

# Agenda Item 11-D Handout

## 2012 HRTPO Quadrennial Federal Certification Review

HRTPO Citizen Transportation Advisory Committee

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January 10, 2013



U. S. Department  
of Transportation

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

Federal Highway Administration  
Virginia Division  
400 North 8<sup>th</sup> Street, Suite 750  
Richmond, VA 23240  
804-775-3320  
804-775-3356 (fax)

November 14, 2012

The Honorable Molly Ward, Chair  
c/o Mr. Dwight Farmer, Executive Director  
Hampton Roads Transportation Planning Organization  
The Regional Building  
723 Woodlake Drive  
Chesapeake, Virginia 23320

Re: 2012 Transportation Planning Process Certification Review Report for Hampton Roads

Dear Ms. Ward:

In accordance with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and the joint Statewide and Metropolitan Planning Regulations of February 14, 2007, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) conducted a joint Planning Certification Review of the Hampton Roads Transportation Planning Organization (HRTPO) on March 21-22, 2012.

Based on this review, the FHWA and FTA, through its oversight and stewardship responsibilities, have determined that the transportation planning process of the Hampton Roads Transportation Management Area (TMA) meets the requirements of the Metropolitan Planning Rule at 23 CFR Part 450 Subpart C and 49 CFR Part 613. Therefore, the FHWA and FTA certify the transportation planning process.

In the report, the FHWA and FTA have included numerous commendations giving credit to many of the HRTPO's improvements and strengths. The Federal Team has also included several programmatic recommendations that reflect national trends and initiatives intended to aid in improving the transportation planning process. The HRTPO is expected to give serious consideration to full implementation of the recommendations for improvement.

The Federal Team recognizes the cooperative efforts between HRTPO and the State that provides a continuously efficient and effective transportation planning process for the Hampton Roads TMA. The Federal Team endeavors to provide technical assistance to support the HRTPO, as well as all MPOs in Virginia, in its planning efforts. To this end, FHWA and FTA will conduct a Statewide Metropolitan Planning and Program Process Review in FY 2014. The review will also allow the Federal Team to provide guidance on additional changes that might need to occur to meet the requirements of MAP-21.

It is our expectation that the MPOs and the State will work with us during this fiscal year as we develop a comprehensive scope for the Process Review in FY 2014.

The Honorable Molly Ward, Chair

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Re: 2012 Transportation Planning Process Certification Review Report for Hampton Roads

If you have any questions, please direct them to Mr. Ivan Rucker, Community Planner, at the FHWA Virginia Division, (804) 775-3350, or Mr. Ryan Long, Community Planner, at the FTA Region III, at (215) 656-7100.

Sincerely,



Brigid Hynes-Cherin  
Regional Administrator Region III  
Federal Transit Administration



for: Irene Rico  
Division Administration  
Federal Highway Administration

cc: Mr. Greg Whirley, Commissioner, Virginia Department of Transportation  
Mr. Dennis Heuer, District Administrator, Virginia Department of Transportation  
(Hampton District)  
Mr. Eric Stringfield, Virginia Department of Transportation (Hampton District)  
Ms. Marsha Fiol, Virginia Department of Transportation (Central Office)  
Ms. Thelma Drake, Virginia Department of Rail and Public Transportation  
Ms. Reta Busher, Virginia Department of Transportation (Central Office)  
Mr. William Harrell, Hampton Roads Transit  
Mr. Anthony Conyers, Williamsburg Area Transit Authority  
Ms. Sandra Jackson, FHWA (D.C. Division)  
Ms. Tameka Macon, FHWA (Headquarters)  
Ms. Jocelyn Jones, FHWA (Resource Center)

**Hampton Roads Transportation Planning Organization  
Transportation Planning Certification Review Summary Report**

**March 20-22, 2012**



**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 Metropolitan planning Organization (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 Metropolitan Planning Organization (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.

### **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 TPO 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. The FHWA and FTA, therefore, are certifying the transportation planning process.

The TPO is expected to give serious consideration to the implementation of the recommendations for improvement.

## 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-certifications and Federal certifications.”

A team consisting of staff from the FHWA Virginia Division, the FHWA Resource Center, FHWA D.C. Division, FHWA Headquarters, and the FTA Region III Office was formed to conduct the Certification Review of the Hampton Roads area planning and program process. The Federal Team interviewed and held discussions on March 21-22, 2012 with:

- Staff from the Hampton Roads Transportation Planning Organization (HRTPO), the federally-designated metropolitan planning organization (MPO) for the Hampton Roads TMA;
- Staff from the Virginia Department of Transportation (VDOT) Hampton Roads District office and Central office; and
- Staff from the localities represented on the Hampton Roads Transportation Technical Advisory Committee (TTAC), the Navy, Hampton Roads Transit-TRAFFIX, Citizens Technical Advisory Committee (CTAC), and Freight Transportation Advisory Committee (FTAC) (see **Appendix A**).

Prior to the review, the Federal Team conducted a desk audit and reviewed 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 statements, TPO and advisor committee bylaws and operating agreements, and public involvement materials and information. In addition, the HRTPO and the VDOT staff were provided with a list of written review questions based on the provisions of 23 United States Code (USC) 134 and the metropolitan planning regulations found in 23 CFR 450. A public meeting was also held on March 20, 2012, to invite public comment on the Hampton Roads planning and program development process.

