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Jurisdiction and Agency Coordinating Committee Northern Virginia Transportation Authority

MEMORANDUM

TO: Martin E. Nohe, Chairman
Northern Virginia Transportation Authority

Members
Northern Virginia Transportation Authority

FROM: David Snyder
Legal Working Group, Chairman
Northern Virginia Transportation Authority

SUBJECT: Legal Working Group Interim Report

DATE: May 20, 2013

Background and Recommendations:

Pursuant to the discussion had by the Northern Virginia Transportation Authority (NVTA) at its April 25, 2013, meeting, NVTA established certain working groups in order to help facilitate NVTA's implementation of HB 2313. One of those working groups is the Legal Working Group.

The NVTA Legal Working Group held its initial meeting at 10:00 a.m. on May 15, 2013, at the Falls Church Community Center, 223 Little Falls Street, Falls Church, Virginia.

I presided at that meeting. Also in attendance were Virginia House of Delegate James LeMunyon, Steve MacIsaac, Angel Horan, Ellen Posner, Monica Backmon, Corinne Lockett, Erin Ward, Cindy Mester, Mark Pohl, Greg Potts, Todd Wigglesworth, Arthur Andersen, and Tom Biesiadny. Monica Backmon agreed to take official minutes for that meeting.

I called the meeting to order at 10:15 a.m. with a welcome message and introductions. I advised the Legal Working Group that its mission was not policy oriented, but was to review and address those legal requirements necessary to implement and comply with the enabling statute's directives and objectives. I further advised that the Legal Working Group's meetings would be open to the public, but that the Legal Working Group would reserve its right to convene a closed session should circumstances warranting and permitting a closed session arise.

In addition to the tentative meeting agenda that had been previously circulated, Ellen Posner and Monica Backmon distributed for the Legal Working Group's use a draft list of proposed projects for NVTA's consideration that was prepared by NVTA's Project Implementation Group and other relevant background documentation that could be useful in discussion. I advised that any additional issues to be discussed or considered by the Legal Working Group at future meetings should be submitted to me on or before May 20, 2013.

The Legal Working Group then discussed possible legal issues relating to the draft initial project list to be submitted to NVTA for its consideration. It is my understanding from input by NVTA's jurisdictional and technical staff that the FY 2014 projects as set forth on that draft project list are all considered part of NVTA's TransAction 2040 plan and that the elements of congestion relief and relative cost benefit were considered in project selection and prioritization. Therefore, based upon the representations made to the Legal Working Group during the meeting, there was no information presented to the Legal Working Group that would indicate that the projects on the draft list were inconsistent with the requirements of Va. Code Ann. Section 15.2-4838.1(C)(1).

The Legal Working Group also discussed whether rolling stock would be eligible for NVTA funding under HB 2313. Given that the term rolling stock is broad and may apply to both buses and rail cars and given that the nature of the services offered by the several regional systems utilizing these assets may vary, the Legal Working Group concluded that further analysis of this question would be needed with additional factual input from the other NVTA Working Groups. As part of that discussion, Ms. Backmon advised that the NVTA Project Implementation Group had established sub-groups for both WMATA and VRE to conduct further study of this issue from a technical and financial standpoint.

The Legal Working Group also discussed the possibility of NVTA filing a bond validation suit in order to determine the validity of the underlying funding mechanism established by HB 2313. The Group recommended that should NVTA decide to pursue and file a bond validation proceeding, the specific details of any such proceeding, including the timing, scope, and particular projects to be included in any such bond issuance, be discussed by NVTA and its counsel in a closed session made upon proper motion at a regularly scheduled NVTA meeting.

Based upon this discussion, it is my intention to offer a motion for discussion purposes at NVTA's May 23, 2013, meeting which would direct that NVTA's staff begin the process of assembling an initial bond issuance with input from the other NVTA Working Groups and further direct that NVTA's technical, financial, and legal staffs begin the process of exploring what steps would need to be taken in order to prepare and file a bond validation suit.

