

National Capital Region Transportation Planning Board

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

ITEM 9

M E M O R A N D U M

December 21, 2005

TO: Transportation Planning Board

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

SUBJECT: Draft Responses to Comments Received Through the Close of the Public Comment Period on December 16, 2005 on Fine Particles (PM2.5) Air Quality Conformity Assessment of the 2005 Constrained Long Range Transportation Plan (CLRP) and the FY 2006-2011 Transportation Improvement Program(TIP)

Introduction

The draft results of the PM2.5 conformity assessment analysis of the 2005 CLRP and FY 2006-2011 TIP were released for public comment at the November 16 TPB meeting. The 30-day public comment period on these results ended on December 16, 2005. The Board will be briefed on the public comments received, asked to accept the recommended responses for inclusion in the documentation, and asked to approve the PM2.5 conformity determination for the 2005 CLRP and FY 2006-2011 TIP.

Public comments have been posted as received on the COG web site at <http://www.mwcog.org/transportation/public/comments.asp> Board members are invited to review these comments on the web. This memorandum provides draft responses to comments received through the close of the public comment period on December 16.

The mailout for this item includes a December 14, 2005 letter from the Metropolitan Washington Air Quality Committee (MWAQC) with comments and responses. Comments from an EarthJustice letter of December 16, 2005 (copy attached) and recommended responses are presented below:

1. Comment: "We previously commented on TPB's fiscal constraint analysis for the 2004 CLRP and FY 2005-2010 TIP. Because the same defects relating to fiscal constraint were carried forward from last year's CLRP and TIP, we attach those comments and hereby incorporate them by reference. As mentioned above, while TPB continues to rely on the Metro Matters funding agreement in its conformity analysis, Metro Matters falls \$2.9 billion short of funding WMATA's basic capital needs."

Response: A response was provided to the previous comments by EarthJustice in conjunction with the approval of the 2004 CLRP and the FY 2005-2010 TIP by the TPB on November 17, 2004, and incorporated in the FY 2005-2010 TIP documents. In addition, in response to letters of January 18, 2005 and March 9, 2005 from EarthJustice to the Federal Highway Administration and the Federal Transit Administration, TPB staff provided more detailed information on TPB's fiscal constraint analysis in a letter to EarthJustice of June 13, 2005 (copy attached).

In a letter to the TPB of June 14, 2005, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) approved the conformity determination of the 2004 CLRP and FY 2005-2010 TIP. With respect to the fiscal constraint requirements, this approval letter stated:

"Based upon 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."

With respect to the Metro Matters funding agreement, the June 13, 2005 letter to EarthJustice stated the following:

"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 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 the WMATA Board (on October 21, 2004) and before the Metro Funding Panel completed its report on (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 600 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.”

2. Comment: "Thus, not only does TPB fail to provide factual support for its assertion that the CLRP provides for adequate operation and maintenance of the existing transit system, it fails to address evidence to the contrary."

Response: The assertion in the comment quoted above was made previously in comments in letters from EarthJustice of October 29, 2004, January 18, 2005 and March 9, 2005 on the conformity determination of the 2004 CLRP and FY 2005-2010 TIP. A full and detailed response was provided to this comment in the attached letter to EarthJustice of June 13, 2005. As noted in the response to Comment 1 above, FHWA and FTA on June 14, 2004 found that for the 2004 CLRP and FY 2005-2010 TIP “the fiscal constraint requirements have been met.”

3. Comment: “TPB has not demonstrated that funding for proposed projects included in the first two years of the TIP are “available or committed”, or that funding for projects beyond the first two years of the TIP “can reasonably be expected to be available. — As a result of this deficiency, the CLRP and TIP contain proposed projects that do not comply with fiscal constraint requirements. For example, the funding table for the proposed Intercounty Connector includes a budget of \$1.25 billion for projects or actions programmed for FY 2006-2008. Ronald F. Kirby, Memorandum re. Significant Changes for the 2005 CLRP and FY 2006-2011 TIP (Sept. 15, 2005) (attachment at 13-14). Anticipated funding is listed under general categories (i.e. "GARVEE (AC)," "MdTA," "Special Federal," and "State") along with the percentage of funding anticipated from each source. There is no indication whether the listed amounts have been currently authorized or instead are anticipated; whether they represent existing or new sources of funding; and if they are new sources of funding, whether they are a "reasonably available new source.”

Response: As noted in the response to Comment 1 above, the Federal Highway Administration (FHWA) and the Federal Transit Administration

(FTA) have reviewed the procedures used by the TPB in demonstrating fiscal constraint for the 2004 CLRP and the FY 2005-2010 TIP, and have found that “the fiscal constraint requirements have been met.” With respect to the example cited concerning the funding for the Inter County Connector (ICC) included in the 2005 CLRP and the FY 2006-2011 TIP, the TPB received the attached letter of February 4, 2005 from Trent M. Kittleman, Executive Secretary of the Maryland Transportation Authority, identifying the sources and commitments for ICC funding. This letter was included in the FY 2006-2011 TIP document in support of the demonstration that the fiscal constraint requirements had been met.

