

**Hampton Roads Metropolitan Planning Organization
Transportation Planning Quadrennial Certification Review
Final Summary Report**

November 14-15, 2007



**Conducted by:
Federal Highway Administration, Virginia Division Office
Federal Transit Administration, Region III Office**

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FORWARD

Pursuant to 23 U.S.C. 134(k)(5) and 49 U.S.C. 5305(e), the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) must jointly certify the metropolitan transportation planning processes in Transportation Management Areas at least every four years (A TMA is an urbanized area, as defined by the U. S. Census, with a population of over 200,000).

Under the planning provisions, each MPO must, at least every four years, with submittal of the entire proposed TIP, self-certify that its planning process is being conducted in accordance with applicable requirements related to planning, air quality, Title VI of the 1964 Civil Rights Act (Title VI), Disadvantaged Business Enterprises (DBE), and the Americans with Disabilities Act (ADA). The Certification Reviews are essentially a look beyond the self-certification, and are not just a review of the MPO or its staff; rather, it covers all of the agencies (State, MPO, and transit operators) that are charged with cooperatively carrying out the process on a daily basis. This shared responsibility is specifically addressed in the regulations where:

The MPO, the State(s), and the public transportation operators shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process.
[23 CFR 450.314(a)]

In general, the reviews consist of three primary activities: a site visit, review of planning products (in advance and during site visit), and preparation of a report which summarizes the review and offers findings. The reviews focus on compliance with federal regulations, challenges, successes, and, experiences of the cooperative relationship between the MPO, State DOT and transit operator in the conduct of the metropolitan planning process. Joint FTA/FHWA certification review guidelines provide agency field reviewers with latitude and flexibility to tailor the review to reflect local issues and needs. As a consequence, the scope and depth of the certification review reports will vary significantly.

It is important that the State, the MPO, and transit operators understand that the Certification Review is being done in the spirit of cooperation with the goal of enhancing the quality of the transportation planning process. FHWA and FTA approach the certification review as true partners in the process, holding a stewardship role to find out what is/is not working and, when appropriate, to *help* make improvements.

The certification review process is only one of several methods used to assess the quality of a local metropolitan planning process, compliance with applicable statutes and regulations, and the level and type of technical assistance needed to enhance the effectiveness of the planning process. Other activities provide opportunities for this type of review and comment, including Unified Planning Work Program approval, Metropolitan and Statewide Transportation Improvement Program Findings, air quality conformity determinations (in non-attainment and maintenance areas), as well as a range of other formal and less formal contact provide both FHWA/FTA an opportunity to comment on the planning process. The results of these other processes are considered in the certification review process.

Executive Summary

Purpose

The purpose of this report is to document the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) evaluation of whether the transportation planning process in the Hampton Roads Transportation Management Area (TMA) meets joint FTA and FHWA planning regulations, and to certify, as appropriate, the planning process required by 23 CFR 450.334 entitled "Self-Certifications and Federal Certifications." TMAs are MPOs for regions with populations of 200,000 or more.

Organization of Report

This Certification report is organized into the following sections:

- **Executive Summary** (An overview of the Certification Actions).
- **Review Elements** (A discussion of the regulatory basis, observations, and findings for each focus area reviewed during this Certification cycle).
- **Appendices** (Appendices include federal, state, local, and citizen participants in the review, comments/handouts from citizens, agenda for the site visit, MPO staff handouts, a list of acronyms, federal regulations, MPO Agreement and Designation letter, and sections or pages from MPO products).

Federal Actions by Topic

Each of the federal actions listed below is discussed in greater detail, with associated findings, in the next section of the report.

MPO Designation, Structure, and Agreements

Commendation: The federal team commends the good level of cooperation and coordination between the MPO, State, and transit operators.

Recommendation: The federal team recommends that the MPO, State, and transit operators complete a new agreement outlining mutual responsibilities within the next three months.

Recommendation: The federal team recommends that the MPO Policy Board establish clear bylaws that govern the internal affairs and actions of the MPO (including advisory committees).

Recommendation: The federal team recommends the MPO provide clarification to the public of the established relationship between the CAO Advisory Committee to the MPO, the

Transportation Technical Advisory Committee (TTC), the HRPDC staff, and the MPO.

Corrective action: The federal team requests that the MPO (including VDOT, HRT, WAT) provide clarification on why the CAO Advisory Committee to the MPO meets in private (versus a public setting) with HRPDC staff to deliberate and provide recommendations to the MPO on publicly funded transportation infrastructure projects for inclusion in the MPO Long Range Plan, whether this is a formally established MPO advisory committee, and whether these meetings were/are held in compliance with the state FOIA statute. Please submit a letter of clarification to the federal team. The compliance deadline for this request is May 2008.

Corrective action: The federal team requests that the MPO provide clarification on why the HRPDC “ratifies” or approves the actions of the MPO, and where in the agreement between the MPO and State is this authority provided. Please submit a letter of clarification to the federal team. The compliance deadline for this request is May 2008.

Air Quality/Conformity/CMAQ program

Commendation: The federal team commends the HRPDC staff for assuming responsibility for analyzing the CMAQ projects in the region and doing so with a consistent methodology.

Commendation: The federal team commends the HRPDC staff for taking a regional approach with its CMAQ Program to address the air quality issues in the region.

Commendation: The federal team commends HRPDC staff for maintaining their knowledge of the CMAQ Program and its eligibility requirements.

Recommendation: The federal team recommends that the HRPDC staff ensure that the localities within the maintenance area are aware that regionally significant transportation projects that are subject to conformity include regionally significant projects carried out by localities, developers, or other federal and state agencies (i.e. military).

Recommendation: The federal team recommends that the MPO review its existing MPO Planning Agreement to determine if it satisfies the requirement of 23 CFR 450.314(b). If the MPO determines that the agreement does not, it should be revised and updated accordingly. A quick review of the agreement, however, reveals the following outdated statement: “The metropolitan planning area has been designated as a nonattainment area for transportation related pollutants under the Clean Air Act and *the [planning area] boundary adjusted to include the area so designated.*”

Long Range Multimodal Transportation Planning

Commendation: The federal team acknowledges the external political conditions experienced by HRPDC staff during the development of the MPO Long Range Transportation Plan and

commends the HRPDC staff for maintaining for their commitment and focus.

Commendation: The federal team commends the HRPDC staff for their outstanding and professional work in developing the Intermodal Management System Regional Freight Study.

Commendation: The federal team commends the HRPDC staff's dedication to safety through its publication of the Hampton Roads Regional Safety Study

Commendation: The federal continues to be impressed with HRPDC staff efforts to produce quality CMS documents and we applaud there efforts for establishing a very good CMS process

Commendation: The federal team appreciates the strong technical capabilities of the HRPDC staff which results in quality products.

Commendation: The federal team commends Hampton Roads Transit (HRT), HRT TRAFFIX, and Williamsburg Area Transport (WAT) for its work as part of the development of the LRTP.

Commendation: HRPDC staff and the MPO are commended for its support of transit in the region through its continuing work with HRT and WAT on flex funding and the Norfolk LRT project.

Commendation: The federal team appreciates the HRPDC staff efforts to coordinate with environmental, land use, and other transportation related agencies during the development of the 2030 Plan.

Commendation: WAT and HRPDC are commended for their successful efforts in providing transportation logistics for the Jamestown 2007 celebration. In doing so, WAT worked admirably in coordinating efforts through many government agencies, including VDOT, VDRPT, FHWA, FTA, and the U.S. Navy.

Recommendation: The federal team recommends that the HRPDC staff and transit increase the attention, detail, and discussion regarding transit in the next MPO LRP (include strategies, needs, funding issues, etc.). A more comprehensive approach in considering transit as a viable alternative in augmenting the region's highway infrastructure should be implemented in the development of the next long range plan.

Recommendation: The federal staff recommends that the HRPDC staff better coordinate with the VDOT Hampton Roads District office to verify financial projection data for future MPO long range plans.

Recommendation: The federal team recommends that the MPO Policy Board assess its membership and the MPO structure in light of emerging regional transportation issues such as freight.