The Legal Working Group also discussed advising NVTA with regard to its statutory responsibilities under Va. Code Ann. Section 15.2-4833. Pursuant to Section 15.2-4833, NVTA is required to employ a chief executive officer and such staff as may be necessary for NVTA to fulfill its duties and obligations under the Virginia Code. The Legal Working Group will review the analysis and recommendations made by NVTA's Financial and Organizational Working Groups as to how that statutory mandate is to be satisfied.

The Legal Working Group also discussed various options for procuring general legal services for NVTA. Since 2007, NVTA has relied upon its "Council of Counsels" concept for general legal services. Under this "Council of Counsels" concept, attorneys from certain NVTA member jurisdictions have contributed legal services to NVTA on a voluntary basis upon the authorization of their respective governing bodies. These legal services are donated free of charge and the attorneys who provide them are attorneys with expertise in those areas of the law pertinent to NVTA's functions. Alternatively, NVTA could employ its own general counsel under Section 15.2-4833 or retain outside counsel services. The Legal Working Group agreed that it is preferable for NVTA to maintain the current structure for its general legal services on the assumption that the localities who contribute these services would continue to allow their

counsel to provide this service on a voluntary basis. Accordingly, I plan to offer the following motion for NVTA's consideration at the May 23, 2013, meeting; to wit: NVTA would continue its Council of Counsels concept upon the concurrence of the localities whose attorneys' legal services would be contributed until rescinded by NVTA and/or the designated localities.

The Legal Working Group also briefly discussed HB 2313's revenue allocations requirements with respect to NVTA's member counties and their respective towns. The Legal Working Group believed that there needed to be a long term solution reached to satisfy the statutory objectives. But, for the interim, it endorsed the concept of having the Financial Working Group provide to NVTA a menu of options that would ensure that the towns received the benefits of the revenues to which they might be entitled under HB 2313, but which would also not jeopardize the revenue entitlements of the member counties. If asked, the Legal Working Group or NVTA's Council of Counsels would review those options for legal sufficiency in advance of NVTA's June 2013, meeting.

There were other miscellaneous legal matters discussed at the Legal Working Group's May 15, 2013, meeting. A summary of those matters are contained in the official minutes which are attached.

It is my understanding that other legal issues and matters have been referred to the Legal Working Group since its May 15, 2013, meeting. Those matters will be reviewed and addressed at the Legal Working Group's next meeting or, if necessary, earlier by NVTA's Council of Counsels.

The Legal Working Group's next meeting is currently scheduled for Wednesday, June 19, 2013, at 10:00 a.m. at the Falls Church Community Center.

Northern Virginia Transportation Authority Legal Working Group
Meeting Summary for Meeting held on Wednesday, May 15, 2013 at 10a.m.
Falls Church Community Center-223 Little Falls Church Street

Meeting Attendees

David Snyder-City of Falls Church-Chairman of Legal Working Group
Ellen Posner-FCDOT-NVTA Council of Counsels
Steve MacIsaac-Arlington County-NVTA Council of Counsels
Angela Horan-Prince William County-NVTA Council of Counsels
Corrine Lockett-Fairfax County
Jim LeMunyon-House of Delegates
Cindy Mester-City of Falls Church
Mark Pohl-WMATA
Todd Wigglesworth-FCDOT
Greg Potts-WMATA
Erin Ward-Fairfax County
Arthur Andersen-McGuire Woods
Monica Backmon-Prince William County DOT
Tom Biesiadny-Fairfax County DOT

Notes

Mr. Snyder called the meeting to order at 10:15am and opened the meeting with welcome and introductions.