4. Comment: "Thus, even if the Davis Bill or a substantially similar enactment is adopted, TPB should not rely on it as an anticipated source of funding in this or any future CLRP unless the conditions of the bill are met and funds are "available or committed."

Response: As correctly noted earlier in the paragraph containing this comment, the Davis bill “is not relied upon in the current CLRP and TIP.” This comment is therefore not relevant to actions related to the 2005 CLRP and the FY 2006-2010 TIP.



Local governments working together for a better metropolitan region

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.

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.mwcoq.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.mwcoq.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

Mr. David Baron

June 13, 2005

Page 3

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 black ink, appearing to read "Ronald F. Kirby". The signature is written in a cursive style with a large, sweeping "R" and "K".

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.mwco.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 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 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.)



February 4, 2005

The Honorable Phil Mendelson, Chairman
National Capital Region Transportation Planning Board
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E.; Suite 300
Washington, D.C. 20002-4290

Attention: Mr. Ronald F. Kirby

Dear Sirs:

In addition to issuing GARVEES for the Intercounty Connector Project (ICC), the Maryland Transportation Authority (Authority) will fund approximately \$1.24 billion of project costs (including \$1.12 billion in the FY 2005 -FY 2010 period). This funding will be provided from Authority toll revenue bonds (and potentially cash), supported by Authority revenues (primarily toll revenues). The funding for the ICC is included in the Authority's FY 2005-2010 capital program, which includes an additional \$1.61 billion in other Authority projects.

With recent toll increases and a proven revenue stream, the Authority is able to undertake its capital program obligations including the ICC. Annual Authority revenues are projected to be \$292 million in FY 2005 and \$301 million in FY 2006. The Authority has been conservative in its use of debt and adheres to strict financial goals and standards, including those imposed in its trust agreement and bond indentures. The Authority's goal is to maintain cash reserves approximately equal to annual toll revenues, and a coverage factor of net revenues being two times annual debt service.

In 2004, the Authority received its highest-ever bond ratings, including Aa3 (Moody's Investors Service) and AA- (Fitch Ratings). The A+ rating from Standard and Poors was unchanged. These ratings took into consideration the Authority's intent to undertake the ICC project.

The Authority was established by the Maryland General Assembly as an independent state agency in 1971. It consists of six members appointed by the Governor with the advice and consent of the State Senate. Each member serves a three-year term. Maryland's Secretary of Transportation serves as the Authority's chairman.

Pursuant to the enabling legislation, the Authority is responsible for the construction, operation, maintenance and repair of revenue-producing transportation facilities projects. All existing highway toll facilities in

MARYLAND TRANSPORTATION AUTHORITY

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Robert L. Flanagan
Chairman

Louise P. Hoblitzell
Walter E. Woodford, Jr., P.E.
John B. Norris, Jr., P.E.
Rev. Dr. William C. Calhoun, Sr.
Andrew N. Barrow
Susan M. Affleck Bauer, Esq.

Trent M. Kittleman
Executive Secretary

2310 Broening Highway
Suite 150
Baltimore MD 21224
410-537-1000
410-537-1090 (fax)
410-355-7024 (TTY)
1-866-713-1596

e-mail: mdta@mdtransportationauthority.com

www.mdtransportationauthority.com



Maryland are owned, operated and maintained by the Authority, which has the exclusive right to levy tolls within the State. Current toll facilities include:

- John F. Kennedy Memorial Highway (I-95);
- Thomas Hatem Memorial Bridge (US 40);
- Fort McHenry Tunnel (I-95);
- Baltimore Harbor Tunnel (I-895);
- Francis Scott Key Bridge (MD 695);
- William Preston Lane Jr. Memorial (Bay) Bridge (US 50/301); and
- Governor Harry W. Nice Memorial Bridge (US 301).

The Intercounty Connector will be the Authority's eighth toll facility.

Acting on behalf of the Department, the Authority has various powers and duties relating to the supervision, financing, construction, operation, maintenance and repair of transportation facilities projects. In addition to its existing transportation facilities projects, the Authority may authorize the acquisition, financing, or construction of any other projects for transportation facilities, including airport, highway, port, rail and transit facilities, as "transportation facilities projects." The Authority is empowered to finance the cost of transportation facilities projects by the issuance and sale of revenue bonds, notes, or other obligations.

If additional information is needed, please do not hesitate to contact me.

Sincerely,



Trent M. Kittleman
Executive Secretary



EARTHJUSTICE

Because the earth needs a good lawyer

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

December 16, 2005

National Capital Region Transportation Planning Board
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E., Suite 300
Washington, D.C. 20002-4290

Re: Draft Supplement to the Air Quality Conformity Analysis for the 2005 Constrained Long Range Plan Amendments and FY 2006-2011 Transportation Improvement Plan (Nov. 16, 2005)

We are writing to comment on the above-referenced draft PM2.5 conformity analysis for the 2005 Constrained Long Range Plan (CLRP) and FY 2006-2011 Transportation Improvement Plan (TIP), presented for public review on November 16, 2005. For the reasons discussed below, the CLRP and TIP 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, 42 U.S.C. § 176(c), and implementing regulations, 40 C.F.R. § 93.108. These comments are also submitted on behalf of the Washington, D.C. chapter of the Sierra Club.