Transportation Improvement Program (TIP)

Recommendation: The federal team recommends that the MPO include an introduction to the TIP that better enables the reading to understand the TIP development process and the relationship of the TIP to the MPO decisionmaking process.

Recommendation: The federal team recommends that the MPO coordinate with the HRTA as it develops its financial plan and project list. HRTA revenues and projects must be considered in the MPOs TIP and Long Range Transportation Plan.

Corrective Action: The federal team requests that the MPO in cooperation with the state and transit operators make available a financial plan for the TIP. Please submit a financial plan to FHWA and FTA. The compliance deadline for this request will be within 1 year following MPO's receipt of the certification review or before the MPO takes approval action on the next TIP update (whichever comes first).

Public Participation

Recommendation: The federal team strongly recommends that the MPO Policy Board provide a citizen comment period prior to MPO public meetings.

Recommendation: The federal staff recommends that the MPO Policy Board provide a written description of the various advisory committees of the MPO outlining their purpose and voting membership for public consumption.

Recommendation: The federal team recommends that the MPO utilize some of its federal planning funds to contract with a firm specializing in public outreach to minority communities to assist the MPO in developing outreach strategies as part of its participation planning process.

Recommendation: The federal team recommends that the MPO develop an educational document aimed at informing citizens what the MPO is and does, the documents required by law to be produced by the MPO, and how citizen participation in the regional decisionmaking process is demonstrated in plan/program development.

Corrective Action: The federal team requests that the MPO (including VDOT and the transit operators) come into full compliance with federal regulations and state law (FOIA) as it pertains to open meeting and notification requirements for public meetings. The compliance deadline for this request is May 2008. After May 1, 2008, the FHWA and FTA will not be able to act on any approvals or amendments to the UPWP, Plan, and TIP until the MPO's public meetings come into full compliance with federal regulations and state law (FOIA). Please submit a letter of assurance to the federal team identifying a consensus among the MPO, VDOT, HRT, and WAT that federal regulations and state law (FOIA) regarding open meeting and notification requirements have been met for the MPO and its committees/subcommittees.

Corrective Action: The federal team requests that the MPO, state, and transit operators cooperatively reevaluate the effectiveness, openness, and fullness of the Hampton Roads MPO's (including advisory committees) transportation planning and programming process as it pertains to the intent of federal public participation requirements, and in consideration of the State's FOIA law. Please include a task in the UPWP to address this corrective action and submit an evaluation report to FHWA and FTA once completed. The compliance deadline for this request is August 2008.

Corrective Action: The federal team requests that the MPO (in cooperation with the state and transit operators) update their participation plan to clearly describe the explicit procedures, strategies, and desired outcomes for seeking out and considering the needs of those traditionally underserved by existing transportation systems such as low income and minority households, who may face challenges accessing employments and other services. The compliance deadline for this request will be August 2008. Please submit an updated participation plan to the federal team.

Title VI, Environmental Justice (EJ), Limited English Proficiency (LEP)

Corrective Action: The federal team requests that the Hampton Roads MPO (in cooperation with HRT and WAT) establish procedures for applying Environmental Justice; develop measures to test the achievement of Environmental Justice; assess both highway and transit investments; and undertake outreach activities to low-income and minority communities to solicit input. This request includes the completion of the LEP four factor analyses. The purpose of this corrective action is to ensure that the MPO addresses Environmental Justice as part of the development of the Regional Transportation Plan and Transportation Improvement Program. The compliance deadline for this request will be March 2009. Please submit the final report to the federal team.

Corrective Action: The federal team requests that that the MPO, through cooperation and coordination with the transit operators and VDOT, develop a Title VI Plan for the Hampton Roads MPO. The compliance deadline for this request will be March 2009. Please submit the plan to the federal team.

Corrective Action: The federal team requests that within 1 year following the approval of the MPO Title VI Plan, the VDOT (per 23 CFR 200.9 (B)(7)) conduct a comprehensive Title VI review of the Hampton Roads MPO and submit a findings report to FHWA and FTA. The compliance deadline is within 1 year following the approval of the MPO Title VI Plan.

Corrective Action: The federal team requests that the MPO, through cooperation and coordination with the transit operators and VDOT, establish procedural guidance for verifying the process and implementation of self-certification with respect to Title VI of the Civil Rights Act of 1964 and ADA. The compliance deadline for this request is August 2008. Please submit the final guidance report to the federal team.

Unified Planning Work Program (UPWP)

Recommendation: The federal team recommends that only the UPWP that has been approved by the MPO be sent to FHWA and FTA for review and approval. We also recommend an introductory page be provided in the UPWP so that readers know what it is they are reading.

Recommendations: The MPO and PDC are separate organizations and the federal team recommends that the MPO draw a clear distinction between both organizations.

Corrective Action: The federal team requests the MPO to clearly identify in the UPWP the end product for each task, schedule for completing each task, and include a summary budget table that includes the federal, state, and local match for each task or activity. The compliance deadline for this request will be prior to the submittal of the MPO's FY 2009 UPWP to FHWA and FTA for approval.

Certification Statement

The Federal Highway Administration and Federal Transit Administration through its oversight and stewardship responsibilities have determined that the transportation planning process of the MPO of the Hampton Roads TMA meets the requirements of the Metropolitan Planning Rule at 23 CFR Part 450 Subpart C and 49 CR Part 613 with the exception of those areas where corrective actions are identified in this report. The FHWA and FTA, therefore, conditionally certify the transportation planning process with the understanding that the corrective actions noted in the summary report will be accomplished within the specified time frame.

In addition, the MPO is expected to give serious consideration to full implementation of the recommendations for improvement within the next 12 months. The FHWA and FTA in taking action on future products, such as approval of the unified planning work program, approval of the TIP/STIP, and review of long-range plan updates will consider progress made by the Hampton Roads MPO in addressing these FHWA/FTA findings.

Introduction

The purpose of this report is to document the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) evaluation of whether the transportation planning process in the Hampton Roads Transportation Management Area (TMA) meets joint FTA and FHWA planning regulations, and to certify, as appropriate, the planning process as required by 23 Code of Federal Regulations (CFR) 450.334, entitled "Self-certification and Federal Certification." Federal MPO regulations are included in Appendix J.

A team consisting of staff from the FHWA Virginia Division, the FHWA Resource Center, and the FTA Region III Office was formed to conduct the Certification Review of the Hampton Roads area planning process (federal certification notification letter is included in Appendix A, federal team members and participants in the review are listed in Appendix B, and citizen participants are included in Appendix C). The federal team interviewed and held discussions on November 15, 2007, with:

- Staff from the Hampton Roads Planning District Commission (HRPDC) which serves the Hampton Roads Area Metropolitan Planning Organization, the federally-designated metropolitan planning organization for the Hampton Roads TMA;
- Staff from the Hampton Roads Transit (HRT), and Williamsburg Area Transport (WAT) which are the local transit agencies;
- Staff from the Virginia Department of Transportation (VDOT); and
- Staff from the localities represented on the Hampton Roads Transportation Technical Advisory Committee.

The agenda for the site visit is included in Appendix D, and Appendix E contains a list of acronyms. Prior to the site visit, the federal team conducted a desk review by reviewing current planning documents and studies, including the Long-Range Transportation Plan (LRTP), the Transportation Improvement Program (TIP), the Unified Planning Work Program (UPWP), air quality planning documents, memoranda of agreement, self-certification, MPO and advisor committee structure, and public involvement materials and information. HRPDC staff was provided with a list of written review questions for the site visit which were based on the desk review and on the provisions of 23 United States Code (USC) 134 and the metropolitan planning regulations found in 23 CFR 450. This report is the result of oversight activities including discussions during the site visit, information from attendance and participation at the Hampton Roads MPO meetings, and interactions with the MPO and its partners.

Description of the Hampton Roads MPO and MPO Membership

The Hampton Roads MPO Planning Area consists of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, as well as, the Counties of Gloucester, Isle of Wight, James City, and York.

