forecasted transit person trips that cannot be accommodated are allocated back to the automobile trip forecasts.

How Does the Transit Ridership Constraint Work?

The transit constraint method is applied during the travel demand modeling process as part of the air quality conformity analysis of the CLRP². First, unconstrained origin and destination trip tables are produced for the years 2005, 2015, and 2025. Constrained transit trip tables are then created for 2015 and 2025 by inserting 2005 totals for the transit trip patterns that

¹ See Cambridge Systematics, Inc., *Analysis of Resources for the Financially Constrained Long Range Transportation Plan for the Washington Area*, prepared for the TPB, October 2000.

² See Attachment B to the TPB approved Scope of Work in Appendix A of the report: *Air Quality Conformity Determination of the 2000 Constrained Long-Range Plan and the FY 2001-2006 Transportation Improvement Program for the Washington Metropolitan Region*, Oct 18, 2000.

correspond to trips into or through the core area³ containing the maximum load points in the rail system. The transit person trips that cannot be accommodated are then allocated back to the auto person trip tables, resulting in increased daily automobile trips and vehicle emissions.

When this method was applied for the 2000 CLRP⁴, transit work trips were forecast to increase by 18 percent from 2001 to 2025 under the constraint, but would increase 36 percent without the constraint. The constraint caused 104,000 additional daily trips to be absorbed by the highway system, causing an increase in emissions.

How Was the Transit Ridership Constraint Method Reviewed and Approved?

During the Spring of 2000, the Board was briefed on several occasions on the method during the process of approving the scope of work for conducting the air quality conformity analysis for the CLRP⁵.

At the June 21, 2000 TPB meeting, the method was discussed and approved. Some specific statements as recorded in the minutes included⁶:

“Mr. Kirby (Director of Transportation Planning) reported to the Board that this method would be used to account for the constraint on Metrorail ridership growth in the core beyond 2005.”

Ms. Hanley (a Board member from Fairfax County) “commented that the constraints on the future use of Metro should not be interpreted as people not wanting to use it; it’s a question of money needed for more rail cars and capacity.”

In response to another Board member, Mr. Kirby “stated that hopefully in practice we will eventually find a way to avoid having the constraint on Metro ridership growth in the core beyond 2005. But,

³ The core area includes the area directly surrounding downtown Washington D.C., and a small portion of Arlington County.

⁴ These results were highlighted on page 10 in the TPB’s 2001 *Region* magazine. Also see pages 5-5 and 5-6 in the plan document: *2000 Update to the Financially Constrained Long-Range Transportation Plan for the National Capital Region*, which is found at www.mwcog.org under transportation/publications/CLRP/TIP.

⁵ On April 19, the Board was briefed on the draft scope of work, which included the transit constraint method, and released it for public comment. On June 7, a special TPB work session was held to discuss developing a process to address key funding issues associated with the 2000 CLRP which included a briefing on the staff memo proposing the method. On June 21 a special TPB work session was held prior to the TPB meeting which included a discussion of the conformity work scope and the transit constraint methodology and implications for the CLRP.

⁶ See page 13 in the minutes for the June 21, 2000 TPB meeting.

for the moment, in order to be consistent with the financial projections, we have a method to estimate what will happen to the ridership growth if the supply of rail cars is limited by funding.”

During the Fall of 2000, the Board was briefed on several occasions on the results of the air quality conformity analysis, including the effects of the transit constraint on projected daily vehicle trips and miles traveled, during the process of approving the conformity determination⁷.

At the September 20, 2000 TPB meeting, the conformity results and the effects of the transit constraint were discussed. A specific statement recorded in the minutes included⁸:

“Ms. Hanley (a Board member from Fairfax County) recapped some of the discussion from the morning work session. She referenced page 6 of the mailout material which illustrated the effect of constraining WMATA transit ridership. She mentioned that at the morning work session, staff were asked to run the travel demand analysis again without constraining WMATA transit ridership to see what the effect would be on air quality.”