Under DOT's metropolitan planning regulations, "[t]he TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained)." 23 C.F.R. § 450.324(e). Further, "[o]nly projects for which construction and operating funds can reasonably be expected to be available may be included." Finally, because the Washington D.C.-MD-VA metropolitan area is in nonattainment status for PM2.5 and ozone standards, projects included for the first two years of the current TIP must be limited to those for which funds are "available or committed." TPB has not demonstrated that the projects included in the CLRP meet the foregoing requirements.

1. TPB has not demonstrated that projects in the CLRP can be implemented "while the existing transportation system is being adequately operated and maintained."

As an initial matter, TPB makes only a conclusory finding that the CLRP provides for adequate operation and maintenance of the existing transportation system, stating:

[T]he FY 2006-2011 TIP has been developed to meet the financial requirements in the Metropolitan Planning Rules and includes projects or identified phases of projects only if full funding can reasonably be anticipated to be available for their completion with already available and projected sources of transportation revenues while the existing transportation system is being adequately operated and maintained.

TPB, Resolution Approving the TIP for FY 2005-2010 (Oct. 19, 2005). However, 23 C.F.R. § 450.324(e) places a priority on ensuring that the existing transit system will be adequately operated and maintained *before* other projects are added to the CLRP. TPB's conclusory statement, without documentation or analysis of its conclusion, falls far short of demonstrating that the CLRP meets this requirement.

Publications and statements by TPB and WMATA officials highlighting the continued funding shortfall facing the Metro transit system contradict TPB's assertion. For example:

-- TPB acknowledges that "substantial additional financial commitment at federal, state, regional, and local levels is necessary to meet WMATA's capital funding needs." *Resolution Endorsing Continuing Efforts to Identify Dedicated Funding for WMATA*, TPB R3-2006 (Sept. 21, 2005). Indeed, TPB recently emphasized the critical need to "identify additional funding to meet the preservation, rehabilitation, safety, security and capacity needs of the Metrorail and Metrobus system."

-- In a presentation to TPB on September 21 of this year, the Washington Metropolitan Area Transit Authority (WMATA) emphasized that "Metro is exceeding beyond expectations - yet literally falling apart." WMATA, *Dedicated Funding for the Washington Metropolitan Area Transit Authority* (PowerPoint Presentation) (September 21, 2005).

-- WMATA estimates that Metro faces a \$300 million annual shortfall in needed operating and capital funds, even after assuming 5.3% growth in state/local funding and modest fare increases. *Id.* Despite \$3.3 billion funded through the Metro Matters funding agreement, "\$2.9 [billion] in basic capital needs remain unfunded." *Id.* Thus, a new funding agreement would be required in 2008 in order to have funding available for needed expenditures after 2010. *Id.*

-- WMATA's Capital Improvement Program (CIP) for FY 2006-2011 calls for a total of \$12 million to be spent on its System Expansion Program (SEP) during the CIP program years. However, the CIP notes that the Metro Matters agreement does not provide funding for the SEP beyond fiscal year 2005. WMATA, *FY 2006 Capital Budget and FY 2006-2011 CIP and 2006 Metro Matters Annual Work Plan* (March, 2005).

Thus, not only does TPB fail to provide factual support for its assertion that the CLRP provides for adequate operation and maintenance of the existing transit system, it fails to address evidence to the contrary.

2. TPB has not demonstrated that funding for proposed projects included for the first two years of the TIP are "available or committed, or that funding for projects beyond the first two years of the TIP "can reasonably be expected to be available."

TPB does not attempt to make a specific demonstration that anticipated funds for each project meet the fiscal constraint requirements. The fiscal constraint rule sets up two separate and specific regimes for demonstrating conformity with fiscal constraint requirements:

- 1) For each year of the CLRP, “[o]nly projects for which construction and operating funds can reasonably be expected to be available may be included.”
- 2) In nonattainment areas like the DC-MD-VA metropolitan area, projects included for the first two years of the current TIP must be limited to those for which funds are “available or committed.”

23 C.F.R. §450.324(e). The Conformity Rule contains specific factors for determining compliance. *See* 58 Fed. Reg. 62188 (Nov. 24, 2003). For example, “[f]or Federal funds that are distributed on a discretionary basis... any funding beyond that currently authorized and targeted to the area should be treated as a new source and must be demonstrated to be a “reasonably available new source.” 58 Fed. Reg. at 62203-04.

In contrast to these specific requirements, TPB claims that it “demonstrate[s] funding can reasonably be expected to be available,” by “examin[ing] the projects in the TIP tables “by the proposed funding categories.” WMATA, 2005 CLRP Financial Plan at 229. Based on this examination, the Financial Plan purports to show that funding needs for proposed projects in the first year are “consistent with the anticipated TEA-21 funding authorized for FY 2006,” and funding needs for proposed projects in the remaining program years are “consistent with the anticipated federal dollars authorized by the states.” *Id.* Even if this finding meets fiscal constraint requirements on its face, and we do not believe it does, it is unclear what standard or analysis TPB follows to determine such “consistency.” Moreover, as discussed above, the fiscal constraint rule sets forth specific requirements for 1) the first two years of the TIP; and 2) all remaining program years beyond the first two years. These requirements are not satisfied merely by identifying general sources of potential funding and asserting that projects are “consistent with anticipated funding.”

