

AGENDA ITEM #1: CALL TO ORDER

The meeting will be called to order by the Chair at approximately 9:30 a.m.

AGENDA ITEM #2: APPROVAL OF AGENDA

Members are provided an opportunity to add or delete items from the agenda. Any item for which a member desires action from the TTAC should be submitted at this time, as opposed to under “Old/New Business.”

AGENDA ITEM #3: SUBMITTED PUBLIC COMMENTS

Members of the public are invited to address the TTAC by submitting comments in advance of the meeting by email to kmiller@hrtpo.org or phone (757) 366-4370. Each oral comment is limited to three minutes. All comments received 48 hours before the start of the meeting will be provided to the TTAC Members prior to the meeting and included in the official record.

Attachment 3

December 16, 2020

Dale Stith
Principal Transportation Planner
Hampton Roads Transportation Planning Organization
dstith@hrtpo.org

BY EMAIL

Dear Ms. Stith,

The Southern Environmental Law Center (“SELC”) would like to provide the following comments on the draft Candidate Project Evaluation and Prioritization report developed by the Hampton Roads Transportation Planning Organization (“HRTPO”) in connection with the ongoing 2045 update to the Long-Range Transportation Plan. SELC is a non-partisan, non-profit organization that works throughout Virginia to promote transportation and land use decisions that protect our environment, strengthen our communities, and improve our quality of life. This includes a focus on encouraging cleaner transportation options, ensuring the resiliency of our communities and transportation system, and maintaining and maximizing taxpayers’ investments in existing infrastructure.

As you know, we weighed in throughout the process of updating the HRTPO’s project prioritization tool, and we are glad to see the new (and in our view, improved) version of the tool being used to score candidate projects. Although it is challenging to provide detailed, substantive comments on individual project scores without access to all the underlying data that factor into those scores, we appreciate this opportunity to provide general thoughts on a number of proposed projects and components of their scoring.

Advancing Transit and Rail In the Region

We continue to support the HRTPO’s consideration of projects focused on expanding residents’ travel options as well as advancing cleaner transportation modes, including projects to expand the region’s public transit and passenger rail networks. For example, among its other benefits, we believe the Peninsula High Capacity Transit project (#2045-510) would provide significant value by expanding Bus Rapid Transit on the north side of the region in the cities of Hampton and Newport News. In addition, the Naval Station Norfolk Transit Extension (#2045-518) has strong potential to advance many goals of the 2045 LRTP by adding light rail service to the region’s largest employer. And the higher-speed and intercity passenger rail project between Hampton Roads and Richmond/Northeast Corridor (#2045-506) is an important project as well, as it is part of the broader Southeast High Speed Rail project, and the Commonwealth’s Transforming Rail in Virginia initiative includes expanding Amtrak service along this line. All three of these projects would significantly advance cleaner and more efficient modes of travel in

the Hampton Roads region; we are glad to see they scored well and urge you to closely consider them for inclusion in the fiscally-constrained portion of the LRTP.

Ensuring Projects Promote Climate Resilience

As we noted in the February 13, 2020 comment letter we submitted on the list of candidate projects, the Hampton Roads region’s particular vulnerability to sea-level rise and other effects of climate change makes sound transportation planning especially important. Projects must be selected, sited, and designed to ensure they will: (1) prevent further loss of wetlands and other natural resilience resources that help absorb floodwater and buffer communities from storms; (2) withstand the new conditions that a changing climate is bringing about; and (3) reduce the transportation sector’s outsized contribution to the greenhouse gas emissions that contribute to climate change.

Both the HRTPO and the localities that comprise it have taken some noteworthy steps toward climate-resilient transportation planning in recent years, including the recent changes to the HRTPO’s project prioritization tool. However, we continue to have strong concerns that a number of the projects under consideration for inclusion in the 2045 LRTP would undermine that progress—particularly as it relates to protecting natural resilience resources. The proposed projects of concern include the following:

Greenbelt Phases I and II. Both phases of the Greenbelt proposal included as candidate projects (#2045-114 and #2045-114A) appear to be segments of the highly destructive and costly Southeastern Parkway and Greenbelt project (“SEPG project”). As noted in our February 13 comment letter, the Federal Highway Administration (“FHWA”) decided to terminate the National Environmental Policy Act (“NEPA”) review for the SEPG project in 2010. In the notice of termination published in the Federal Register, FHWA explained its decision was the result of “significant resource agency opposition” to the project based on the extent of the damage it would inflict on the environment and on wetlands in particular, as well as FHWA’s related doubt that the project could receive a permit under Section 404 of the Clean Water Act.¹

As an initial matter, it is important to note that the environmental harms and permitting challenges of the larger SEPG proposal cannot be sidestepped or negated simply by breaking it into segments.² Under both NEPA and Section 404 of the Clean Water Act, connected or

¹ “Termination of Environmental Review Process Cities of Chesapeake and Virginia Beach, VA,” 75 Fed. Reg. 70351 (Nov. 17, 2010).