Voting Membership in the Hampton Roads MPO is as follows:

City of Chesapeake	Clifton E. Hayes, Jr., City Council Member
Gloucester County	William H. Whitley, County Administrator
City of Hampton	Randall A. Gilliland, Vice Mayor
Isle of Wight County	Stan D. Clark, Chairman, Board of Supervisors
James City County	Bruce C. Goodson, Chairman, Board of Supervisors
City of Newport News	Joe S. Frank, Mayor
City of Norfolk	Paul D. Fraim, Mayor
City of Poquoson	Charles W. Burgess, Jr., City Manager
City of Portsmouth	Douglas L. Smith, City Council
City of Suffolk	James G. Vacalis, City Manager
City of Virginia Beach	Louis R. Jones, Vice Mayor
City of Williamsburg	Jackson C. Tuttle II, City Manager
York County	James O. McReynolds, County Administrator
Hampton Roads PDC	Arthur L. Collins, Executive Director
Williamsburg Area Transport	Mark D. Rickards, Executive Director
Hampton Roads Transit	Michael S. Townes, Executive Director
Virginia Department of Trans.	Dennis W. Heuer, Hampton District Administrator

Non-Voting Members:

Federal Highway Admin.	Ivan P. Rucker, Metropolitan Transportation Planner
Federal Transit Admin.	Tony Cho, Transportation Program Specialist
Federal Aviation Admin.	Terry Page, Manager

Participants in this Review

Federal Highway Administration-Virginia Division: Ivan Rucker, Ed Sundra, Mohammed Dumbuya, Brian Betlyon, Janice Richard, Arturo Perez, Jorismar Torres-Hernandez, John Mazur

Federal Transit Administration: Tony Cho (via telephone)

Virginia Department of Transportation: Marsha Fiol, Irene Shuman, Eric Stringfield, Chris Voigt

Virginia Department of Rail and Public Transportation: Corey Hill

Hampton Roads Planning District Commission (MPO staff): Keith Nichols, Laura Surface, Sam Belfield, Mike Kimbrel, Robert Case, Andy Pickard, Art Collins, Nicole Fox, Camelia Ravanbakht, Dwight Farmer.

Hampton Roads Transit: Jayne Whitney, Vince Jackson, Ron Hodges (HRT TRAFFIX)

Williamsburg Area Transport: Richard Drumwright

City of Suffolk: Eric Nielsen

Review Elements

This review was conducted to ensure that the metropolitan planning process for the Hampton Roads metropolitan area meets current federal law and regulations.

MPO Designation, Structure, and Agreements

Regulatory Basis/ Requirements

1. MPO – 23 CFR 450.310 (a) states, “To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals.”
2. Designation – 23 CR 450.310(b) states, “MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population...”
3. Membership – 23 CFR 450.310(d) states, “Each MPO that serves a TMA, when designated or redesignated under this section shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate State transportation officials.”
4. Staffing – 23 CFR 450.310(f) states, “Nothing in this subpart shall be deemed to prohibit the MPO from using the staff resources of other agencies, non-profit organization, or contractors to carry out selected elements of the metropolitan planning process.”
5. Agreements – 23 CFR 450.314(a) states, “The MPO, State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, State(s), and public transportation operator(s) serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed.”
6. Definition - 23 CFR 450.104 defines a Metropolitan Planning Organization (MPO) as “the policy board of an organization created and designated to carry out the metropolitan transportation planning process.”

Findings

The designated MPO for the Hampton Roads Region is the Hampton Roads Metropolitan Planning Organization and it has a designated agreement in place that outlines the mutual responsibilities of member agencies. Both VDOT and HRPDC staff are currently in negotiations to update the existing agreement to reflect changes in SAFETEA-LU. The MPO voting and

nonvoting membership is established in the agreement and the agreement, which is included in Appendix I, confirms that the HRPDC will serve as staff to the MPO. Per the agreement, the MPO has established a “Technical Advisory Committee to provide review and recommendations on items referred to it by the MPO.” It continues and states that “the MPO may establish such special and standing committees as it deems advisable for the transaction of its affairs.” The federal team reviewed the MPO Policy Board structure and voting members and confirms that the MPO Policy Board appropriately includes the voting members within the MPO study area boundary, VDOT, the transit operators and other members as determined by the MPO Policy Board.

The federal team requested a summary paragraph describing the purpose of all of the MPO Policy Board established advisory committees listed on its website, along with voting members on each committee. The committees listed on the MPO website at the time of our review are included in Appendix F. These committees included:

1. CAO Advisory Committee to the MPO
2. MPO Executive Committee
3. Lead planning Organization
4. Transportation Technical Subcommittee
5. ITS Committee
6. CMS Subcommittee
7. IMS Subcommittee
8. Non-Highway Advisory Committee
9. HOV Steering Committee
10. Regional Emergency Management Technical Advisory Committee (REMTAC)

The federal team requested clarification about the CAO Advisory Committee to the MPO since this committee meets in closed door session with HRPDC staff and appears to be advising both the MPO and the TTC on matters related to federal-aid dollars and regional transportation projects.

The HRPDC staff mentioned that the CAO advisory committee is not an advisory committee and that the committee listings on its website needed to be updated. However, the federal team’s review of the Hampton Roads 2030 LRTP (page 4) as well as the minutes of the MPO’s October 18, 2006, meeting, that are included in Appendix G, appears to confirm that the COA committee is acting in an advisory capacity. This appears to be a continuation of its role during the development of the 2026 plan where the CAO met on May 27, 2003, in a closed door meeting to develop recommendations on project selection and funding scenarios for the MPO’s draft 2026 plan. The CAO committee selected draft 2026 transit and highway projects to be funded with NHS, Primary, RSTP, tolls, and a regional gas tax. Later, the committee voted to construct the 2026 Plan with “building blocks and on June 18, 2003, in a closed door session divided the list into two blocks (projects funded with existing funding formula, and additional projects to be funded with a regional gas tax).

The federal team requested a list of the CAO advisory committee members to the MPO and was provided a copy which is included in Appendix H. Later, the federal team reviewed the CAO membership list and noticed that a few of the members on the CAO Advisory Committee to the MPO were also MPO voting members serving as elected officials or their designees. We also noticed that some of the voting members on the MPO (VDOT, HRT, WAT) appeared to not be represented on this MPO established advisory committee.

While the federal team recognizes that the MPO Policy Board has the full right to establish advisory committees (or other public bodies), the federal team's position is that deliberations taking place by advisory committees to the MPO that are related to publicly funded transportation infrastructure projects and regional transportation planning should be held in a public setting (see also Public Involvement section).

Also, unlike all other MPOs in the Virginia, the federal team noticed that the Hampton Roads MPO does not have bylaws in place that govern the internal affairs or actions of the MPO. The HRPDC's staff which handles the administrative affairs of the Hampton Roads MPO contends that it is not required.

The federal team agrees with staff in that federal regulations do not require the MPO to establish bylaws. However, we note that without bylaws it makes it very difficult to determine the organizational and voting structure of the MPO (including its advisory committees). An example of this is during PDC and MPO meetings where the PDC meets, then adjourns, the MPO convenes and then the PDC reconvenes to "ratify" the actions of the MPO. Both the PDC and MPO are separate organizations with different voting members, and the agreement between the MPO and State is clear in that the HRPDC will provide the staffing and administrative support to the MPO, but the action taken by the PDC leads one to believe that the MPO is subordinate to the HRPDC (see also Unified planning Work Program). Again, we note that with the exception of the Hampton Roads MPO, all other MPOs in Virginia have established bylaws.

Commendation: The federal team commends the good level of cooperation and coordination between the MPO, State, and transit operators.

Recommendation: The federal team recommends that the MPO, State, and transit operators complete a new agreement outlining mutual responsibilities within the next three months.

Recommendation: The federal team recommends that the MPO Policy Board establish clear bylaws that govern the internal affairs and actions of the MPO (including its advisory committees).

Recommendation: The federal team recommends the MPO provide clarification to the public of the established relationship between the CAO Advisory Committee to the MPO, the Transportation Technical Advisory Committee (TTC), the HRPDC staff, and the MPO.

Corrective action: The federal team is requesting the MPO (including VDOT, HRT, WAT) provide clarification on why the CAO Advisory Committee to the MPO meets in private (versus a public setting) with HRPDC staff to deliberate and provide recommendations to the MPO on publicly funded transportation infrastructure projects for inclusion in the MPO Long Range Plan, whether this is a formally established MPO advisory committee, and whether these meetings were/are held in compliance with the state FOIA statute. Please submit a letter of clarification to the federal team. The compliance deadline for this request is May 2008.