Each element of the planning process under 23 CFR 450 is identified separately in this report. Under each planning element is a summary of the Federal Team’s findings summarizing how the Hampton Roads TPO currently addresses specific planning issues. The report identifies commendations and recommendations for improvement. While many of the recommendations are not regulations, they do reflect national interest and trends and are intended to assist the TPO in their efforts to effectively meet Federal planning requirements.

The Federal Team identified several notable planning practices and accomplishments by the Hampton Roads TPO since the last certification review. One of the most recognized accomplishments is the re-structuring of the TPO – its staff, operating procedures and committee structure. This action was taken not only to address the corrective actions in the previous Federal Certification Review (2007), but also to improve external communication and outreach as part of a more informed and open decision-making process. During the Federal Team’s public meeting on March 20, 2012, the results of the TPO’s restructuring was evident from the generally positive comments received indicating the TPO’s process of inclusion and openness was headed in the right direction.

On more than one occasion, The TPO Board expressed strong support for the TPO staff, their work ethic, and their technical and interpersonal skills. We found the TPO (and VDOT Hampton Roads District office) to be staffed with qualified individuals with many having advanced degrees and professional licenses (PE, AICP, PhD, etc.). This in-house capability has a direct impact on the TPO’s ability to respond to immediate issues, as well as staffs’ ability to articulate planning products to their Board, committees, and the public. In addition, the Hampton Roads Planning District Commission (HRPDC) staff, who is equally respected in their discipline areas, can serve to compliment the activities of the TPO.

The HRPDC is a regional organization serving as a resource of technical expertise to the area's sixteen local governments. It provides assistance on local and regional issues pertaining to [Economics](#), [Physical and Environmental Planning](#) and [Emergency Management](#). The HRPDC staff also serves as the support staff for the Hampton Roads Metropolitan Planning Organization through land use analysis and other data sharing activities.

The Hampton Roads TMA Planning Area consists of voting members from 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. In addition, voting representation includes representatives from the Virginia Senate, Virginia House of Delegates, Hampton Roads Transit (HRT), Williamsburg Area Transit Authority (WATA), VDOT, Virginia Department of Rail and Public Transportation (DRPT), and Virginia Port Authority (VPA).

An expanded non-voting membership consists of representatives from FHWA, FTA, Federal Aviation Administration (FAA), and Virginia Dept. Of Aviation (VDOA), Peninsula Airport Authority, Norfolk Airport Authority, CTAC, FTAC, CTB, and Military Liaisons

This summary report is the result of the FHWA and FTA stewardship responsibilities, including discussions during the site visit, report reviews, information from attendance and participation at the Hampton Roads TPO meetings, and interactions with the TPO and its partners.

## **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 MPO. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement shall include specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan and the metropolitan TIP, and the development of the annual listing of obligated projects”
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**

Among the corrective actions included in the 2007 review was the need for the TPO to separate from under the auspices of the Hampton Roads Planning District Commission, to develop formal bylaws to guide the conduct and actions of the TPO, and to consider redefining itself to ensure that the TPO structure compliments the economic, transportation, and public accountability demands of the region.

The Federal Team was quite impressed with the TPO's effort to address the corrective actions and to "reinvent" itself from the ground up since the last review. Delineating the HRTPO and HRPDC functions, restructuring the organization to achieve performance and efficiency goals, instituting new voting procedures, establishing bylaws, and expanding membership and committees was an impressive accomplishment (**see Appendix B**). The membership list is exhaustive, and includes a much needed and recommended freight and citizen advisory committee. The addition of regional representatives from the Virginia Senate, House of Delegates, and Commonwealth Transportation Board (CTB) has proved to be beneficial and allows a greater level of exposure to the Federal planning process required of MPOs. Also, the Federal Team was briefed on a significant number of positive product reforms and accomplishments (**see Appendix C**).

Finally, the Continuing, Cooperative, Coordinating Agreement (3-C) was recently updated on July 15, 2009. We found that the partnership between the TPO and VDOT Hampton Roads District office is exceptional. The VDOT Hampton Roads District office staff consists of well-educated and qualified individuals that excel at their craft and demonstrate a commitment to cooperatively working with the TPO Policy Board and TPO staff towards common goals. In addition, we find the VDOT Hampton Roads District Administrator and TPO Executive Director to be approachable and have a good working relationship with staff, elected representatives and the general public.

## **Commendations**

1. Extremely competent and highly educated staff (MPO and Hampton Roads VDOT District office) that are professional and committed to providing quality data to the TPO Policy Board resulting in informed and accountable decisions regarding transportation projects in the Hampton Roads Region.
2. Very impressed with the breadth and depth of restructuring since the last Certification Review. Also, during FHWA and FTA evening meeting with citizens, many spoke positively about the progress of the MPO and the increased visibility of staff throughout the region and in communities.
3. Establishment of Freight Transportation Advisory Committee (FTAC) was much needed considering the regional, statewide, and national economic importance of freight and related industries throughout the region. Impressed with work of the committee.
4. Citizen Transportation Advisory Committee consists of dedicated individuals. Looking forward to great things as the group matures.
5. Impressed with the amount and detail of work being produced by MPO staff. MPO is being managed very efficiently and the use of Federal funds for planning activities and staffing operations is well documented.