As a result of this deficiency, the CLRP and TIP contain proposed projects that do not comply with fiscal constraint requirements. For example, the funding table for the proposed Intercounty Connector includes a budget of \$1.25 billion for projects or actions programmed for FY 2006-2008. Ronald F. Kirby, Memorandum re. Significant Changes for the 2005 CLRP and FY 2006-2011 TIP (Sept. 15, 2005) (attachment at 13-14). Anticipated funding is listed under general categories (i.e. “GARVEE (AC),” “MdTA,” “Special Federal,” and “State”) along with the percentage of funding anticipated from each source. There is no indication whether the listed amounts have been currently authorized or instead are anticipated; whether they represent existing or new sources of funding; and if they are new sources of funding, whether they are a “reasonably available new source.”

3. The transit ridership constraint does not satisfy fiscal constraint requirements.

TPB also claims to meet the fiscal constraint requirements by “explicitly account[ing] for the funding uncertainties affecting the Metrorail system capacity and levels of service” beyond 2010 through the “transit ridership constraint.” TPB, *Resolution Finding That the 2005 CLRP and FY 2006-2011 TIP Conform With the Requirements of the Clean Air Act Amendments of 1990*, TPB R5-2006 (October 19, 2005). According to TPB, the transit ridership constraint is applied during the travel demand modeling process as part of the air quality conformity analysis for the CLRP. TPB, *Description of the Transit Ridership Constraint* (June 13, 2004). In plain terms, the constraint creates an assumption in the travel demand model that future transit trips through the core area

will remain at 2010 totals. *Id.*; TPB R5-2006. The “unconstrained” transit demand predicted by the model is then allocated to automobile trip totals, resulting in increased model totals for daily automobile trips. *Id.* Whatever validity this technique has in predicting vehicle trips, it is not a substitute for compliance with the *fiscal constraint* requirements set forth in 40 C.F.R. § 93.108 and the FHWA Conformity Guidance. TPB cannot override fiscal constraint requirements by modeling.

Finally, although it is not relied upon in the current CLRP and TIP, it is worth noting here TPB’s recent citation to a bill submitted by Congressman Tom Davis, titled H.R. 3496 (National Capital Transportation Amendments Act of 2005) (introduced on July 28, 2005, and reported on Oct. 20, 2005). *See* TPB, *Certification of the Urban Transportation Planning Process* (Oct. 19, 2005). TPB notes that “the commitment of the \$1.5 billion in federal and \$1.5 billion state and local capital funding [from the Davis Bill] would address the funding uncertainties affecting the Metrorail system capacity and levels of service beyond 2010, and permit the TPB to remove the transit ridership constraint in the air quality conformity analysis for the CLRP.” *Id.* However, the Davis Bill is contingent on 1) amending the WMATA Compact to add a requirement that each of the jurisdictions approve “dedicated funding sources” for WMATA; 2) establishment of an inspector general to report to the WMATA Board; and 3) the addition of two seats on the WMATA board for representatives from the Federal government. *See Minutes of the TPB* at 6 (Sept. 21, 2005). As those minutes demonstrate, the state jurisdictions and WMATA have not committed to the Davis Bill’s conditions, either formally or in principal. *Id.* at 6-7. Thus, even if the Davis Bill or a substantially similar enactment is adopted, TPB should not rely on it as an anticipated source of funding in this or any future CLRP unless the conditions of the bill are met and funds are “available or committed.”

We previously commented on TPB’s fiscal constraint analysis for the 2004 CLRP and FY 2005-2010 TIP. Because the same defects relating to fiscal constraint were carried forward from last year’s CLRP and TIP, we attach those comments and hereby incorporate them by reference. As mentioned above, while TPB continues to rely on the Metro Matters funding agreement in its conformity analysis, Metro Matters falls \$2.9 billion short of funding WMATA’s basic capital needs. For example, the urgent need for funding \$150 million in high-priority security improvements for Metrorail and Metrobus still has not been fulfilled. *See* Michael Alison Chandler, *Transit Security Funding is Urged*, *Washington Post*, Thursday, September 22, 2005; Page B04; *Minutes of the TPB* at 12 (May 18, 2005).

For all the foregoing reasons, the 2005 TIP and FY 2006-2011 CLRP do not comply with the conformity requirements of the Clean Air Act. We request that TPB address the specific deficiencies described in these comments prior to final approval of the Draft Supplement to the Air Quality Conformity Analysis for the CLRP and TIP.