Corrective action: The federal team is requesting the MPO provide clarification on why the HRPDC “ratifies” or approves the actions of the MPO, and where in the agreement between the MPO and State is this authority provided. Please submit a letter of clarification to the federal team. The compliance deadline for this request is May 2008.

Air Quality/Conformity/CMAQ

Regulatory Basis/Requirements

Section 176 (c)(1) of the 1990 Clean Air Act Amendment (CAAA) states: “No metropolitan organization designated under Section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110.” The Intermodal Surface Transportation Efficiency Act of 1991 subsequently included provisions responsive to the mandates of the CAAA. Implementing regulations have maintained this strong connection.

Provisions governing air-quality related transportation planning are incorporated in the metropolitan planning regulations. For MPOs that are declared to be air quality non-attainment or maintenance areas, there are many special requirements in addition to the basic requirements for a metropolitan process. These requirements include:

- Formal agreements to address air quality planning requirements,
- Requirements for setting metropolitan planning area boundaries,
- Interagency coordination,
- Transportation Plan content and updates,
- Requirements for CMS, public meeting requirements, and
- Conformity findings on Transportation Plans and Transportation Improvement Programs (TIPs).

Sections of the metropolitan planning regulations governing air quality that are specific to Metropolitan Planning Areas (MPA) and Transportation Control Measures (TCM) are:

- MPA Agreement – 23 CFR 450.314(b) states “if the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State

department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area.”

- Long Rang Transportation Plan – 23 CFR 450.322(d) states “In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing TCMs in the State Implementation Plan (SIP)”
- Long Range Transportation Plan – 23 CFR 450.322(f)(4) states that the Plan at a minimum shall include “consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including identification of SOV project that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide.”
- TIP - 23 CFR 450.324(e)(5) states that in nonattainment and maintenance areas the TIP shall include for each project “identification of those projects which are identified as TCMs in the applicable SIP.”

Findings

The Hampton Roads non-attainment area was reclassified as a maintenance area for EPA’s 8 – hour standard on June 1, 2007.

The federal team reviewed the membership of the Inter-agency Consultation Group. In addition to reviewing air quality issues within the Hampton Roads Maintenance area, the ICG is responsible for approving the modeling methodology, assumptions, and proposed list of regionally significant projects that are modeled in the conformity analysis. The ICG consists of staff from local governments, VDOT, Virginia Department of Environmental Quality, FHWA, FTA, EPA, and the MPO. For information on local (non-state and non-federal) regionally significant transportation projects gathered and incorporated into the conformity process, each locality as a member of the Inter-agency Consultation Group is responsible for reviewing, verifying, and ensuring that the list of regionally significant projects modeled in the conformity analysis for their locality is accurate. HRPDC staff, therefore, relies on the judgment of the localities to ensure that they are using accurate project inputs for their area. Regardless, the HRPDC staff was not aware of any upcoming or ongoing non-state or non-federal transportation projects that could be considered regionally significant.

The federal team asked HRPDC staff if the entire MPO study area boundary encompasses the entire maintenance area boundary, in particular, Gloucester County, and if so have there been any discussions with VDOT, DEQ, and Gloucester County that describes the process for cooperative planning within the full nonattainment area. HRPDC staff reported that the MPO study area boundary does not include the entire maintenance area boundary. Specifically, a portion of Gloucester County is outside the study area boundary even though the entire county is within the maintenance area boundary. HRPDC staff mentioned that coordination with Gloucester Counter occurs as necessary.

The federal team reviewed the MPO's CMAQ program and concluded that based on our experience in dealing with the CMAQ Programs in other nonattainment/maintenance areas around the state, the federal team considers the Hampton Roads' CMAQ Program to be one of the better programs in Virginia in terms of how they prioritize and select projects for funding and the regional focus that they take. In addition, the HRPDC staff has adopted a methodology for analyzing different types of CMAQ projects that ensures consistency among the projects and ensures that projects are being compared on an apples-to-apples basis. The PDC staff has a good grasp of the CMAQ requirements, and rarely do FHWA and FTA ever have any issues with eligibility.

Commendation: The federal team commends the HRPDC staff for assuming responsibility for analyzing the CMAQ projects in the region and doing so with a consistent methodology.

Commendation: The federal team commends the HRPDC staff for taking a regional approach with its CMAQ Program to address the air quality issues in the region.

Commendation: The federal team commends HRPDC staff for maintaining their knowledge of the CMAQ Program and its eligibility requirements.

Recommendation: The federal team recommends that the HRPDC staff ensure that the localities within the maintenance area are aware that regionally significant transportation projects that are subject to conformity include regionally significant projects carried out by localities, developers, or other federal and state agencies (i.e. military).

Recommendation: The federal team recommends that the MPO review its existing MPO Planning Agreement to determine if it adequately satisfies the requirement of 23 CFR 450.314(b). If the MPO determines that the agreement does not, it should be revised and updated accordingly. A quick review of the agreement, however, reveals the following outdated statement: "The metropolitan planning area has been designated as a nonattainment area for transportation related pollutants under the Clean Air Act and *the [planning area] boundary adjusted to include the area so designated.*"

Long Range Multimodal Transportation Plan

Regulatory Basis/Requirements

Federal regulations require the MPO to develop a Multimodal Transportation Plan with at least a twenty-year planning horizon as a key product of the metropolitan transportation planning process (see 23 CFR 450.322). The plan shall include both long-range and short-range strategies that lead to the development of an integrated multimodal transportation system that facilitates the efficient and safe movement of people and goods. The plan is to be updated every four years in air quality nonattainment and maintenance areas to ensure its consistency with changes in land use, demographics, and transportation characteristics.

Other required elements that must be addressed include:

- Include a financial plan that demonstrates fiscal constraint
- In developing the financial plan the MPO must consider Federal, State, local and private participation sources.
- In cases that the FHWA and FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e., legislative or administrative action), the FHWA and FTA will not withdraw the original determination of fiscal constraint; however, in such cases, FHWA and FTA will not act on an updated or amended plan that does not reflect the changed revenue situation.
- A discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities based on a consultation process with Federal, State, and Tribal land management, wildlife, and regulatory agencies.
- Demand analysis;
- Congestion Management Process (CMP);
- Planning Factors;
- Transit;
- Pedestrian walkway and bicycle facilities;
- System preservation
- For systems operations and maintenance the plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to operate and maintain Federal-aid highways and public transportation.
- Use of inflation rates in the plan to reflect year of expenditure dollars.
- Conformity determination on any update or amended transportation plans in accordance with CAA and EPA transportation conformity regulations; and
- Public official/agencies and citizen involvement (see also 23 CFR 450.316)

Findings

One of the most noticeable efforts as it related to the development of the 2030 Plan was the Hampton Roads Toll Feasibility Study. Several major projects (Hampton Roads Third Crossing, Midtown Tunnel and MLK, Southeastern Parkway and Greenbelt, Route 460, and Improvement to I-64 on the Peninsula, and I-64 on the Southside) were considered as part of the study to determine what portion of the construction costs could be funded via toll collection. Both VDOT and the MPO work on this package and in 2005 the MPO included the six projects in the Plan and sought financial assistance from the Virginia General Assembly.

The General Assembly took no action on the MPO request during the 2006 session and the MPO later removed the projects from the Plan with the understanding that the plan would not meet the federal financial constraint requirements. However, in 2007, House Bill 3202 was passed by the General Assembly establishing the Hampton Roads Transportation Authority (HRTA) and giving it the ability to toll the subject highway and collect various sources of revenue to build the

subject transportation infrastructure projects. The HRPDC staff, which is also serving as temporary staff to the HRTA, concluded that the HRTA tax/fee revenue projections *plus* the anticipated toll revenue will be enough to construct the projects by 2030 thereby meeting the federal fiscal constraint requirement for planning purposes. As a result, the MPO voted to include the projects back into the Plan at the request of the HRTA.