At the October 18, 2000 meeting, the Board approved the 2000 CLRP, along with the TIP and air quality conformity determination. The Board also approved a resolution expressing its “serious concerns over the inability of the CLRP to meet the goals of the TPB Vision due to a shortfall in transportation funding,” and committed to a high-level meeting of state DOT officials, state legislators, representatives from Congress, and other regional leaders to review and discuss the region’s transportation needs⁹. The presentation materials from this meeting were made into a brochure¹⁰ and included in a video which was shown on many of the local cable TV networks.

⁷On September 14 the draft air quality conformity assessment was released for public comment. On September 20, a special TPB work session was held prior to the TPB meeting to review the results of the air quality conformity analysis which included a discussion of the effects of the transit constraint on projected daily vehicle trips and miles traveled.

⁸ See page 13 in the minutes for the September 20, 2000 TPB meeting.

⁹See the 2001 *Region* magazine for a synopsis of the meeting held at Union Station on November 30.

¹⁰ “A System in Crisis: The Funding Shortfall for the Washington Area Transportation System” February 2001. (The results of the transit constraint due to the lack of funding to accommodate transit growth are highlighted on page 8.)



U.S. Department
of Transportation

Federal Transit Administration
Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103
215-656-7100
215-656-7260 (fax)

Federal Highway Administration
DC Division
1990 K Street, N.W., Suite 510
Washington, DC 20006
202-219-3536
202-219-3545 (fax)

Mr. David S. Baron
Earth Justice
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036-2212

APR 25 2005

Dear Mr. Baron:

Thank you for your letters dated January 18, 2005 and March 9, 2005 in which you expressed concerns about the National Capital Region Transportation Planning Board (TPB) conformity determination adopted on November 17, 2004. In your letter, you allege that the TPB has not fulfilled the fiscal constraint requirement in accordance to the Intermodal Surface Transportation Efficiency Act and subsequent regulatory provisions.

The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have reviewed the issues you raised in detail and think it would be worthwhile to explain the FHWA and FTA responsibilities as related to fiscal constraint. We will be working with the Transportation Planning Board to assure that the fiscal constraint requirements are met.

Transportation Planning and The Fiscal Constraint Requirement

The metropolitan planning statutes state that a transportation plan and a transportation improvement program (TIP) must include a "financial plan" that "indicates resources from public and private sources that are reasonably expected to be available to carry out the program." 23 U.S.C. §§ 134(g)(2)(B) and 134(h)(2)(B)(ii). This requirement is implemented in our transportation planning regulations for both the transportation plan and the TIP. These regulations provide, in essence, that a transportation plan and TIP can include only projects for which funding "can reasonably be expected to be available." 23 C.F.R. §§ 450.322(b)(11) (for transportation plan) and 450.324(e) (for TIP). In addition, the regulations provide that projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP only if funds are "available or committed." 23 C.F.R. § 450.324(e). Finally, the Clean Air Act transportation conformity regulations specify that a conformity determination can only be made on a fiscally constrained plan and TIP. 40 C.F.R. § 93.108. The fiscal constraint requirement is intended to ensure that transportation plans and TIPs reflect realistic assumptions about future revenues, rather than being "wish lists" that include many more projects than could realistically be completed with available revenues. Given this basic purpose, compliance with the fiscal constraint requirement

entails an analysis of revenues and costs. The basic question to be answered is “Will the available revenues cover the costs of the projects included in this plan, along with operation and maintenance of the existing system?” In general, if the projected revenues are sufficient to cover the costs, and the estimates of both revenues and costs are reasonable, then the fiscal constraint requirement has been satisfied.

Reliability of Future Revenue Forecasts

Under FHWA and FTA regulations, the financial forecasts for a plan and TIP can take into account new funding sources that are “reasonably expected to be available.” New funding sources are revenues that may not currently exist or that may require additional steps before the MPO can commit such funding to transportation projects. These sources must be clearly identified. However, this standard allows for consideration of revenue sources that are uncertain, including sources that depend on future legislative or executive actions that cannot be predicted with absolute certainty. The level of uncertainty is generally greatest for revenues in the “out years” of a 20-year plan, simply because it is difficult to make firm predictions about costs and revenues that far into the future.