Sincerely,

/s/ David S. Baron
David S. Baron
Jennifer C. Chavez
Earthjustice

/s/ Chris Carney
Chris Carney
Sierra Club Metro D.C.
Healthy Communities Campaign



October 29, 2004

Transportation Planning Board
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E.
Washington, D.C. 20002

RE: Draft Air Quality Conformity Determination of the 2004 Constrained Long Range Plan and the FY2005-2010 Transportation Improvement Program for the Washington Metropolitan Region (Oct. 1, 2004)(Conformity Determination); Draft Transportation Improvement Program for the Washington Metropolitan Region FY 2005-2010 (Oct. 1, 2004)(TIP); 2004 Fiscally Constrained Long Range Transportation Plan (CLRP).

We are writing to comment on the above-referenced drafts. For reasons further discussed below, these drafts and the analyses therein do not comply with the conformity and planning requirements of the Clean Air Act, the Intermodal Surface Transportation Efficiency Act (ISTEA)(as amended by the Transportation Equity Act for the 21st Century (TEA-21)), and regulations promulgated thereunder.

We are particularly concerned that COG and its member jurisdictions are proposing billions of dollars for new road building while neglecting to fund projects that are urgently needed to maintain the region's existing transportation infrastructure. According to Metro officials, the Washington area's transit system is on "life support," and will not be able to maintain even its current degraded level of service without a major infusion of funds. "Emergency" bridge repairs needed in the District of Columbia are left unfunded by these plans. Yet at the same time, the TIP and CLRP propose massive new spending for new and bigger roads. As further discussed below, these warped priorities violate explicit provisions of federal law and defy common sense. They also threaten to prolong our region's violation of health standards for smog, a fact obscured by TPB's inaccurate and seriously flawed transportation model.

1. Federal law requires the TIP and CLRP to assure adequate maintenance of existing transportation systems

In order to be found in conformity for purposes of the Clean Air Act, "[t]ransportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450." 40 C.F.R. §93.108 (2003). The DOT metropolitan planning regulations require, among other things, that CLRPs and TIPS include financial plans showing that funds are in fact available or (for the longer term) are reasonably expected for all of the projects in such plans. 23 C.F.R. § 450.322(b)(11); 450.324(e); 58 Fed. Reg. 58040, 58059-60

(1993). The regulations further mandate that priority be given to maintaining the existing system:

The financing plan must demonstrate which projects can be implemented annually using current revenue sources and which projects are to be implemented using proposed new revenue sources **while the existing transportation system is being adequately operated and maintained**. This means that **priority should be given to the maintenance and operation of the existing system, including capital replacement**.

59 Fed. Reg. at 58060 (emphasis added); 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).

2. Neither the TIP nor the CLRP assure adequate maintenance and operation of the existing Metro system

In a recent presentation to COG’s Transportation Planning Board (TPB), the general manager of the Washington Metropolitan Area Transit Authority (WMATA) demonstrated that funding levels provided by the TIP and CLRP are insufficient to adequately maintain and operate the region’s transit system. According to WMATA:

- “Metro is seriously overcrowded.” Rail service on all lines is “highly congested,” meaning that railcars are seriously overcrowded
- “Due to funding shortfalls, Metro is deferring necessary capital investments that keep existing assets in a ‘state of good repair’
- “Metro’s service performance has been steadily declining in the last couple of years”
- “Approximately 42% of Metrobus riders have difficulty obtaining a seat every day”

Richard A. White, General Manager/CEO, WMATA, *WMATA Performance and Funding Requirements Update* (powerpoint presentation to TPB, Sept. 15, 2004)(hereinafter, “WMATA Update”) at 2, 4, 5.¹ These findings are no surprise to anyone who uses the metrorail or metrobus systems. Hardly a day goes by without breakdowns somewhere in these systems, leading to delays that sometimes stretch on for hours. WMATA figures show that the mean distance between rail failures has plummeted by nearly 30% in just the last two years. *Id.* at 7. According to published reports, Metro's rail cars are breaking down nearly twice as often as they did three years ago, creating increasing delays across all lines when ridership is surging. “Localities Kick in for Metro Upgrade,” *Washington Post*, Oct. 15, 2004, B1. A 2004 Brookings Institution report notes that “WMATA has been hounded in recent years by a series of setbacks: mechanical problems and breakdowns on buses and trains, overcrowding on certain rail lines, communications and information troubles, and ongoing elevator and escalator hassles.” Brookings Institution, *Washington’s Metro: Deficits by Design* (June 2004) at 1.

¹ All documents cited are incorporated herein by reference. We will separately submit copies of some of these documents for convenience, but all are on file at COG or otherwise publicly available.

WMATA projects that, without a major infusion of new funding, the situation will become even worse over the next five years. According to WMATA estimates, overcrowding will become “unmanageable” on the Orange line by 2008, on the Blue line by 2009, on the Red and Yellow lines by 2010, and on the Green line by 2011. WMATA Update at 4. These time frames fit squarely within both the TIP and CLRP.