Several supporting planning initiatives were underway during the time the plan was being developed. These include:

- Regional Freight Study
- Regional Safety Study
- Congestion Management System
- Elderly and Handicapped Transportation in 2030
- Improving the Mobility of Non-Drivers
- The State of Transportation in Hampton Roads

The federal team recognizes the outstanding job the HRPDC staff did in developing the Regional Freight Study, the staff's commitment to freight, and efforts to bring an awareness and sense of urgency to the need to maintain and build upon existing infrastructure to prepare the Hampton Roads Region for what some professional have termed the "Hampton Roads Freight Tsunami." With the early opening of the Maersk terminal and the development of Craney Island the federal team recognizes the important need for the region to continue to analyze the impacts these freight related developments will mean to the transportation infrastructure, productivity, and overall quality of life for citizens in the Hampton Roads region.

Safety is one of eight planning factors identified in federal regulation that must be considered as part of the planning process. These planning factors are expressed as goals in the Hampton Roads 2030 Plan and in support of the safety goal the HRPDC staff has developed a very comprehensive safety study entitled, "Hampton Roads Regional Safety Study." The Safety Study is part of the MPO's Congestion Management System (CMS) and examines traffic crashes, injuries, and fatalities for the region.

The federal teams expressed its appreciation of HRPDC staff and its commitment to analyzing trends associated with crashes, injuries, and fatalities on a regional and jurisdictional level. The study completed by staff is an excellent tool that regional decisionmakers can use as a starting point to develop policies, target resources, or request more specific project level studies.

The Hampton Roads MPO began congestion management planning in 1991, as a response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The first CMS, as required by ISTEA, was documented in a report released in 1995. Updated CMS reports were released in 1997, 2001 and 2005. During this time, the HRPDC was recognized by FHWA for their good practice in implementing a CMS which embodied the spirit of the regulations and sought to bring operations and planning together to tackle congestion problems in the region.

With the passage of the SAFETEA-LU reauthorization bill in August 2005, the Congestion Management System requirements morphed into a new Congestion Management Process (CMP) planning requirement which was not radically different from its predecessor. The intent of the new CMP requirements was to do away with “stand-alone” CMS frameworks and integrate the CMP into the overall metropolitan planning process. The “toolbox” of congestion management strategies continued as a prominent feature, with renewed emphasis on operations and management strategies for evaluation and implementation.

The MPO maintains a comprehensive database for the CMS network and has expended significant effort in data collection activities for purposes of CMP implementation. The CMP network includes over 1400 centerline miles for which level-of-service (LOS) values are calculated. Speed and travel time data are also collected and analyzed. Another performance measure being considered to enhance the CMP is delay, which will enhance the current analysis of congested roadway segments. The CMP also contains operational and management strategies to improve performance of existing transportation facilities. Output from the CMP is also used to measure the effectiveness of projects for inclusion in the LTRP.

The CMP is used by member localities in making decisions regarding potential congestion mitigation activities in their respective jurisdictions. In general the HRPDC has demonstrated a commitment to implementation of the CMP and enhancing its effectiveness as an integral part of the transportation planning process in the region. They are commended for their noteworthy efforts and practices in meeting the challenges of congestion management in the context of systems planning activities. The federal team notes that the January, 2007, State of Transportation in Hampton Roads report is one of the best we’ve seen.

The federal team complimented HRPDC staff on their strong technical capabilities and reminded the staff how much the federal team appreciates the work that they do for the region that has in many instances allowed FHWA and FTA to promote and share many of their products as best practices throughout the state as well as the country.

The federal team also appreciates the HRPDC staff efforts to coordinate with environmental, land use, and other transportation related agencies during the development of the 2030 Plan. We encourage the HRPDC staff to develop a documented process per 23 CFR 450.316(e) that outlines the roles, responsibilities, and key decision points for consulting with these agencies. The federal team suggests that the documented process be included in the MPO’s participation plan.

Public Transit Planning

The 2030 LRTP contains an inventory of existing and proposed transit facilities, emanating from the inclusion of long range plans from the transit service providers in the region.

The region includes two public transit providers, Hampton Roads Transit (HRT) and Williamsburg Area Transport (WAT). Of the two transit providers, HRT is the larger provider of transit in the

region and is actively engaged in the MPO process as a member of both the policy and technical committees of the HRPDC. They also perform most of the transit planning for the region.

The 2030 LRTP includes the WAT 2030 Plan and HRT 20 Year Transit Plan as appendices to the main document. The HRT portion of the plan was written in August 2006, and outlines a plan for several major fixed guideway capital projects, including the Norfolk Light Rail Transit (LRT) project and the Peninsula Fixed Guideway Project.

In the time since the HRT 20 year plan has been written, HRT has signed a Full Funding Grant Agreement (October 1, 2007) with FTA to secure Federal funding for the Norfolk LRT project, and has already begun construction. In addition to FTA New Starts funds, HRT has been successful in working with HRPDC to obtain RSTP funding for the LRT project. HRT is commended for bringing fixed guideway public transit to Norfolk, and HRMPO is also commended for its support of HRT in bringing light rail to the Hampton Roads region. Major capital construction for public transit is difficult to achieve without regional support, and HRMPO has been a major factor in the Norfolk LRT project's success. The Peninsula Fixed Guideway project is currently in the Alternatives Analysis phase of development, and the Plan outlines several alternatives that are currently under consideration. Along with the Norfolk LRT project, the Peninsula project is a major component of a long-term vision for a fixed-guideway transit system throughout the Hampton Roads region. HRT has been working closely with the City of Newport News in the development of alternatives for the Peninsula project.

In addition to the fixed guideway projects, HRT has several plans and studies that were used for the 2030 LRTP, including a visioning plan, regional bus plan, and comprehensive operations analyses. HRT is also planning to construct a new maintenance/administration facility (Southside facility), which would invite private investors to a joint development mixed-use project that would include retail and residential spaces. HRT plans to seek LEED certification for green architecture elements of the project. This project will be funded with Federal earmark funds, as well as STP funding support from HRMPO.

The region also has a travel demand management organization – TRAFFIX. TRAFFIX is provided \$1.1 million in RSTP funds by the MPO on an annual basis to promote regional congestion relief efforts, including ridesharing and bus programs. The TRAFFIX program is administered by HRT, with oversight by the TRAFFIX Steering Committee. Members of the steering committee include: HRT, HRPDC, FHWA, VDOT, VDRPT, and member local governments.

HRT's TRAFFIX Program is a program that compliments the MPO's CMS process. It is a public service that exists for the purpose of reducing congestion by providing a Single Occupancy Vehicle (SOV) commute to work alternative. Some of the programs include: Carpooling, Commuter Computer, Guaranteed Ride Program, Vanpooling, Van Leasing, and Telecommuting. FHWA and FTA have always been impressed with this program and encourage the MPO to continue to support the TRAFFIX program as a means of reducing SOV commuting.

Williamsburg Area Transport, the region's other transit provider, is also an active participant in the MPO process. WAT regularly receives support from the MPO through CMAQ and STP funding for various projects in the region. WAT's 2030 plan includes new initiatives such as shuttle service between Williamsburg and New Town in James City County, a vehicle replacement plan, an employment commuter service between Surry County and the Williamsburg region, two new transportation centers, and a medical circulator for the Doctors Hospital of Williamsburg.

In May 2006, WAT accepted the role as lead transportation agency to support Jamestown 2007, an event that commemorated the 400th anniversary of Jamestown, the first English settlement in North America. WAT was designated the lead transportation agency in support of Anniversary Weekend, from May 11-13, 2007.

Commemorative activities took place at Jamestown Settlement, Jamestown Island and Jamestown festival Park that had limited parking, limited roadway capacity and were located in a historically sensitive environment. Thus, WAT was challenged to help develop a coordinated transportation plan working with local, state and federal governments as well as the private sector. In addition given crowds of up to 30,000 daily with dignitaries including the British Monarchy, the President of the United States, the Governor of Virginia a comprehensive Safety/Security element was required for the transportation plan managed by WAT.

A park-and-ride plan using nine outlying Park-and-Ride Lots was supported by up to 300 buses daily from six neighboring school systems.