If FHWA and FTA find a plan or program to be fiscally constrained, and subsequently the funds are removed, i.e., legislative or administrative actions, FHWA and FTA do not withdraw the original determination of fiscal constraint. In these cases, the FHWA and FTA do not insist that alternative sources of revenue be identified immediately. Rather, our staffs work with the MPOs to meet the relevant requirements of the transportation planning process, with the understanding that it is still incumbent upon the MPO to develop strategies to deal with those uncertainties. By contrast, if the MPO takes an affirmative action to amend and/or update a transportation plan or program, then all the fiscal constraint requirements must be demonstrated once again.

In large metropolitan regions substantial investments have been made in highway and transit infrastructure. The short- and long-term needs for system operation preservation, and enhancement can be enormous. Simply maintaining the existing system in a large metropolitan area can demand billions of dollars in investments, while system expansion – which is needed simply to “hold the line” against rising congestion – demands investments of a similar scale. At times, these competing demands can cause temporary shortfalls in an MPO’s budget. However, to the extent there appear to be shortfalls, the MPO needs to identify a strategy to address these gaps in funding prior to the adoption of a new TIP or plan. The strategy should include a plan of action that describes the steps that will be taken to make funding available within the time frame shown in the financial plan. The strategy may rely upon the MPO’s past record of obtaining funding. To the extent it relies on new funding sources, the MPO’s strategy must demonstrate that these funds are reasonably expected to be available.

System Preservation and Operation

The metropolitan planning process should “[a]ssess capital investment and other measures necessary to ...ensure the preservation of the existing metropolitan transportation system,

including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities.” 23 U.S.C. §134(g)(2)(c). To support this assessment, FHWA and FTA expect that the MPO will provide credible cost estimates.

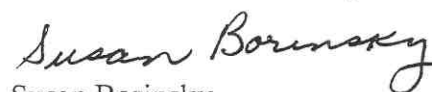
With respect to the regulatory requirement in 23 CFR 450.322(b)(5)&(11) for fiscal constraint to provide for adequate maintenance and operation of the existing system, FHWA and FTA allow considerable deference to state and local governments as to what is “adequate.” It does not mean a particular, specific level of operations or maintenance. The Federal government must allow latitude to state and local governments and MPOs to adjust the operation and maintenance from year to year and decade to decade, based on an open transportation planning process.

Outside the planning process, there is a requirement that states properly maintain, or cause to be maintained, any projects constructed under the Federal-aid highway program. 23 U.S.C. §116. However, beyond this basic requirement of proper maintenance, FHWA and FTA do not second-guess a MPO’s decisions regarding uses of funding, nor would we question the priorities the MPO has set with respect to maintenance and operation of the existing transportation system and construction of new projects. The FHWA and FTA simply assure that the process used by the MPO to establish priorities is consistent with the transportation planning statute and regulations, and that the MPO it is able to demonstrate reasonably available funding to meet the priorities it has identified. Consistent with regulations implementing the Clean Air Act, FHWA and FTA will also continue to assure that priority is given to the timely implementation of transportation control measures in the State Implementation Plan for air quality. 40 C.F.R. §§ 93.103 and 93.116.

As you know, conformity for the 8- hour ozone standard must be determined no later than June 15, 2005 for the Metropolitan Washington area, and that conformity determination must be made on a fiscally constrained plan and TIP. The FHWA and FTA are reviewing the conformity assessment submitted by the MPO to assure that it has satisfactorily demonstrated that its plan and TIP are fiscally constrained. We will ask (by copy of this letter) the TPB to respond to you directly on the specific concerns you have identified. We will review their responses in conjunction with our conformity determination. The FHWA and FTA will also assure that the required information is clearly documented and made available to the public.

Sincerely yours,


 Gary Henderson
 Division Administrator
 Federal Highway Administrator


 Susan Borinsky
 Regional Administrator
 Federal Transit Administration

cc: Ron Kirby, Metropolitan Washington Council of Governments
 National Capital Region Transportation Planning Board



EARTHJUSTICE

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.
ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

March 9, 2005

Via U.S. Mail and email
(sandra.jackson@fhwa.dot.gov)
Sandra Jackson
Planning Program Manager
Federal Highway Administration
District of Columbia Division
1990 K Street, NW, Suite 510
Washington, DC 20006

Via U.S. Mail and email
(tony.tarone@fta.dot.gov)
Anthony Tarone
Transportation Program Specialist
Federal Transit Administration
Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103