To address these and other urgent needs for maintenance and operation of the existing system, WMATA needs at least an additional \$1.5 billion over the next five years. According to WMATA, these funds are needed for the following (among other things):

- Replacement and rehabilitation of existing assets: “Many critical infrastructure assets are already becoming stressed because of deferred rehabilitation and replacement cycles. Without additional funding of \$516 million, Metro service will deteriorate **and the system will fail.**”
- Additional rail cars: “Metro desperately needs eight-car trains to relieve severe overcrowding and keep pace with ridership growth. The cost of 120 new railcars and support systems needed for eight-car trains is \$625 million. Another \$171 million is needed to support the bus system.
- Security and emergency response: Metro needs “\$150 million in critical infrastructure protection to eliminate potential vulnerabilities in the Metro operating system and improve Metro’s ability to respond and recovery during a regional emergency.

Metro Matters Fact Sheet (emphasis added).

TPB itself has acknowledged the critical need for additional funding to adequately maintain and operate the existing transit system. In a report earlier this year, TPB stated that the region’s “critical” unfunded transportation needs include “[r]ehabilitating and maintaining the region’s Metrorail and Metrobus system to keep it in a state of good repair; maximizing available system capacity to reduce overcrowding; and securing the system against potential threats.” TPB, *Time to Act – The National Capital Region’s Six-Year Transportation Funding Needs, 2005-2010* (Feb. 2004) at 2-3. TPB further stated that WMATA’s needs “are particularly critical,” and that the region “urgently requires additional capital funding in order to meet [WMATA] needs totaling \$4.1 billion over six years, of which \$1.9 billion is funded and \$2.2 billion remains unfunded.” *Id.* 3.

A resolution slated for approval by the TPB Board on October 20, 2004 “[d]eclares that funding must be identified to meet the preservation, rehabilitation, and capacity expansion needs of the Metrorail and Metrobus system.” TPB R3-2005.

TPB’s October 20 resolution tacitly acknowledges that neither the TIP nor the CLRP identifies funding to adequately maintain and operate the existing regional transit system. Nor do the TIP and CLRP financial plans show that such funding can be reasonably expected. Accordingly, the TIP and CLRP do not comply with the fiscal constraint requirements of the DOT metropolitan planning rules cited above, and therefore cannot be found to meet the conformity requirements of the Clean Air Act.

3. The proposed “Metro Matters” funding agreement, while an important step forward, does not resolve the fiscal constraint deficiencies in the TIP and CLRP.

Staff for WMATA and Washington area governments have recently negotiated a proposed “Metro Matters Funding Agreement” to provide additional local funding of WMATA’s near term needs. The agreement calls for local jurisdictions to provide \$917 million in additional funds for WMATA over the next 6 years. Although this agreement is a welcome step forward, it does not fully resolve the funding shortfalls identified above, for several reasons.

First, the agreement will not become final until approved by all of the participating jurisdictions. At least two jurisdictions – Arlington and Fairfax counties - are depending on voter approval of funding at the upcoming November 2 election. “In N. Va., It’s Rail Vs. Road Repairs: Fairfax, Arlington Face Bond Issues,” Washington Post, Oct. 20, 2004, B1. Others will need approval from their governing bodies.

Second, even if approved by all of the jurisdictions, the agreement does not provide the full \$1.5 billion that WMATA says is required for its most urgent needs over the next 6 years. Full funding “depends on 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 (hereinafter, “Metro Press Release”). WMATA has not shown where these federal funds will come from, or that they can be reasonably expected. WMATA speculates that such funds might be provided in a future Congressional transportation bill, but there is no reason to believe this is anything more than wishful thinking. Equally speculative is WMATA’s suggestion that, if federal funds are not provided, WMATA might cover the entire \$260 million for capital costs using grant anticipation bonds. If there is no new federal grant or grant program, then WMATA will have no basis for issuing bonds in anticipation of grants from such a non-existent program.

Third, Metro Matters will not provide immediate relief from overcrowding, system breakdowns, delays, and other problems that transit riders are currently experiencing. The vast bulk of new rail cars under the program will not be delivered until fiscal years 2007 and 2008. Most of the additional buses provided under the program will not be put in service until the 2008-2010 period. Thus, it will take years before daily riders notice improvements attributable to Metro Matters. “In the meantime, we have to keep the system alive, and that’s going to be a struggle,” according to WMATA’s general manager. “Localities Kick in for Metro Upgrade,” Washington Post, Oct. 15, 2004, B1. Neither WMATA nor COG explain how the TIP and CLRP can be found to assure adequate maintenance and operation of the existing transit system, when that system is *currently* being *inadequately* maintained and operated, when neither the TIP nor the CLRP contain sufficient programs or funding to correct those inadequacies, and when even the Metro Matters program will not address many of those inadequacies for at least 3 years.

Fourth, the Metro Matters agreement does not provide funding beyond the next six years. According to WMATA:

Metro Matters is only a six-year commitment and does not fully-fund critical rehabilitation needs beyond 2010. Only a small portion of needed capacity improvements

is funded. A plan for dealing with Metro's long-term capital and operating needs is still unresolved. The Metro Matters agreement buys approximately six years before more problems reoccur and does not cover security issues.

Metro Press Release. Thus, there is as yet no plan, let alone available or reasonably expected funding, for assuring adequate maintenance of operation of the existing transit system after 2010.