WAT and HRPDC are commended for their successful efforts in providing transportation logistics for the Jamestown 2007 celebration. In doing so, WAT worked admirably in coordinating efforts through many government agencies, including VDOT, VDRPT, FHWA, FTA, and the U.S. Navy.

The transit portion of the 2030 LRTP is a small section in the main plan; indeed the individual WAT and HRT plans are included only in the appendix. The main section of the report briefly summarizes the WAT and HRT plans; however, transit should be more comprehensively included in the Regional Transportation Plan. The Plan clearly separates highway planning and transit planning into two separate entities – rather, a true multimodal comprehensive approach should have been undertaken instead. For example, in a section labeled “Focusing Transportation Dollars on Construction,” projects are divided into three phases: Preliminary Engineering, Right-of-Way, and Construction. These three labels apply mostly to highway projects only, the majority of transit projects do not use this nomenclature, only major capital improvement projects such as the Norfolk LRT. By using these project categories, there is no opportunity for transit to be included.

In developing a list of candidate projects for the 2030 plan, there does not appear to be much of a role for transit in developing the plan's project list. In the list of questions for the 2005 HRPDC Phone Survey, only highway-specific questions were asked, and thus no transit projects arose with any significant response. In measuring the effectiveness of candidate projects, the plan offers data

for “candidate *highway* project measures of effectiveness data.” Again, there is no opportunity for transit to be involved in a true multi-modal comprehensive approach to transportation planning in the region.

The MPO should be commended for its support of transit in the region through its continuing work with HRT and WAT on flex funding and the Norfolk LRT project. However, the 2030 LRTP is segmented into distinct highway and transit sections, an approach that is not conducive to true multi-modal planning. Rather, a more comprehensive approach in considering transit as a viable alternative in augmenting the region’s highway infrastructure should be implemented in the development of the next long range plan.

Commendation: The federal team acknowledges the external political conditions experienced by HRPDC staff during the development of the MPO Long Range Transportation Plan and commends the HRPDC staff for maintaining their commitment and focus.

Commendation: The federal team commends the HRPDC staff for the outstanding and professional work in developing the Intermodal Management System Regional Freight Study.

Commendation: The federal team commends the HRPDC staff’s dedication to safety through its publication of the Hampton Roads Regional Safety Study.

Commendation: The federal team continues to be impressed with HRPDC staff efforts to quality CMS documents and we applaud there efforts for establishing a very good CMS program.

Commendation: The federal team appreciates the strong technical capabilities of the HRPDC staff which results in good products.

Commendation: The federal team commends Hampton Roads Transit (HRT), HRT TRAFFIX, and Williamsburg Area Transport (WAT) for its work as part of the development of the LRTP.

Commendation: The federal team appreciates the HRPDC staff efforts to coordinate with environmental, land use, and other transportation related agencies during the development of the 2030 Plan.

Commendation: HRPDC staff and the MPO are commended for its support of transit in the region through its continuing work with HRT and WAT on flex funding and the Norfolk LRT project.

Commendation: WAT and HRPDC are commended for their successful efforts in providing transportation logistics for the Jamestown 2007 celebration. In doing so, WAT worked admirably in coordinating efforts through many government agencies, including VDOT, VDRPT, FHWA, FTA, and the U.S. Navy.

Recommendation: The federal team recommends that the MPO and transit agencies increase the attention, detail, and discussion regarding transit in the next MPO LRP (include strategies, needs, funding issues, etc.). A more comprehensive approach in considering transit as a viable alternative in augmenting the region's highway infrastructure should be implemented in the development of the next long range plan.

Recommendation: The federal staff recommends that the HRPDC staff better coordinate with the VDOT Hampton Roads District office to verify financial projection data for future MPO long range plans.

Recommendation: The federal team recommends that the MPO Policy Board assess its membership and the MPO structure in light of emerging regional transportation issues such as freight.

Transportation Improvement Program (TIP)

Regulatory Basis/Requirements

The MPO is required to develop a TIP in cooperation with the State and public transit operators (see 23 CFR 450.324 unless otherwise noted). Specific requirements include that the TIP shall:

- Be a management tool for monitoring progress in implementing the Transportation Plan, identify the criteria and process for prioritizing the implementation of Plan elements through the TIP, list major projects implemented from the previous TIP, and identify significant delays in implementation;
- Cover a period of at least four years;
- Include all transportation projects, including bicycle and pedestrian facilities, proposed for funding under title 23, USC; all regionally significant transportation projects for which FHWA or FTA approval is required for informational purposes; all regionally significant projects to be funded from non-Federal sources; and only projects that are consistent with the Transportation Plan;
- Provide sufficient descriptive material for each project to identify the project or phase, estimated cost, Federal funds proposed to be obligated during each program year, proposed source of Federal and non-Federal funds, funding recipient/project sponsor, and in nonattainment and maintenance areas, describe Transportation Control Measures (TCMs) in sufficient detail for conformity determination; and
- Describe progress in nonattainment and maintenance areas in implementing required TCMs and include a list of all projects found to conform in a previous TIP and which are part of the base case in determining conformity.
- Include a financial plan that demonstrates how the proposed TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs.

- Financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues
- A conformity determination by FHWA and FTA in nonattainment and maintenance areas.
- Provided interested parties to comment on the plan and hold at least on formal public meeting during TIP development.

Findings

The MPO FY 06-09 TIP is developed from four key data sources. The Six Year Improvement Program is developed by y the VDOT, VDRPT, and adopted by the Commonwealth Transportation Board. This program provides information on the Interstate, Primary, and Urban projects funded in the region. Secondary Six Year Plans are prepared by VDOT and counties on an annual basis. These plans program funds to secondary road projects in York, Isle of Wright, and Suffolk. Transit capital and operating programs are developed and submitted to the MPO by HRT and WAT. Finally, each local government provides a listing of locally funded projects to be included in the TIP for air quality conformity purposes.

The MPO has established a well-documented procedure for the allocation of CMAQ and RSTP funds. When funds are available for allocation, HRPDC staff issues a notice for all localities to apply for CMAQ or RSTP funds. Applications are rated and forwarded to the Transportation Technical Advisory Committee who ultimately makes recommendations for funding to the MPO Policy Board. The procedures are documented on the MPO's website and have been admired by other MPOs in the state.

The federal team reviewed the TIP project list and found that the required elements for each project satisfy federal regulations. There are MPO approved procedures for when the TIP requires either an amendment or adjustment and these procedures are appropriately followed. One of the important requirements for an MPO's TIP is that it includes a financial plan. Taken from the definition in federal regulations, "a financial plan means documentation required to be included with the metropolitan transportation plan and TIP that demonstrates the consistency between reasonably available and projected sources of federal, state, local, and private revenues, and the costs of implementing proposed transportation system improvement." The financial plan supports the MPO, State, and transit determination of fiscal constraint for the TIP.

During the federal team's review of the Hampton Roads TIP, we could not locate the financial plan section which is required by federal law for the purpose of demonstrating fiscal constraint. The FHWA and FTA will not be able to make an approval action on the Hampton Roads TIP until the MPO develops a financial plan.

Recommendation: The federal team recommends that the MPO include an introduction to the TIP that better enables the reader to understand the TIP development process and the relationship

of the TIP to the MPO decisionmaking process.

Recommendation: The federal team recommends that the MPO coordinate with the HRTA as it develops its financial plan and project list. HRTA revenues and projects must be considered in the MPOs TIP and Long Range Transportation Plan

Corrective Action: The federal team is requesting the MPO (in cooperation with the VDOT and transit operators) make available a financial plan for the TIP. Please submit your financial plan to FHWA and FTA. The compliance deadline for this request will be within 1 year following MPO's receipt of the certification review or before the MPO takes approval action on the next TIP update (whichever comes first).