6. The addition of the regional representatives from the Virginia Senate, House of Delegates, and Commonwealth Transportation Board (CTB) has proved to be beneficial, and allows a greater level of exposure to the Federal planning process required of MPOs.
7. Impressed with civilian and military representation from the Navy and appreciate their active participation.
8. Partnership between MPO and VDOT District office is exceptional. VDOT District Office staff consists of well-educated and qualified individuals that excel at their craft and also demonstrate a commitment to cooperatively working with MPO staff. In addition, VDOT District Administrator and MPO Executive Director are approachable and have a good working relationship with staff and elected representatives.

## UPWP Development

### **Regulatory Basis/ Requirements**

23 CFR 450.308(c) requires, "... 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 MPO. 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
  - Proposed funding by activity/task; and
  - Summary of total amounts of Federal and matching funds (i.e. state and local).

### **Findings**

The UPWP serves as the annual work program for the HRTPO. It details the transportation planning activities that the organization intends to undertake using Federal, State and local resources and it delineates responsibilities and procedures for carrying out the cooperative transportation planning process. Each task in the UPWP includes a background summary, expected end products, work elements to support end products, responsible agencies, and an estimated cost table and a schedule for each activity. The current FY 2013 UPWP was approved by the Policy Board in April 2012.

Consistent with previous years, the FY13 UPWP supports ongoing work in the areas of long range transportation and land use planning, congestion management, program development, public participation, corridor planning, safety and other special studies.

To fund the federally required transportation planning process, the TPO receives several sources of Federal funds that can be used for metropolitan transportation planning activities – planning (PL), Section 5303 funds, and Regional Surface Transportation Program (RSTP). These funds are matched by the State of Virginia as well as the TPO localities.

The Federal Team finds that the UPWP activities and costs demonstrate consistency with the

regulatory requirements. The UPWP provides a good summary of anticipated planning throughout the region for the fiscal year. It is also developed cooperatively with member jurisdictions and the transit agencies.

## **Air Quality/Conformity**

### **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.

The FHWA and FTA are responsible for ensuring that transportation plans, programs and projects meet the requirements of the Clean Air Act (CAA) as amended. With passage of the 1990 Clean Air Act Amendments, transportation plans, programs and projects developed, funded or proposed under 23 U.S.C. or the Federal Transit Act must demonstrate conformity in accordance with Section 176 (c) of the CAA as amended.

### **Finding**

The Transportation Conformity Analysis was prepared in accordance with the November 24, 1993 Final Rule of Criteria and Procedures for Determining Conformity promulgated by EPA and subsequent rulemakings related to ozone dated August 7 and November 14, 1995, August 15, 1997, July 1, 2004, and January 25, 2008. In addition, the Transportation Conformity Analysis is consistent with a variety of guidance issued by the EPA, as well as guidance issued by FHWA and FTA developed to address many conformity-related topics.

On December 12, 2011, the FHWA and FTA found the Transportation Conformity Analyses final report of the Hampton Roads, Amended FY 2012-2015 TIP and new 2034 Long Range Plan for the Hampton Roads 8-Hour Ozone Maintenance Area met EPA’s Transportation Conformity Rule and subsequent amendments and guidance.

## **Long Range Transportation Plan Development and Project Prioritization**

### **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 (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**

The Hampton Roads 2034 Plan update adopted by the HRTPO Board as of January 19, 2012 was

an ambitious update over its predecessor. Notable to the update was a robust public outreach effort and development of a formal project prioritization tool. On the financial side, the introduction of tolling through Public/Private Partnerships constitutes a significant share of project revenue in the plan, and a reasonable inflation factor is applied to project costs estimates. In addition, projects are appropriately banded allowing for the ability to discern near term projects from long term.

In 2009, following a robust restructuring, the Hampton Roads Policy Board requested staff to develop technical methodology to assist the Board in determining and advancing regional transportation priorities. VDOT and its on-call consultant assisted with this effort. This new planning tool has been implemented to better vet and select transportation projects in a quantitative manner which is especially beneficial when many regional infrastructure needs and competing priorities far outweigh limited funding.

Before the development of the prioritization tool, the TPO staff committed itself to a year-long public involvement effort. The public involvement effort helped shape the vision and define the goals for the long range plan, and it provided the framework for the prioritization tool (**see Appendix D**).

The establishment of project categories for purposes of prioritization is determined to be broad and considers most major modes of transportation (highways, transit, intermodal, bike/ped). Weighting factors are applied independently to modal classifications based on a project's utility, viability, and vitality, and the project criteria looks to be balanced with the eight Federal planning factors.

The Federal Team acknowledges the TPO staff efforts to coordinate with environmental, land use, and other transportation related agencies during the development of the 2034 Long Range Transportation Plan. We believe that the TPO's established consultation process with Federal, State, Tribal land management, wildlife and regulatory agencies, and its partnership with the HRPDC may present unique opportunities to streamline the project development process.

SAFETEA-LU (see also 23 CFR 450, Appendix A to Part 450 –Linking the Transportation Planning and NEPA Process) allowed products developed in the planning process to be used in the environmental process to streamline the project development process, an effort currently termed Planning and Environmental Linkages (PEL). In 2007, VDOT developed standard operating procedures for integrating elements of NEPA into the transportation planning process.