For all these reasons, the Metro Matters agreement will not resolve the fiscal constraint deficiencies in the TIP and CLRP. As noted above, these plans must provide for funding to adequately maintain and operate the existing transit system, and must show that funding therefor is either currently available/committed or reasonably expected. Moreover, because the Washington area is nonattainment for ozone, the TIP financial plan must assure 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. Here, neither WMATA nor COG have shown how the transit system will be adequately operated and maintained (or how such adequate operation and maintenance will be funded) during the first two years of the TIP, when most of the Metro Matters improvements will not be implemented until well after that. In addition, the need for adequate security in the metro system is immediate, yet there is no available or committed funding in the TIP to implement the \$143 million security program that WMATA says is necessary.

Although funding for periods beyond years 1 and 2 of the TIP and CLRP does not have to be currently available or committed, it must be "reasonably available." 58 Fed. Reg. at 58060. See 23 U.S.C. § 134(g)(2)(B). New funding sources may be considered for this purpose, but it is not enough to simply identify potential new funding sources without identifying strategies for ensuring their availability. *Id.* There must be a specific plan of action describing the steps that will be taken to ensure that the funds will be available within the timeframe shown in the financial plan. *Id.* Here, no such specific plan of action has been provided to ensure that any of the unfunded portions of Metro Matters will be funded, or to ensure that WMATA's funding needs beyond 2010 will be addressed. Indeed, CLRP does not even address WMATA's unmet needs for adequate operation and maintenance beyond 2010. Moreover, new funding sources will not generally be considered "reasonably available" where past efforts to enact new revenue sources have generally been unsuccessful, the extent of current support indicates that passage of a pending funding measure is doubtful, or no specific plan of action or other information is available demonstrating a strong likelihood that funds will be secured. *Id.* Here, full financing of the Metro Matters agreement and programs beyond 2010 hinges on additional funding that goes well beyond what has been provided in the past, and there is no plan or other information showing that such funding is strongly likely.

Failure to fully fund Metro to assure adequate operation and maintenance is all the more inexcusable when the proposed TIP and CLRP includes billions of dollars for new, capacity-increasing highway projects. The fiscal constraint rules require that first priority be given to adequate maintenance and operation of existing systems. Yet COG is proposing a multi-billion expansion while the existing system is broken. COG cannot lawfully adopt a TIP and CLRP that provide for billions in new road capacity when funding is not provided to fix existing systems that are falling apart.

4. The conformity determination fails to account to ridership losses due to inadequate operation and maintenance of the transit system

WMATA predicts that failure to correct inadequacies in the regional transit system will drive people away from using public transit and back into cars. WMATA, *America's transit system stands at the precipice of a fiscal and service crisis* (Sept. 2003). Yet the air quality analysis in the draft conformity determination assumes that transit ridership will be maintained. That assumption plainly cannot stand, given the lack of adequate funding in the TIP and CLRP to relieve overcrowding in the transit system and adequately operate and maintain that system. The conformity analysis must therefore be reworked to reflect the increased number of motor vehicle trips and VMT (and associated increased VOC and NOx emissions) that will result due to deficiencies in the transit system.

5. The TIP and CLRP fail to comply with fiscal constraint requirements in other key respects

As noted above, DOT's metropolitan planning rules require TIPs and CLRPs to show that sufficient funds are available or reasonably expected to adequately maintain and operate the existing transportation system. The TIP and CLRP here fail to meet this requirement not only with respect to the regional transit system, but also with respect to other parts of the Washington area transportation network. For example, the TIP and CLRP fail to fund \$300 million in "emergency" bridge repairs needed in the District of Columbia. TPB, *Time to Act* (Feb. 2004) at 4. COG cannot seriously claim that the TIP and CLRP provide for adequate maintenance and operation of the existing system, when they fail to provide for "emergency" repairs in major system components like bridges.

In addition, the draft TIP fails to show that funds are available or committed for all projects in the first two years of the TIP, as required by 23 C.F.R. § 450.324(e). For most road projects, the draft TIP shows funding needs only for FY 2005, and does not show that funds are available or committed even as to those. The TIP financial plan merely shows categories of funding sources, and does not show that funds are actually available or committed from these sources in amounts sufficient to cover all costs in the first two years of the TIP. Nor does the TIP financial plan show that adequate funds are reasonably expected for TIP projects in 2007-10.

Likewise, the CLRP fails to show that funds are reasonably expected for all of the projects enumerated therein. The document posted on COG's web site in publicly noticing the CLRP revision ("Proposed Significant Changes for the 2004 CLRP"), merely lists proposed additions to the CLRP, without addressing funding. Although sheets containing additional information on these projects were circulated under cover of an April 15, 2004 memo from Ronald Kirby, those sheets also fail to show that funding is reasonably expected for each project. For most projects, the sheets merely identify funding sources in vague terms, such as "federal and state." This plainly does not satisfy the above-cited DOT requirements for a showing that funding will be reasonably available. 23 C.F.R. § 450.322(b)(11); 58 Fed. Reg. at 58060. To the extent that COG is relying on other information to show the plan is fiscally constrained, that information must be documented in a financial plan that is part of the CLRP, and that is made available for public review and comment as part of the proposed CLRP amendment. 23 C.F.R.