Public Participation

Regulatory Basis/Requirements

- Participation Plan – 23 CFR 450.316(a) requires the MPO to develop and use a documented participation plan that defines a process for providing all interested parties (i.e. citizens, public agencies, representatives of the disabled, bike and pedestrian representatives, providers of freight services, etc) reasonable opportunities to participate in the transportation planning process
- Development of Participation Plan – 23 CFR 450.316(a)(1)) states “The participation plan shall be developed by the MPO in consultation with all interested parties...”
- Participation Plan Content – 23 CFR 450.316(a)(1) states that the participation plan shall at a minimum describe explicit procedures, strategies, and desired outcomes for the following:
 - Provide adequate public notice of public participation activities and time for public review and comment at key decision points (include commenting on proposed plan and TIP);
 - Provide timely notice and reasonable access to information about transportation issues and processes;
 - Employee visualization techniques to describe metropolitan plans and TIPs;
 - Make public information (technical information and meeting notices) available in electronically accessible formats and means, such as the Internet;
 - Hold any public meetings at convenient and accessible locations and times;
 - Demonstrate explicit consideration and response to public input received during development of the metropolitan plan and TIP;
 - Seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who face challenges accessing employment and other services;
 - Provide additional opportunity for public comments if the final plan or TIP differs significantly from the one that was originally made available for review;
 - Coordinate with the statewide transportation planning public involvement process;

- and
- Periodically review the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process

Findings

The goal of the MPO's public participation process is to provide multiple and varied opportunities for public input into the regional transportation planning process. The strategy for achieving this goal is to use a variety of activities to inform the public and garner their input regarding transportation in the region. These strategies include: a telephone survey, public notices in newspapers, website, emails, a public meeting and the HRPDC newsletter. The region's Participation Plan was revised in July 2007. The MPO conducts regular evaluation of the effectiveness of the public involvement as required by federal regulations. The latest evaluation was published in June 2004.

Public involvement is a federally mandated core MPO activity that supports the overall metropolitan area transportation planning process and the development of all key MPO products. As mentioned above, one of the federal requirements as it pertains to public participation and the regional transportation decisionmaking process is that the MPO must periodically assess the effectiveness of its public participation policies and procedures to ensure a full and open public participation process.

In the 2001 federal certification report, the federal team wrote a strong recommendation, where we said, "the MPO needs to devise a method of receiving public comment." The federal team also noted that the MPO's technical advisory committee was not open to the public. Six years later, the federal team has noticed that not much appears to have changed with respect to the MPO and its advisory committees.

- The MPO Technical Advisory Committee meetings are still closed to the public;
- There are no public notices for technical advisory committee meeting times and dates posted in a public location or on the MPO website;
- It appears no technical advisory committee meeting minutes are posted or available to the public or on the MPO website; and
- MPO Policy Board meetings are open to the public; still however, there is no time allocated for the board members to receive public comment regarding regional transportation decisions.

First, the federal team is extremely concerned that the MPO advisory committee meetings (including CAO advisory committee and other advisory committees to the MPO) continue to not be advertised and continue to be closed to the public. The federal team's position is that these are public meetings and by not advertising them and keeping them closed to the public the MPO (including VDOT and transit operators) is not fulfilling its responsibilities for a full and open public participation process required under federal regulations.

Second, the federal team is concerned that these closed-door public meetings may not be in compliance with the open meeting and notification requirements that are contained in the state's FOIA law. The MPO Designation which is included in Appendix I, serves as the basis for the MPO's existence and is required by federal law between the MPO and Governor. It states, "The responsibilities of the Metropolitan Planning Organization shall be determined as prescribed in 23 CFR Part 450, and in accordance with the Constitution of Virginia and applicable state statutes." The federal team believes that the state's FOIA statute is applicable to the MPO.

Third, the team feels that the MPO's participation plan could do a better job in describing the explicit procedures, strategies, and desired outcomes for seeking out and considering the needs of low income and minority households who may face challenges accessing employment and other services. The HRPDC staff cited the placement of kiosks in minority communities as one way of meeting this requirement. The federal team feels that this is a novel approach. However, our review of the survey results did not allow us to reach a conclusion regarding what were the targeted needs of low income and minority households, their challenges to accessing employment and other services, and how their needs are considered as part of the regional transportation decisionmaking process. Furthermore, the federal team notes that the kiosks have not been in use for over three years.

Fourth, the federal team feels that part of the MPO's public outreach and involvement strategies should include an educational component. The MPO should make sure that the citizens of the region understand what the roles and responsibilities of the MPO are and how their involvement in the planning process is considered as part of the regional decisionmaking process.

Fifth, the federal team remains concerned that there is no opportunity for the citizens to address policy board officials at MPO meetings. Although an invitation is extended to the public to attend these meetings, any citizen that takes the time to attend and who wishes to share a regional concern or issue (i.e. regional transit, bike, pedestrian, highway) is not afforded an opportunity, and there exists no clear, alternative mechanism for their comment to be heard by the MPO policy board. At a minimum, the MPO should make some modifications to their meeting format to allow public comment, particularly at meetings where the MPO is voting on documents such as the Unified Planning Work Program, Long Range Transportation Plan, or the Transportation Improvement Program.

The Hampton Roads MPO is wholly funded by public dollars (80% federal, 10% state, 10% local) and is the officially designated, federally recognized, decisionmaking body for the Hampton Roads region with the responsibility for approving projects for inclusion into the regional plan and program. The federal team's opinion is that the MPO must do more to improve upon its required public participation process.

The federal team notes that with the exception of the Hampton Roads MPO, all other MPOs in Virginia advertise their advisory committee meetings as public meetings and welcome public comment at the MPO Policy Board meeting.

Recommendation: The federal team strongly recommends that the MPO provide a citizen comment period prior to MPO Policy Board meetings.

Recommendation: The federal recommends that the MPO utilize some of its federal planning funds to contract with a firm specializing in public outreach to minority communities to assist the MPO in developing outreach strategies as part of its participation planning process.

Recommendation: The federal staff recommends that the MPO Policy Board provide a written description of the various advisory committees of the MPO outlining their purpose and voting membership for public consumption.

Recommendation: The federal team recommends that the MPO develop an educational document aimed at informing citizens what the MPO is and does, the documents required by law to be produced by the MPO, and how citizen participation in the regional decisionmaking process is demonstrated in plan and program development.

Corrective Action: The federal team requests that the MPO (including VDOT and the transit operators) come into full compliance with federal regulations and state law (FOIA) as it pertains to open meeting and notification requirements for public meetings. The compliance deadline for this request is May 2008. After May 1, 2008, the FHWA and FTA will not be able to act on any approvals or amendments to the UPWP, Plan, and TIP until the MPO's public meetings come into full compliance with federal regulations and state law (FOIA). Please submit a letter of assurance to the federal team identifying a consensus among the MPO, VDOT, HRT, and WAT that federal regulations and state law (FOIA) regarding open meeting and notification requirements have been met by the MPO and its committees/subcommittees.

Corrective Action: The federal team requests that the MPO, State, and Transit Operators cooperatively reevaluate the effectiveness, openness, and fullness of the Hampton Roads MPO's (including advisory committees) transportation planning and programming process as it pertains to the intent of federal public participation requirements, and in consideration of the Virginia's FOIA law. Please include a task in the UPWP to address this corrective action and submit an evaluation report to FHWA and FTA once completed. The compliance deadline for this request is August 2008.

Corrective Action: The federal team requests that the MPO (in cooperation with the state and transit operators) update their participation plan to clearly describe the explicit procedures, strategies, and desired outcomes for seeking out and considering the needs of those traditionally underserved by existing transportation systems such as low income and minority households, who may face challenges accessing employments and other services. The compliance deadline for this request is August 2008. Please submit an updated participation plan to the federal team.

Title VI, Environmental Justice (EJ), Limited English Proficiency (LEP) **Regulatory Basis/Requirements**

It has been the U.S. Department of Transportation's (DOT) longstanding policy to actively ensure non-discrimination under Title VI of the Civil Rights Act of 1964. Title VI states that "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance." Title VI bars intentional discrimination as well as disparate impact discrimination (for example, neutral policy or practice that has the effect of a disparate impact on protected groups). 23 CFR 450.316(b)(2) requires consistency with Title VI, the Title VI assurance executed by each State adds sex and physical handicap to characteristics protected against discrimination.

Environmental Justice

Executive Order 12898, issued in 1994, further amplifies Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations." In compliance with Executive Order 12898, the U.S. DOT Order on Environmental Justice was issued in 1997.