Via U.S. Mail
Gloria M. Shepard
Director
Office of Planning
Federal Highway Administration
400 7th Street, SW
Washington, D.C. 20590

RE: Conformity Determination for the 2004 Constrained Long Range Plan (CLRP) and the FY2005-2010 Transportation Improvement Program (TIP) for the Washington Metropolitan Region

This letter supplements our letter of January 18, 2005 on the above matter. Please consider the following additional information in determining whether the above-referenced CLRP and TIP meet conformity requirements:

1. Testimony of Richard A. White, CEO, Washington Metropolitan Area Transit Authority, before the House Committee on Government Reform, February 18, 2005 (copy provided herewith – also available on the Committee's web site, at: <http://reform.house.gov/GovReform/Hearings/EventSingle.aspx?EventID=1576>). Among other things, Mr. White states that: a) "the success of the Metro Matters Funding Agreement rests with a robust TEA-21 reauthorization and \$260 million additional federal funding to pay for additional rail cars" (p. 17); b) the Metro Matters Agreement "leaves critical portions of the 10-

Year CIP unfunded” (id.); c) “The \$2.1 billion balance of the System Access and Capacity Program, which among other things will purchase 130 additional rail cars to avoid unmanageable congestion early in the next decade, is also unfunded” (id.); d) Metro’s security program “is 100 percent dependent on federal funding” (p. 18; see also p. 25); e) the Metro Blue Ribbon Funding Panel issued a report in January 2005 finding, among other things, that Metro “is literally falling apart” and faces a funding shortfall of \$2.4 billion between FY2008 and FY2015 (p. 20).

2. Testimony of Dana Kauffman, Chairman of the Board of the Washington Metropolitan Area Transit Authority before the House Committee on Government Reform, February 18, 2005 (copy provided herewith and also available at the above-referenced web address). Among other things, Mr. Kauffman states as follows: “It is essential to remember that the Metro Matters Agreement is contingent upon \$260 million in new discretionary federal funding, under the surface transportation reauthorization bill, to help pay for the rail cars that Metro needs to relieve overcrowding.” (p. 5).

3. WMATA provides e-mail alerts of metrorail delays to anyone who requests such notice. See http://www.wmata.com/riding/alerts/metrorail_alerts.cfm . Attached hereto is a listing of such alerts issued from November 13, 2004 through March 8, 2005. Over that period of less than 4 months, WMATA issued 272 delay notices of which we are aware. Also attached are some examples of the texts of these delay notices.

Sincerely,

/s/ David S. Baron

David S. Baron
Jennifer C. Chavez*
Attorneys

* Member of the Illinois Bar. Application to D.C. Bar pending



EARTHJUSTICE

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.
ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

January 18, 2005

Via U.S. Mail and email
(sandra.jackson@fhwa.dot.gov)
Sandra Jackson
Planning Program Manager
Federal Highway Administration
District of Columbia Division
1990 K Street, NW, Suite 510
Washington, DC 20006

Via U.S. Mail and email
(tony.tarone@fta.dot.gov)
Anthony Tarone
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1760 Market Street, Suite 500
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Via U.S. Mail
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400 7th Street, SW
Washington, D.C. 20590

Re: Conformity Determination for the 2004 Constrained Long Range Plan (CLRP) and the FY2005-2010 Transportation Improvement Program (TIP) for the Washington Metropolitan Region

We are writing to comment on the above-referenced Conformity Determination, adopted by the National Capital Region Transportation Planning Board (TPB) on November 17, 2004. On October 29, 2004, we submitted public comments to the TPB that demonstrated in detail that the CLRP and TIP do not comply with the conformity and planning requirements of the Clean Air Act, other applicable statutes, and regulations promulgated thereunder. Those comments are incorporated herein by reference. We continue to believe that the TIP and CLRP do not satisfy the requirement that "transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450," and therefore cannot be found to meet the conformity requirements of the Clean Air Act. 40 C.F.R. § 93.108 (2003).