§450.322(b)(11)(CLRP must “include” financial plan). COG cannot merely rely on documentation or information that might be available elsewhere.

6. The Conformity Determination is based on flawed and inaccurate travel modeling that underestimates air pollution from motor vehicles

Comments previously submitted by Environmental Defense to TPB and the Metropolitan Washington Air Quality Committee (MWAQC) detail a number of serious flaws in the model used by TPB staff to predict future motor vehicle traffic and emissions, and the conformity analysis relying on that model. Among other things, those comments demonstrate that:

* The TPB model fails to account in any way for increased in-commuting that will result from the additional 56,000 jobs that planners predict will be induced by 2030 with the addition of the ICC to the CLRP

* The latest TPB model does not accurately or even passably simulate real world conditions: Rather, it underestimates traffic by 26% on the 20 highest volume freeway links, and by 41% on the 10 highest volume major arterials.

* The model fails to accurately replicate traffic entering and leaving the metro core, and other basic travel patterns.

These and other major deficiencies in the TPB model are set forth in October 25, 2004 comments by Environmental Defense to MWAQC, along with the attachments thereto, all of which are incorporated herein by reference (“ED comments”).

Because of these deficiencies, the Conformity Determination does show conformity as required by EPA rules. Pursuant to those rules, a conformity demonstration requires a showing that the TIP and CLRP are consistent with the region’s motor vehicle emissions budgets. E.g., 40 C.F.R. § 93.118. Such consistency “must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected” in the timeframe of the plan. *Id.* § 93.118(d). Here, because of the model deficiencies cited above, the draft conformity determination does not include emissions from the entire transportation system. Rather it unlawfully excludes substantial quantities of such emissions by failing to include emission from expected additional vehicle trips and by grossly underestimating future traffic volume (and associated emissions).

Moreover, consistency with the motor vehicle emissions budgets “must be demonstrated with a regional emissions analysis that meets the requirements of” 40 C.F.R. §93.122. *Id.* §93.118(d)(1). Under 40 C.F.R. § 93.122, such a regional emissions analysis must be made at a minimum “using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation.” *Id.* § 93.122(b)(1). Such models “must be validated against observed counts (peak and off-peak, if possible),” and “must be analyzed for reasonableness and compared to historical trends and other factors...” *Id.* § 93.122(b)(1)(i). “Land use, population, employment, and other network-based

travel model assumptions must be documented and based on the best available information.” Id. §93.122(b)(1)(ii). “Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated,” and the “distribution of employment and residences for different transportation options must be reasonable.” Id. § 93.122(b)(1)(iii). And the model “must be reasonably sensitive to changes in the time(s), costs(s), and other factors affecting travel choices.” Id. §93.122(b)(1)(vi).

The TPB travel model does not meet the foregoing requirements for all the reasons set for in the ED comments. The model does not comport with procedures and methods that are available and in practice, but rather conflicts with sound modeling methodologies recommended by the National Academy of Sciences and discussed in the ED comments. The model is not supported by current and available documentation, but rather conflicts with that documentation, as explained in the ED comments. Moreover, the model has not been validated against observed counts: Rather, the ED comments show that the model does *not* accurately simulate such counts, and is not reasonable compared to other factors. Model assumptions are not based on the best available information, and the model is not reasonably sensitive to the factors affecting travel choices, but rather the model ignores key information about the impact of new jobs and additional commuting that will be induced by the ICC and other projects, as well as other factors cited in the ED comments.

Accordingly, the Conformity Determination does not demonstrate that the TIP and CLRP are consistent with the region’s motor vehicle emissions budget in the manner required by EPA rules, and therefore the TIP and CLRP cannot be found in conformity. Moreover, any conformity finding by COG or DOT would be arbitrary and capricious, for all the reasons set forth in the ED comments.

Finally, we note that TPB has failed to make available for public review the full model information used to develop the proposed October 1, 2004 Conformity Determination, even though this information was requested in writing by Environmental Defense and others. Accordingly, we ask that the comment period on the Conformity Determination, TIP, and CLRP be extended until at least 30 days after this information is provided and made publicly available. The failure to provide this information violates the public participation and consultation requirements of EPA and DOT rules, including 40 C.F.R. §§93.105(e), .110(f), & .112, and 23 C.F.R. §§ 450.212, .316(b)(1), .322(c), .324(c), and .326.

Conclusion

For all the foregoing reasons, the proposed TIP and CLRP do not meet the conformity requirements of the Clean Air Act and do not comply with DOT’s metropolitan planning regulations. Moreover, a finding of conformity would be arbitrary and capricious because it is not supported by substantial evidence or by an explanation showing a rational connection between the facts and a finding of conformity.

These comments are submitted on behalf of Environmental Defense, Sierra Club, Audubon Naturalist Society, and Chesapeake Bay Foundation.

Sincerely,

/s/ David S. Baron

David S. Baron
Attorney