The FHWA and the FTA issued a memorandum on October 7, 1999, entitled "Implementing Title VI Requirements in Metropolitan and Statewide Planning." The memorandum provided clarification for field offices on how to ensure that environmental justice is considered during current and future planning certification reviews. While Title VI and environmental justice have often been raised during project development, the law applies equally to the processes and products of planning. The FTA and FHWA have concluded that an appropriate time to ensure compliance with Title VI in the planning process is during the planning certification reviews conducted for TMAs and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

Limited English Proficiency

Executive Order 13166, issued in 2000, requires that "each Federal agencies to examine the services they provide, identify any need for services to those with Limited English Proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them."

To assist federal agencies in carrying out these responsibilities, the Department of Justice (DOJ) issued a Policy Guidance Document, "Enforcement of the Title VI of the Civil Rights ACT OF 1964 – National Origin Discrimination Against Persons with Limited English Proficiency" (LEP Guidance). The guidance identifies compliance standards that recipients of federal funds (i.e. MPOs and DOTs) must follow to ensure that their programs and activities do not discriminate on the basis of national origin.

The DOT guidance is modeled after the guidance issued by the DOJ and requires recipients and

subrecipients to take steps to ensure meaningful access to their program and activities to LEP persons. It outlines four factors recipients should apply to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons:

1. The number and proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee.
2. The frequency with which the LEP individuals come in contact with the program
3. The nature and importance of the program, activity, or service provided by the recipient to people's lives.
4. The resources available to the recipient and costs.

The greater the number or proportion of eligible LEP persons; the greater the frequency with which they have contact with a program, activity, or service; and the greater the importance of that program, activity, or service, the more likely enhanced language services will be needed. Smaller recipients with more limited budgets are typically not expected to provide the same level of language service as larger recipients with larger budgets. The intent of DOT's guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small organizations and local governments.

Findings

The Hampton Roads MPO and VDOT jointly self certify (23 CFR 450.334) on an annual basis that the transportation planning and programming process for the Hampton Roads region meets the requirements of Title VI and ADA. However, the federal team found that there is no verification in place to ensure that the requirements included in the Self-Certification are actually being met. In addition, the federal team did not recognize a comprehensive, coherent, and consistent system for assuring nondiscrimination as part of the MPO's planning and programming process.

Corrective Action: The federal team is requesting that the Hampton Roads MPO (in cooperation with HRT and WAT) establish procedures for applying Environmental Justice; develop measures to test the achievement of Environmental Justice; assess both highway and transit investments; and undertake outreach activities to low-income and minority communities to solicit input. This request includes the completion of the LEP four factor analyses. The purpose of this corrective action is to ensure that the MPO addresses Environmental Justice as part of the development of the Regional Transportation Plan and Transportation Improvement Program. The compliance deadline for this request will be March 2009. Please submit the final report to the federal team.

Corrective Action: The federal team is requesting that the MPO, through cooperation and coordination with the transit operators and VDOT, develop a Title VI Plan for the Hampton Roads MPO. The compliance deadline for this request will be March 2009. Please submit the plan to the federal team.

Corrective Action: The federal team requests that within 1 year following the approval of the MPO Title VI Plan, the VDOT (per 23 CFR 200.9 (B)(7)) conduct a comprehensive Title VI review of the Hampton Roads MPO and submit a findings report to FHWA and FTA. The compliance deadline is within 1 year following the approval of the MPO Title VI Plan.

Corrective Action: The federal team requests that the MPO, through cooperation and coordination with the transit operators and VDOT, establish procedural guidance for verifying the process and implementation of self-certification with respect to Title VI of the Civil Rights Act of 1964 and ADA. The compliance deadline for this request is August 2008. Please submit the final guidance report to the federal team.

Unified Planning Work Program (UPWP)

Regulatory Basis/Requirements

23 CFR 450.308(e) states that "... each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next one or two year period by major activity and task (including activities that address the planning factors in section 450.306(a)), in sufficient detail to indicate who will complete the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds."

Elements that must be included in the UPWP are:

- Discussion of the planning priorities facing the metropolitan planning area and
- Description of all metropolitan transportation planning and transportation-related air quality planning activities anticipated within the next 1 or 2-year period indicating:
 - Who will perform the work;
 - The schedule for completion of the work;
 - Resulting Products; and
 - Proposed funding by activity/task
 - Summary of total amounts of federal and matching funds (i.e. state and local)

Findings

The Hampton Roads UPWP contains a thorough description of all metropolitan area transportation planning and transportation-related air quality planning activities anticipated within the necessary time period. It was mentioned by the federal team that while the PDC and

MPO are separate organizations they share the same UPWP that is submitted to FHWA and FTA for approval. This creates a problem for FHWA and FTA since our approval authority is only valid for MPO related tasks and budgets.

In addition, the federal team noticed that practically all of the MPO products (TIP, Plan, UPWP, MPO studies) that are financed by federal planning funds provided to the MPO acknowledge only PDC members and includes the PDC heading. There is nothing that identifies the product as being an MPO product. While we take no issue with the recognition of PDC members being identified in the products developed by the MPO, we remind the HDPC staff again that the PDC is a separate organization from the MPO and that it is the MPO members that endorse/approve the above mentioned products that are required by federal law.

Finally, while reviewing the UPWP the federal team noticed that it does not clearly identify what the resulting product will be for each task, a schedule for completing each task and matching funds.

Recommendation: The federal team recommends that only the UPWP that has been approved by the MPO be sent to FHWA and FTA for review and approval. We also recommend an introductory page be provided in the UPWP so that readers know what it is they are reading.

Recommendation: The MPO and PDC are separate organizations and the federal team recommends that the MPO draw a clear distinction between both organizations.

Corrective Action: The federal team requests the MPO to clearly identify in the UPWP the end product for each task, schedule for completing each task, and include a summary budget table that includes the federal, state, and local match for each task or activity. The compliance deadline for this request will be prior to the submittal of the MPO's FY 2009 UPWP to FHWA and FTA for approval.

Public Meeting -November 14, 2007

Regulatory Basis/Requirements

- 23 CFR 450.334(b)(4) – states “In conducting a certification review, the FHWA and FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at the decision on a certification action.”

Findings

Prior to the certification review meeting with HRPDC staff, a public meeting was held on Wednesday, November 14, 2007, from 4-6:30 PM at The Regional Building located at 723 Woodlake Drive in Chesapeake, Virginia. The MPO followed its participation process and made

public notices available in local newspapers inviting citizens to share their feelings about the regional transportation planning and decisionmaking process.

Public turnout at the meeting was low but the conversations were very spirited. For the most part the public discussions were focused on public participation in the regional transportation decisionmaking process, specific projects such as the Hampton Roads Bridge Tunnel and the Third Crossing, regional congestion, transit in the region, and environmental justice. Additional public comments are included in Appendix K.

Some concern was expressed about the Hampton Roads Transportation Authority (HRTA) and the role that this body plays in the metropolitan transportation planning process and the selection of projects to be developed in the region. While the federal team made it clear that the HRTA was outside the purview of the certification review and it would not get involved in local decision making, the federal team also made it clear that the Hampton Roads MPO is the entity recognized by FHWA and FTA that was created and designated to carry out the metropolitan transportation planning process for the region. This includes the responsibility of determining which projects will be funded and eventually constructed by virtue of their selection for inclusion in the MPO's long range transportation plan. This responsibility carries with it some serious implications for federally funded projects because the MPO's decisions regarding the inclusion of projects in the long range transportation plan will effect what projects FHWA and FTA will be able to ultimately approve and authorize. Therefore, it is imperative that the MPO's project selection process remain as open and transparent as possible to ensure public confidence and buy-in in that process and the projects being advanced.

In addition, the federal team received a report from the Future of Hampton Roads, Inc. entitled; "Improving the Competitiveness of Hampton Roads". We have reviewed the report and find it to be pretty thorough with some good points that the MPO may want to consider. The report can be found/downloaded at: <http://www.fhrinc.org/>

The federal team appreciates all of the comments we have received from the citizens of the Hampton Roads region and we encourage their continued involvement and participation in the regional transportation planning and decision-making process.