² See *City of Boston Delegation v. FERC*, 897 F.3d 241, 252 (D.C. Cir. 2018) (“An agency impermissibly segments NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration; this rule ensures that an agency considers the full environmental impact of connected, cumulative, or similar actions before they are undertaken, so that it can assess the true costs of an integrated project when it is best situated to evaluate different courses of action and mitigate anticipated effects.” (internal quotations omitted)).

cumulative projects cannot be evaluated in a piecemeal manner in order to minimize the appearance of adverse environmental impacts.³

Further, both of these Greenbelt segments would likely face major permitting challenges in their own right. Phases I and II appear to overlap with large portions of Segments F and E, respectively, of the SEPG project, which would have been routed through areas of significant ecological value, including high-quality wetlands and significant wildlife habitat located in the North Landing River and West Neck Creek watersheds and in the vicinity of Gum Swamp. These are important natural resilience resources that the region should be preserving. Moreover, it would be extremely difficult to mitigate the damage that a highway would cause to the ecological values these resources provide, and the cost of attempting to do so would be significant.

Turning to the draft scores for these two proposals, we question the ten points both projects received under the “project readiness” factor merely for being included in the current LRTP. It appears that the proposed projects received these points because the current LRTP includes a planned study of the Southeastern Parkway and Greenbelt proposal (Project 2040-86) in its list of fiscally-constrained studies. We question, however, whether either of these projects (or any other project) should receive points for merely being included in a previous LRTP as a study. In addition, due to the ecologically valuable areas these proposals would traverse and the likely difficulty and cost of minimizing impacts to those areas, we were also surprised to see both projects ranked only as “intermediate” for potential damage to natural and cultural resources.⁴

In short, there were good reasons why federal agencies decided against advancing the unduly destructive SEPG proposal after studying it. The two pieces of that project that are now represented by the Greenbelt Phase 1 and 2 proposals appear to impact a significant amount of the environmentally sensitive land along the SEPG project’s proposed route and would very

³ See *Colony Fed. Sav. & Loan Ass’n v. Harris*, 482 F. Supp. 296, 302 (W.D. Pa. 1980) (“There is substantial case law establishing that large projects may not be artificially segmented into smaller ones for the purpose of avoiding NEPA or minimizing the appearance of adverse environmental impact.”); *Nat’l Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 297–98 (D.C.Cir.1988); *Preserve Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Eng’rs*, 87 F.3d 1242, 1247 (11th Cir.1996) (An applicant “cannot evade [its] responsibilities under [NEPA] by artificially dividing a major federal action into smaller components, each without a ‘significant’ impact.” (internal quotations omitted)). The 404(b)(1) guidelines, which the Corps use to evaluate Section 404 permits under the Clean Water Act, also “provide that the review may not be ‘piecemeal’ – a few acres here, a small tract there.” *Buttrey v. United States*, 690 F.2d 1170, 1180 (5th Cir. 1982); *United States v. Rueth Dev. Co.*, 335 F.3d 598, 600 (7th Cir. 2003) (noting that the Corps denied a Section 404 permit application because the applicant had “present[ed] his development plans in a piecemeal fashion in an attempt to avoid a comprehensive review of their cumulative environmental impact”).

⁴ When we looked across the entire highway project category to see how the roughly 150 candidate highway projects were scored on this measure, we noted that more than 100 were ranked as “low” impact; roughly 40 were ranked as “intermediate” impact; and only four were ranked as “high” impact. This unlikely result leads us to ask what acreage thresholds were used to define those categories and to urge you to consider whether the thresholds should be adjusted to ensure a more realistic and more even dispersal of projects into the different categories, which would help give this component of project scoring greater utility in comparing and contrasting different projects.

likely encounter similar permitting challenges; yet their scores do not appear to sufficiently reflect these problematic issues. The environmental threats posed by these projects, the difficulty and cost of developing adequate mitigation for those threats, and the resulting permitting challenges strongly weigh against pursuing them. For all of these reasons, we recommend against including either of these projects in the fiscally-constrained portion of the LRTP.