MAP-21 further reinforces the use of planning products in the environmental process by codifying the PEL provisions of SAFETEA-LU. Forthcoming guidance on the PEL provisions of MAP-21 will identify examples of planning products and analyses that may be adopted in the environmental process and also establish a process for adopting those products. In anticipation of these developments, FHWA and FTA recommend that the TPO work with VDOT and look for opportunities to use the PEL initiative on projects in the region once this guidance is

forthcoming.

The 2034 Plan also incorporates the TPO's Congestion Management Process with inclusion of Systems Management/Transportation Demand Management/Operational Improvements as an independent category for evaluating projects.

The HRTPO has consistently been recognized by FHWA for their good CMP implementation. Integrating the CMP with the new prioritization process embodies the spirit of the regulations and bring operations and planning together to tackle congestion problems in the region. The Federal Team notes that the 2010 report update, *The State of Transportation in Hampton Roads*, is consistently informative and of good quality and summarizes in detail the vast military and Federal facilities, port terminal activities, bridges and tunnel networks, that make the Hampton Roads region so complex but critically important (see **Appendix E**).

As part of the region's CMP efforts to manage demand on the regional network, we find HRT's TRAFFIX group efforts to be an outstanding service value. More specifically, the TRAFFIX's GOPASS 365 Program appears to be an extremely effective and successful initiative providing demand management options to thousands of students and hundreds of businesses. The TRAFFIX program is administered by HRT, with oversight by the TRAFFIX Steering Committee. Members of the steering committee include: HRT, HRTPO, FHWA, FTA, VDOT, DRPT, and local governments (see **Appendix F**).

## **Commendations**

1. Prioritization process is outstanding and we consider it a best practice approach that should be promoted:
  - a. Cooperatively developed between the MPO and VDOT (on-call consultant) with the public having a hand in defining the Vision and Goals of the tool:
  - b. Effectively incorporates the Federal planning factors:
  - c. Process structured to be unbiased, straightforward, and the tool is effective at prioritizing and balancing an overabundance of projects with limited funds.
2. Dramatically improved and is not just a "Plan of Projects,"
3. Prioritization process is effectively integrated into the 2034 Plan,
4. Fiscal constraint is detailed and reasonable with YOE appropriately banded.
5. Strong visualization techniques (i.e. Google Earth integration),
6. Good effort to demonstrate Title VI through benefit/burden analysis,
7. Integration with Congestion Management Process,
8. Impressed with effective work of HRT's TRAFFIX and GOPASS 365 Program, and
9. Public outreach and involvement during development of the LRTP was exceptional.

10. Safety and Security (Military/Defense and Hurricane Risk/Evacuation) as part of transportation planning has been strengthened. Partnership between the Navy (major employer) and TPO Policy Board is more pronounced.
11. Adopted 2007 recommendation to establish Freight Transportation Advisory Committee (FTAC). Federal Team was very impressed with the Committees accomplishments (including the production video – “*A Region United*”).
12. The TPO’s established consultation process with Federal, State, Tribal land management, wildlife and regulatory agencies, and its partnership with the HRPDC may present unique opportunities to streamline the project development process

## **Recommendation**

SAFETEA-LU (see also 23 CFR 450, Appendix A to Part 450 –Linking the Transportation Planning and NEPA Process) allowed products developed in the planning process to be used in the environmental process to streamline the project development process, an effort currently termed Planning and Environmental Linkages (PEL). In 2007, VDOT developed standard operating procedures for integrating elements of NEPA into the transportation planning process. MAP-21 further reinforces the use of planning products in the environmental process by codifying the PEL provisions of SAFETEA-LU. Forthcoming guidance on the PEL provisions of MAP-21 will identify examples of planning products and analyses that may be adopted in the environmental process and also establish a process for adopting those products. In anticipation of these developments, FHWA and FTA recommend that the TPO work with VDOT and look for opportunities to use the PEL initiative on projects in the region once this guidance is forthcoming.

## **Public Transit Planning**

### **Regulatory Basis/Requirements**

Section 5303 of Title 49 and Section 134 of Title 23 require the transportation planning process in metropolitan areas to consider all modes of travel in the development of their plans and programs. Federal regulations cited in 23 CFR 450.312 state that the MPO in cooperation with the State and operators of publicly owned transit services shall be responsible for carrying out the transportation planning process.

### **Findings**

The region includes two public transit providers, Hampton Roads Transit (HRT) and Williamsburg Area Transit Authority (WATA). HRT, the larger of the two transit agencies, operates over seventy local bus routes, as well as paratransit, light rail and ferry services. Both transit providers are actively engaged in the MPO process as voting members on the TPO Board, and participate on the Transportation Technical Advisory Committee. Transit operators however separately perform most of the transit planning for the region which is supported by the TPO through data and technical resource sharing.

In 2009, a metropolitan planning agreement was established between the VDOT, Virginia Department of Environmental Quality, HRTPO, HRT and WATA outlining joint responsibilities for maintaining a cooperative, comprehensive and continuing planning and programming process for the region. This MOA sets forth several articles pertaining to committee structures, planning products, project selection, and air quality requirements among other expectations between the parties involved. This agreement has contributed to improved coordination between agencies on planning efforts over the last few years.

As mentioned, the 2034 LRTP includes both the WATA and HRT strategic Transit Development Plans as appendices to the main document. These TDPs focus on guiding each transit agency's operational management and capital improvements. For example, HRT's TDP from December 2011 outlines several major capital projects, including various passenger facility improvements and vehicle replacement efforts for enhancing bus and ferry service.