As further detailed below, TPB has failed to respond to the very specific deficiencies we raised, and has offered nothing to demonstrate that the TIP and CLRP provide adequate funding for the existing metro area transportation system. Instead, TPB relies heavily on the Metro Matters funding agreement and the recommendations of the Metro Funding Panel sponsored by the agency to identify potential funding sources. Neither addresses immediate deficiencies in the regional transit system, and neither provides the requisite specific plan of action for ensuring that all the necessary funds will be available within the timeframe shown in the financial plan. *See* 58 Fed.Reg. 58040 at 58060; 23 U.S.C. § 134(g)(2)(b).

The comments we previously submitted to TPB demonstrate that neither the TIP nor CLRP assure adequate maintenance of the existing Metro system and other transportation systems. *See* 23 C.F.R. § 450.324(e) (TIP financial plan must show that projects can be implemented with existing and proposed revenue sources “while the existing transportation system is being adequately operated and maintained”). *See* 23 U.S.C. §§ 134(f)(1), (g)(2), (h)(1)–(3). Among other things:

- WMATA has stated that it has \$1.5 billion in unfunded needs over the next five years, including \$516 million in additional funding for replacement and rehabilitation of existing assets, without which “Metro service will deteriorate and the system will fail;” an additional \$625 million for additional rail cars to relieve overcrowding and keep up with ridership growth on trains and another \$171 million to support the bus system; and \$150 million in critical infrastructure protection to eliminate potential vulnerabilities during a regional emergency. Metro Matters Fact Sheet.
- The Metro Matters funding agreement does not demonstrate that funding to support the existing system is either currently available/committed or reasonably expected. 23 C.F.R. § 450.324(e); 58 Fed.Reg. at 58040, 58060. Metro Matters assumes “significant assistance from the federal government: \$260 million on top of what Metro already receives for rail cars, plus \$143 million for security needs.” Metro Press Release, 10-15-04, http://www.wmata.com/about/MET_NEWS/PressReleaseDetail.cfm?ReleaseID=521. Yet this federal funding goes well beyond what has been provided in the past, and WMATA has not shown where the federal funds will come from or that they can be reasonably expected.
- Metro Matters does not fund solutions to WMATA’s capacity problems beyond FY2012, and does not fund basic infrastructure renewal. Metropolitan Washington Council of Governments (“COG”), January 6, 2005, *Report of the Metro Funding Panel* at 19.
- The Washington area is in nonattainment status for ozone and as a result the TIP must demonstrate that for the first two years of the TIP, funds to adequately maintain and operate the existing system are *available* or *committed*. 23 C.F.R. 450.324(e); 58 Fed. Reg. at 58060 (emphasis added). The TIP and CLRP fail in this respect. For example, while the need for adequate security in the Metro system is immediate, the Metro Matters agreement does not cover security issues. Metro Press Release, *supra*. Consequently, there is no available or committed funding for the security improvements WMATA says are necessary.
- The TIP and CLRP fail to provide for other aspects of the existing regional transportation system, including \$300 million in “emergency” bridge repairs needed in the District of Columbia. TPB, *Time to Act – The National Capital Region’s Six-Year Transportation Funding Needs, 2005-2010* (Feb. 2004).

TPB apparently does not disagree with the specific defects we raised, as its reply in defense of the TIP and CLRP is silent on each of the specific objections. TPB makes only vague references to speculative funding options, and offers nothing to show that funding needed to

adequately support the existing transportation system is available/committed or reasonably expected.

First, TPB states that FHWA and FTA approved its 2003 conformity determination, and notes that FHWA and FTA can only make this determination if the plan and TIP meet all applicable planning requirements. In addition, TPB states that it has approved the 2004 CLRP and found it to be consistent with “already available and projected sources of revenues.” TPB, *Review of Comments Received and Acceptance of Recommended Responses for Inclusion in the Air Conformity Assessment, the 2004 Constrained Long Range Plan (CLRP) and FY 2005-2010 Transportation Improvement Program (TIP)*, (hereinafter “TPB Review of Comments”), November 17, 2004 at 4. However, TPB does not specify what these purportedly “available and projected sources of revenues” are. Moreover, whatever the validity of prior FHWA and FTA approvals of prior conformity determinations for prior plans, they do not excuse TPB and the states from demonstrating compliance with all conformity requirements in its current plans. Likewise, TPB’s own conclusive conformity determination cannot substitute for addressing each of the specific defects that preclude a finding of compliance with fiscal restraint requirements.