US Route 460 Relocated. As noted in our February 13 letter, we continue to have serious concerns with the US Route 460 Relocated (#2045-117) proposal to build a new four-lane divided highway from the Suffolk Bypass to Zuni. The Virginia Department of Transportation’s (“VDOT”) previous plans for a new highway parallel to existing Route 460 along this stretch were extremely expensive relative to their limited benefits, and the HRTPO’s candidate project scoring process indicates that this continues to be the case. This \$945 million project is expected to carry just 27,000 vehicles per day (a small fraction of its proposed capacity), and ranks near the very bottom of all projects scored in terms of cost-effectiveness. Further, VDOT’s previous plans faced major environmental permitting difficulties due to the severe impacts the project would have had on wetlands and streams along the corridor. We were therefore puzzled to see this proposal receive only a score of “low” for its potential damage to natural and cultural resources, providing further evidence that the scaling for this factor should be reconsidered. Nevertheless, the overall scoring clearly indicates that this proposal should not be included in the fiscally-constrained project list.

Nimmo Parkway Phase VII-B. We remain troubled by the proposal (# 2045-252) to extend the Nimmo Parkway across nearly a mile of the Back Bay National Wildlife Refuge in Virginia Beach. Wetlands and marsh make up 75 percent of the Refuge’s territory, and routing a road along the proposed path would likely destroy and disrupt important carbon sinks and wildlife habitat, while also altering the area’s hydrology in a way that could increase flooding in nearby communities. The project’s environmental impacts were ranked as “intermediate,” and its overall project score places it in roughly the bottom one-third of candidate highway projects that were scored. We urge you not to include Nimmo Parkway Phase VII-B in the fiscal-constraint list and to explore less damaging alternatives instead.

I-564/I-664 Connector and VA-164 Connector. We also have concerns with the project scoring second-highest overall in the “Bridges and Tunnels” category—the proposed I-564/I-664 Connector and VA-164 Connector (#2045-401). In evaluating proposed improvements for the recent Hampton Roads Crossing Study, VDOT found that the improvement segment representing the VA-164 Connector (“Alignment Segment 13”) would destroy far more wetlands (61 acres) and impact much more endangered and threatened species habitat (101.7 acres) than any other segment assessed in the study.⁵ Not surprisingly, this is one of the few projects that received a score of “high” in terms of its potential natural and cultural resource impacts in this LRTP

⁵ See *Hampton Roads Crossing Study Supplemental Environmental Impact Statement, Natural Resources Technical Report* at A-6, A-9 (July 2016).

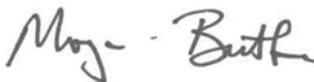
process. Despite its high overall scoring rank, it is also important to note that due to its exorbitant \$5.1 billion estimated cost, this proposal was also found to be one of the least cost-effective of all projects scored. For these reasons, we recommend against including this project in the fiscally-constrained project list.

Bowers Hill Interchange. Another project we were surprised to see scoring “low” in the natural and cultural resource impacts category is the Bowers Hill Interchange (#2045-308) project. While we recognize the importance of this interchange to the Hampton Roads transportation network, it is located in an area with significant natural resources, including substantial wetlands, forests, and floodplains. This area also includes significant historic and cultural resources, as well as several communities—including a number of environmental justice communities—that could be adversely affected by proposed improvements at this interchange. The adverse effects of any proposals for this interchange thus need to be carefully considered, along with any alternatives and mitigation measures to minimize these impacts. Among other things, serious consideration should be given to options to upgrade transit service in this area, as well as cost-effective operational enhancements, transportation demand management strategies, and other targeted improvements that can be accommodated within existing right-of-way.

US 460/58/13 Connector. Finally, in our February 13 letter, we raised concerns about previous proposals for the US 460/58/13 Connector project (now designated as #2045-116) that involved widening this highway, which runs alongside the Great Dismal Swamp National Wildlife Refuge and some of Virginia’s most important habitat areas. Although we are encouraged to see that the proposal scored in the LRTP process has been pared down to primarily consist of safety improvements, we continue to urge HRTPO to ensure that any proposals advanced along this corridor—and particularly any proposals for an interchange at the regional landfill—be sited and designed to first avoid and then minimize any adverse effects to sensitive resources in this area to the greatest possible extent.

Thank you for your consideration of these comments as you finalize project scores and prepare to turn to the fiscal-constraint portion of the LRTP update. Please do not hesitate to contact us if you have any questions or would like to discuss any of our comments further.

Sincerely,



Morgan Butler
Senior Attorney



Travis Pietila
Staff Attorney