Since the last Federal Certification Review, the 7.4 mile Norfolk LRT project (The Tide) has been completed and runs from downtown Norfolk to the Norfolk/Virginia Beach border. Major capital construction for public transit is difficult to achieve without regional support, and HRTPO has been a major factor in the Norfolk LRT project's success.

HRT's current planning effort in the 2034 LRTP is the Virginia Beach Transit Extension study (VBTES) that explores the transit options available for a former freight rail right of way running from Newtown Road to Birdneck Road in Virginia Beach. The study will consider four principle

options: extending The Tide light rail into Virginia Beach, building a bus rapid transit line, enhancing local bus service or a no-build alternative.

WATA, the region's other transit provider, is also an active participant in the MPO process. WATA's Transit Development Plan developed in 2009 proposed new bus routes and vehicle needs, as well as a new admin/operations/maintenance facility and transportation center in response to increased ridership. WATA currently does not directly own any of its facilities. Williamsburg has been identified as a new urbanized area by the 2010 Census. In FY 13, WATA will be eligible to receive funding under the FTA's Section 5307 Urbanized Area Formula Program as apportioned to the Governor as the Designated Recipient.

Funding for HRT and WATA's capital improvements are primarily through FTA's Section 5307 Urbanized Formula Funds, as well as support from the MPO through CMAQ and RSTP funding for various transit projects in the region. Projects utilizing CMAQ and RSTP funds are allocated by the MPO's highly competitive selection and prioritization process. Projects proposed by the eligible recipients are analyzed by HRTPO staff using a specific set of criteria that have been approved by the HRTPO Board. The proposed projects are then ranked based on the results of the analyses. The Transportation Programming Subcommittee reviews the ranked set of eligible CMAQ projects and makes recommendations to the TTAC. HRTPO Board considers TTAC recommendations regarding CMAQ/RSTP projects and funding allocations for final approval.

The 2011 Hampton Roads Regional Transit Vision Plan (TVP) was conducted as a component of the 2034 LRTP. This longer term vision provides a concept for a regional rapid transit network that connects major employment and population centers in Hampton Roads, including coordinated land use planning, combined with specific transit modes that improve mobility options for the public. The TVP was included by reference in the 2034 LRTP.

In conclusion, while the 2034 Long Range Transportation Plan (LRTP) contains existing and proposed transit projects, they are largely the result of plans and studies completed by the transit service providers in the region. Moreover, the transit portion of the 2034 LRTP is a small section of the main plan and could be more comprehensively included throughout the LRTP. The 2034 LRTP clearly separates highway planning and transit planning into two separate entities.

### **Commendation**

The Review Team commends the TPO for the excellent coordination with the region's transit providers in data sharing and transit planning efforts. This extensive level of transit agency involvement and participation is demonstrated through the production of high quality of planning and programming products.

### **Recommendation**

A more comprehensive multimodal approach should be explored in the next LRTP development cycle that seeks to comprehensively address the region's transportation needs with all modes working together to achieve the Plan's goals.

## Transportation Improvement Program (TIP)

### **Regulatory Basis/Requirements**

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

- The TIP shall act as 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
- The TIP shall cover a period of at least four years
- The TIP shall include all transportation projects, including bicycle and pedestrian facilities, proposed for funding under Title 23 U.S.C. and 49 U.S.C.; all regionally significant transportation projects for which FHWA or FTA action is required; all regionally significant projects to be funded from non-Federal sources; and only projects that are consistent with the Transportation Plan
- The TIP shall 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
- The TIP shall 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
- A financial plan shall be included that demonstrates how the proposed TIP can be implemented, indicates resources from public and private sources that area reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies from 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,
- Provide interested parties to comment on the plan and hold at least on formal public meeting during TIP development
- For transportation operations and maintenance, contain system level estimates of costs and revenue sources to adequately maintain and operate federal aid highways and public transportation
- TPO may group projects that are not of an appropriate scale to list individually
- As a TIP action by the FHWA and FTA, 23 CFR 450.328 requires that, “the FHWA and FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan plan

produced by the continuing and comprehensive transportation planning process carried on cooperatively by the MPO(s), the State(s), and the public transportation operators in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under section 450.334, a review of the metropolitan transportation plan by the FHWA and FTA, and upon other reviews as deemed necessary by the FHWA and FTA.”

## **Findings**

The MPO has made tremendous strides since the last Planning Certification to develop a more readable document showcasing the proposed investments in the region. As a result, the updated FY 2012 -2015 TIP is a more visually appealing and informative program document. The Federal Team was also impressed with staff efforts to restructure the TIP to provide more detailed project information. This level of detail exceeds Federal requirements. For example, in addition to obligations, checking project implementation against a set schedule and tracking actual expenditures by project phase as shown in the Hampton Roads TIP is a more meaningful snapshot on a project’s progress. We are also aware that this effort is meant to better manage project activity and progression so as to maximize the efficient and effective use of public funds.

We commend the TPO efforts and assistance from the VDOT Hampton Roads District office to develop a document that allows citizens of the Hampton Roads region a more informative review of projects. We consider this approach to TIP development to be a best practice.