Second, TPB states that “DDOT, MDOT, and VDOT have long-standing policies for maintaining and preserving their existing highway systems, and have demonstrated that they will give budget priority to maintenance and preservation.” Yet the Metro Funding Panel found that “[w]ith increasing pressures on state and local budgets,” the Washington area “cannot assume that each jurisdiction will continue to meet the funding challenge of the recapitalization of the [Metro] system.” *Report of the Metro Funding Panel* at 29. Thus, TPB’s reliance on funding from the metro area jurisdictions is not even supported by the findings of the agency’s own study.

TPB further replies that the Metro Matters funding agreement provided for WMATA’s near-term rehabilitation, preservation and access and capacity needs through 2010. TPB Review of Comments at 4. However, as discussed above, Metro Matters relies on highly speculative additional federal funding, does not fund necessary security improvements, does not address Metro’s capacity problems beyond the year 2012, and does not fund basic infrastructure renewal. *Report of the Metro Funding Panel* at 19.

For funding needs beyond 2010, TPB points to the Metro Funding Panel that was established in September 2004 to identify dedicated funding sources for WMATA. While this Panel has developed some preliminary ideas for possible long-term funding sources for Metro, its Report and recommendations do not constitute a specific plan of action for ensuring that the necessary funds will be available within the timeframe shown in the financial plan. See 58 Fed.Reg. 58040 at 58060; 23 U.S.C. § 134(g)(2)(b). The report merely “recommends that elected officials in the region take immediate steps to provide a significant degree of dedicated funding for Metro,” and “recommends that the federal government play a greater continuing role in the support of Metro.” *Report of the Metro Funding Panel* at 8.

With respect to potential local and state revenue sources, the Report only goes so far as to identify various *potential* sources, recommending a sales tax as the most viable dedicated regional revenue source. *Report of the Metro Funding Panel* at 6. Rather than a specific plan, this report is no more than a preliminary study. Furthermore, the Report states that the potential

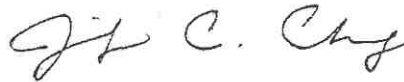
state and local funding sources it identifies will only close WMATA's funding shortfall assuming a 50% federal contribution. *Id.* at 31. Yet historically, federal contributions have totaled only 29% of WMATA's sources of funding. *Id.* at 39. Moreover, the federal government has "expressed policy concerns with providing operating assistance," and has "articulated a policy that WMATA, with the completion of the 103-mile base Metrorail system, should be treated 'like any other city.'" *Id.* This policy is being implemented currently with respect to system extensions, *id.*, and TPB offers no reasonable basis to expect that the federal government plans to change its policy.

Finally, the Report of the Metro Funding Panel assumes away a large portion of the Metro funding shortfall – needed improvements to accommodate growth of MetroAccess, the door-to-door transportation service operated by WMATA for the region's disabled population. *See Report of the Metro Funding Panel*, 9-10. The Panel finds that "MetroAccess is an essential service to its users," and recognizes that "a substantial portion – more than half – of WMATA's projected operating gap relates exclusively to these services." *Id.* at 27. MetroAccess would represent 60% of WMATA's operating shortfall in 2015 under current arrangements. *Id.* at 14. However, with respect to plans for funding MetroAccess in the future the Panel merely "recommends a concerted effort, perhaps involving the formation of a new panel with expertise on this issue to focus on existing federal, state and local social service funding." TPB cannot rely on mere recommendations for funding MetroAccess without identifying a specific plan of action for ensuring that the necessary funds will be available within the timeframe shown in the financial plan. *See* 58 Fed.Reg. 58040 at 58060; 23 U.S.C. § 134(g)(2)(b).

For all the foregoing reasons along with those set forth in our previous comments to TPB, the TIP and CLRP do not comply with the conformity requirements of the Clean Air Act. Consequently, a finding by FHWA and FTA that the TIP and CLRP meet conformity requirements would be arbitrary, capricious and contrary to law.

Please notify us of any findings or determinations you may make with respect to conformity of the above-referenced TIP and CLRP.

Sincerely,



David S. Baron
Jennifer C. Chavez*
Earthjustice

* Member of the Illinois Bar. Application to D.C. Bar pending