As a result of the more ambitious effort by the TPO to produce a more informative TIP, however, the TPO highlighted data issues associated with data dumps coming from VDOT database(s). The TPO presented examples of some of the issues that were flagged (see **Appendix G**). According to TPO staff findings, approximately seventy percent (70%) of the projects in the TIP were flagged due to data inconsistencies. This must be improved to ensure TIP integrity. In addition, in order to be useful the data dumps need to occur on a more regular basis and the data needs to be corrected.

As we move toward a performance based planning and program process, which helps ensure the integrity of the TIP product, VDOT, public transit operators and TPO staff should work cooperatively to develop a process to improve accurate data and data sharing regularity for TIP development.

The Federal Team reviewed the TIP project list and found that the required elements for each project satisfy Federal regulations. There are TPO approved procedures for when the TIP requires either an amendment or adjustment and these procedures are appropriately followed.

An important requirement for the TPO TIP is that it includes a financial plan. Per 23 CFR 450.104, “...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.” As part of the financial plan for the TIP, Federal regulations also require that for transportation operations and maintenance, the TIP contain system level estimates of costs and revenue sources to adequately maintain and operate federal aid highways and public transportation.

With respect to the financial plan and fiscal constraint, the Federal Team inquired how the TPO staff determines the TIP to be fiscally constrained. The response was that for highway projects the fiscal constraint determination was left up to the VDOT via the insertion of Table C in the TIP documentation. Transit financial data is provided to the MPO by the transit agencies and verified by the Virginia Department of Rail and Public Transportation (VDRPT) which generally has a good record of reliable data sharing efforts. This allowed the TPO to assure that the funds programmed were consistent with the available revenues, but not to determine if, for transportation operations and maintenance, the plan contained system level estimates of costs and revenue sources to adequately maintain and operate federal aid highways and public transportation.

The Federal Team finds that the TPO needs to be more actively involved with the fiscal constraint determination for the Hampton Roads TIP (and Plan). Specifically, the TPO should position itself, thru better cooperation with VDOT and VDRPT, to more effectively comprehend how fiscal constraint is determined. Additional focus should be on comprehending system-wide operations and maintenance cost and revenue estimates to adequately operate and maintain federal aid highway and public transportation to ensure that the state-of-good-repair needs for the region are being reasonably met at an appropriate level.

Based on the limited feedback the Federal Team received regarding fiscal constraint, and because the Federal Team could not clearly locate the TIP maintenance and operation costs and revenue sources in the financial portion of the TIP, the Federal Team is recommending the following for the TPO:

1. The TPO, public transit operators and VDOT District staff need to work cooperatively to better comprehend how fiscal constraint for the Hampton Roads TIP is determined.
2. The TPO and VDOT District staff needs to review the FHWA Operations and Maintenance Checklist for ensuring fiscal constraint (**see Appendix H**), identify relevant questions that require better understanding, and cooperatively assist in documenting a response.
3. The TPO should demonstrate that the financial needs of both highway and transit providers pertaining to system maintenance and preservation, as well as state-of-good-repair, are being reasonably met in the Hampton Roads region at the system-level as part of their fiscal constraint requirements.

The recommendations are being provided to encourage enhanced cooperation between the VDOT District office, VDRPT, transit operators and TPO staff for TIP (and Plan) financial plan development and fiscal constraint determination.

For project selection and prioritization, the MPO has established a well-documented procedure for the allocation of CMAQ and RSTP funds. When funds are available for allocation, TPO 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 TPO Policy Board. The procedures are documented on the TPO's website. As mentioned above, the enhanced TPO TIP is meant to better manage project activity and progression so as to maximize the efficient and effective use of public funds.

Federal regulations offer the TPO the opportunity to group or list individually projects in the TIP only if they are not of an appropriate scale to be listed separately. These tend to be relatively small projects that are exempt from air quality conformity determinations. The TPO staff mentioned some concerns they were having with grouped projects and wanted to transition to listing projects individually. To this end there is an MOA between the FHWA, FTA, VDOT, and VDRPT regarding grouped STIP projects. The Federal Team believes that this concern can be addressed through revisiting the recommendation as part of the September 2011 FHWA and FTA Metropolitan Transportation Improvement Program Planning Finding.

During the FHWA and FTA discussion with the TPO and VDOT staff during the site review, the Federal Team further inquired about the status of the recommendations in the September 2011 FHWA and FTA Metropolitan TIP Planning Finding as they pertained to the Planning Certification requirements. While there was no concerted, recognizable effort to address the recommendations, the Federal Team agreed to hold additional discussions with all MPOs, VDOT, and VDRPT at a later date. However, the Federal Team also believed that there were a number of recommendations that should be re-emphasized in this report and have included them in the recommendations section below.

As mentioned earlier, in preparation for the Certification Review, the Federal Team had reviewed a number of documents. These include: various MPO documents, the Commonwealth of Virginia's December 2010 Joint Legislative Audit and Review Commission (JLARC) *Review of Transportation Planning and Programming Process*, the 2011 FHWA/FTA MPO Planning Finding, the 2011 FHWA/FTA Statewide Planning Finding, and the 2012 FTA Title VI Review of DRPT. Following the review of these documents and the Certification Review, the Federal Team is recommending that a 2014 Statewide Metropolitan Planning and Program Process Review be undertaken.

## **Commendations**

1. TIP layout, including visualization techniques, is above par. The Federal Team is very impressed with staff efforts and commitment to restructure the TIP to provide more detailed information about projects. This allows citizens of the region a more informative review of projects.
2. The TPO has developed a TIP format containing fields for obligations, expenditures, phase costs and schedules. The expectation is that the new format will better measure the performance of projects in the TIP. The Federal Team considers this approach to TIP development and management a best practice, and the VDOT Hampton Roads District office appears to be committed to partnering with the MPO on this effort.
3. The Federal Team is very appreciative of the TPO and VDOT Hampton Roads District office efforts to develop a TIP that assists in better tracking expenditure of Federal funds.
4. The Federal Team finds that the prioritization process for CMAQ and RSTP funds is well documented.

## **Recommendations**

1. The TPO, public transit operators and VDOT District staff need to work cooperatively to better comprehend how fiscal constraint for the Hampton Roads TIP is determined.
2. The TPO and VDOT District staff needs to review the FHWA Operations and Maintenance Checklist for ensuring fiscal constraint (**see Appendix H**), identify relevant questions that require better understanding, and cooperatively assist in documenting a response.
3. The TPO should demonstrate that the financial needs of both highway and transit providers pertaining to system maintenance and preservation, as well as state-of-good-repair, are being reasonably met in the Hampton Roads region at the system-level as part of their fiscal constraint requirements.
4. The TPO, transit operators, and VDOT staff need to work cooperatively to develop a process to improve accurate data and data sharing regularity for TIP development.
5. The TPO and State should develop an MOA for dealing with grouped projects in the TIP (23 CFR 450.324(f)). Specifically, the MOA should require the VDOT, VDRPT, and the TPO to cooperatively determine and ensure that the process provides project/program efficiency, clarity, and transparency for projects within grouped project line items contained in the metropolitan TIP.
6. The TPO needs to determine the degree to which project grouping is appropriate for their TIP. Should the TPO decide to continue to group projects then the TPO, VDOT, and VDRPT (who provides the group project listings for transit) must strive to maintain an accurate and updated list of projects that are within the group.
7. Due to of the restructuring changes at VDOT, an Addendum to the 3-C Agreement would be helpful to clarify which VDOT office now performs what planning and programming functions and how planning and programming tasks are to be coordinated and completed in cooperation with the TPO, VDRPT and transit operators (including projects status information).

## Annual Listing of Obligated Projects

### **Regulatory Basis/Requirements**

23 CFR 450.332 requires that the State, the MPO, and public transportation operators cooperatively develop a listing of projects for which Federal funds under 23 U.S.C. or 49 U.S. C. Chapter 53 have been obligated in the previous year. The listing must include all federally-funded projects authorized or revised to increase obligations in the preceding program year and, at a minimum, the following for each project:

- The amount of funds requested in the TIP
- Federal funding obligated during the preceding year
- Federal funding remaining and available for subsequent years
- Sufficient description to identify the project or phase
- Identification of the agencies responsible for carrying out the project or phase

The listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, must be published or otherwise be made available in accordance with the MPO's public participation criteria for the TIP within 90 calendar days of the end of the program year. Further, cooperative procedures among the State, the MPO, and transit operators to submit the fund-obligation information necessary for this report should be set forth in the MPO Agreement [23 CFR 450.314(a)].

### **Findings**

The *Annual Obligations Report (AOR)* provides a means to compare projects (or project phases) actually obligated with those proposed for obligation. In a sense, the listing provides a measure of how well the metropolitan transportation planning process is doing in implementing area priorities. The VDOT, the TPO, and transit operators can use this information to show progress in meeting area goals as well as to demonstrate the benefits of the cooperative transportation planning process.

Through a review of the annual obligation listing, one should be able to assess the ease by which a project (or project phase) included in the Annual Listing can be matched to a project (or project phase) in the TIP.

MPO staff demonstrated that there were a large number of project inconsistencies in the AOR. According to the MPO, fifty-eight percent (87 out of 149) of federally-funded projects authorized last year were not in the TIP and/or STIP. Many of these projects were actually "grouped" projects, and while the MPO TIP contains a listing of projects within grouped line

items, the projects contained in the AOR were not among the projects listed in the group (see **Appendix I**).

The Federal Team inquired about how projects in the TIP and/or STIP could not match the AOR when the TPO's TIP is the Hampton Roads TPO section of the STIP. The Federal Team also inquired about other discrepancies between projects in the AOR and the TIP. While the Federal team did not receive any clear answers to their questions, the Federal Team was told that questions related to the AOR would be addressed. The Federal Team mentioned that the Hampton Roads TPO issues regarding the AOR are not unique to Hampton Roads.

### **Recommendation**

The FHWA and FTA will be taking additional time to review the results of the TPO's review of the AOR and VDOT's response to that review. The Federal Team will explore this issue in cooperation with VDOT, follow-up with TPO, and a written response will follow the release of the Certification Report. In the meantime, the TPO and the VDOT need to cooperatively determine, to the extent possible, why a large discrepancy exists between projects in the TIP versus the AOR and begin to document an approach that reconciles future discrepancies between projects obligated in the TIP and the AOR, prior to public release.

## **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. Furthermore, the development of the Participation Plan – 23 CFR 450.316(a) (1)) delineates “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 Hampton Roads TPO is funded by public dollars (Federal, state, and local) and is the officially designated, federally recognized, decision-making body for the Hampton Roads region with the responsibility for planning transportation investments for inclusion into the Regional LRTP and TIP. Public involvement is a federally mandated core TPO activity that supports the metropolitan area transportation planning process and the development of all key TPO products.

After the 2007 Federal Certification Review, the TPO hired a Public Involvement/Community Outreach and Title VI and Environmental Justice Coordinator. The decision by TPO leadership to create this position and remove the collateral duty designation served as a clear indication that the TPO was serious about reforming its public outreach practices and creating a positive public image. As noted earlier, the satisfactory feedback the Federal Team received during the public hearing proved that this decision was a move in the right direction.

Guiding the direction of the TPO's public involvement efforts is the Public Participation Plan (PPP). The PPP was adopted by the TPO Board in December of 2009. TPO staff is currently in the final stages of drafting a 2012 update.

In addition to the PPP update, the TPO Board adopted a *Citizens Guide to Transportation*. This guide was developed to help educate citizens in the region about the transportation planning process, its products, its players, and to encourage participation. We find that the Citizen Guide is well done, simple and informative, and educational.

New outreach activities and partnering efforts were also shared with the Federal Team (see **Appendix J**). For example, during the development of the 2034 Long Range Transportation Plan, TPO staff actively sought out ways to engage kids and parents in helping to shape the region's vision over the next 20 years. Active involvement in community schools was a technique. Feedback received was shaped into criteria that was later included into the TPO's project prioritization process.

Finally, a Citizen Transportation Advisory Committee (CTAC) was established. Comprised of citizens from the Hampton Roads region, this group is meant to compliment the TPO's public outreach efforts and serve as conduit of public information and opinion between the TPO Policy Board and citizenry to help establish a more informed decision-making process.

### **Commendations:**

1. Public involvement and outreach has improved dramatically since the hiring of a Public Involvement/Community Outreach and Title VI and Environmental Justice Coordinator. Furthermore, *the Citizen Guide to Transportation* is well done, informative and educational.
2. CTAC is a great addition to the TPO. We look forward to hearing positive feedback regarding their involvement in the planning process.
3. Reaching out and engaging communities throughout the region and incorporating feedback received into the project prioritization selection criteria is recognizable and demonstrates a move in the right direction.

## **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." To comply with Executive Order 12898, FHWA issued updated Order 6640.23A - *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations*.

In addition, the FHWA and FTA memorandum dated October 7, 1999, entitled "*Implementing Title VI Requirements in Metropolitan and Statewide Planning*" is still relevant. 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 agency 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, and
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 TPO and the VDOT jointly certify concurrently with the TIP submittal (at least every 4 years) that the transportation planning and programming process for the Hampton Roads region meets the requirements of Title VI of the Civil Rights Act of 1964, Environmental Justice, and related statutes.

Since the last review, the TPO has developed and adopted a Title VI Plan. The Title VI Plan is update yearly (if necessary), and was most recently update in 2011. The Federal Team finds that the Title VI Plan (which includes LEP) better establishes a recognizable, comprehensive, coherent, and consistent system for assuring nondiscrimination as part of the planning and programming process.

With respect to the TPO's 2034 Long Rang Transportation Plan, the Federal Team appreciates the TPO's strengthened demographic and socio-economic analysis. It is good to see a stronger effort made to document potential project impacts as part of the LRTP development process, especially considering the number of proposed regional toll projects in the Plan. The Federal Team also noticed active involvement by TPO staff in the review and comment on

environmental documents (EA, EIS) regarding adverse impacts to EJ communities. In addition, the establishment of the newly formed *Environmental Justice Roundtable* should be a good forum to encourage the free flow of thoughts and ideas regarding transportation planning, as well as a good tool to gain feedback from the public, and how to best create a transparent, inclusive process in the Hampton Roads Region. The Federal Team remains committed to attending.

### **Commendations**

1. The Federal Team appreciates the TPO's strengthened demographic and socio-economic analysis. It is good to see a stronger effort made to review potential project impacts on the human environment.
2. The Title VI and EJ analysis (TIP and Plan) has improved and become a more informative document.
3. Federal Team also acknowledges and appreciates the efforts to reach out to underserved communities through the TPO's *Environmental Justice Roundtable*.

### **Recommendation**

To further advance current EJ efforts, the Texas Department of Transportation's *Guidebook for Identifying, Measuring and Mitigating Environmental Justice Impacts of Toll Roads* should be used as a resource for both the TPO and the VDOT staff.

## **Public Meeting**

Federal regulations require that the Certification Review include a public meeting, for the public the metropolitan planning area under review. In addition, the regulations require the FHWA and the FTA to consider the public input received in arriving at the decision on a certification action. The Federal Team held a public meeting on Tuesday, March 20, 2012, at the Regional Building located at 723 Woodlake Drive in Chesapeake, Virginia. The TPO made public notices available in via the internet, libraries (bookmarks), and through the use of their public directory. The purpose of the meeting was for the Federal Team to hear from citizens about the regional transportation planning and decision-making process.

Public turnout at the meeting was low but the conversations were very engaging. Many of the citizens that were present and made presentation were known by members of the Federal Team to be actively engaged and regular participants who were familiar with the TPO's evolution. All spoke positively about the MPO reforms and our review of the written feedback received shows some uneasiness about a few aspects of the transportation planning process.

The Federal Team appreciates all of the comments we received from the citizens of the Hampton Roads region and we encourage continued involvement and participation in the regional transportation planning and decision-making process (**see Appendix K**).