- Mr. Snyder informed the group that their task was not political or policy in nature but to look at the legal requirements to implement the code.
- It was stated that while the meetings are open to the public, where necessary and appropriate, the group may go into closed session to discuss legal issues.
- Ellen Posner/Monica Backmon circulated a draft/ proposal project list for FY 14 for discussion by the Legal Working Group that had been compiled in accordance with previous discussions had by the Project Implementation Group and the JACC. The documents that were included in the meeting packet were reviewed and confirmed.
- Mr. Snyder requested that any additional issues for the Legal Working Group consideration should be submitted to him no later than Monday, May 20th.
- There was discussion on the eligibility of the Authority to fund Rolling Stock projects. The FY 14 project list does not include VRE rail cars but does include bus purchases- which the Council of Counsels must review to ensure they meet statutory requirements.
- There was discussion of the FY 14 draft project list that is being recommended by the Project Implementation Working Group. The projects in FY14 are all in TransAction 2040. It was also stated that congestion reduction relative to cost applies to all projects including those in FY14 and beyond. The request was made of the Council of Counsels to confirm that the project selection criteria used for the development/selection of the projects meets the statutory requirements prior to the May 23rd NVTA meeting.

- There was discussion of the possibility of a bond validation suit—this would allow the Authority to test the legal issues concerning the legislation, including the rolling stock issue, before any funds are expended. The recommendation was made that any discussion of projects on a potential bond list be held in closed session. Any bond validation should include the use of the 70% funds on administrative expenses.
- The Legal Working Group will remind the NVTA about the statute that requires a CEO and such other staff as are necessary to carry out NVTA's duties and responsibilities, and that this is advisable to minimize liability of Authority members. The Legal Working Group will get recommendations from Financial and Organizational regarding staffing for the Authority.
- There was discussion on whether the Council of Counsels needs to be appointed to act as General Counsel for the NVTA. There was also discussion on whether additional attorneys should be appointed to the Council of Counsels. It was recommended that any additions to the Council of Counsels have the support of their own governing body and be approved via NVTA action.
- The calculation and tracking of localities' long term benefit in proportion to revenues was discussed. Arlington County staff made initial projections regarding revenues—it was determined that the Council of Counsels will review the recommendations of the Financial Working Group regarding this matter to determine if the methodology being used is acceptable.
- Del. LeMunyon, an attendee from the public, stated his views on various issues.
- Tom Biesiadny informed the group that a subcommittee of the Financial Working Group has been established to further explore how to appropriately address the outstanding WMATA and VRE issues
- There was discussion of the need for jurisdictions to provide project cash flow estimates to NVTA.
- There was discussion of the documentation and timing requirements for jurisdictions reporting to NVTA to comply with State audit requirements.
- Tom Biesiadny reported that the other working groups have been asked to submit their estimates of potential NVTA administrative operating budget needs to the FWG.
- The Chairman reported that the next NVTA Board meeting is May 23rd.
- Another public attendee, NVTA's former bond counsel Arthur Andersen, stated his view to the Legal Working Group that any debt issued by NVTA in which the revenues generated by HB2313's taxes and fees would be considered NVTA debt and not state debt. Also, if NVTA chose to issue debt pledging the revenues generated by the taxes and fees imposed and appropriated by the state, NVTA would be asked to write a letter to the Treasury Board advising that it was exempt and/or seeking exemption from any approvals required by the Treasury Board.
- There was discussion regarding the Towns and Enactment Clause 8—the group believes that there should be a long term solution but in the interim, the Legal Working Group suggested that the NVTA approve a menu of options/choices for the Counties and Towns so that there are different scenarios for the Counties and Towns to cooperate in providing revenue to the towns from HB 2313 without fear of jeopardizing the ongoing participation of the respective counties under Enactment Clause 14. The Financial Working Group is working on the revenues projected for the Towns. Legal review the

options that the Financial Working Group develops so that a recommended list of options can be submitted to NVTA for approval at its June meeting.

- The reporting mechanisms for the jurisdictions were discussed. The group determined that the Financial Working Group can make a recommendation for the consideration of the Legal Working Group.
- There was discussion regarding whether the NVTA should appoint a CEO and staff in due course in accordance with 15.2-4833.

Actions Taken and Follow-up Items

Mr. Snyder will make three motions at NVTA's May 23, 2013, meeting based upon the Legal Working Group's recommendations which were reached upon consensus.

1. The first will be for NVTA to continue its Council of Counsels concept upon concurrence of the localities whose attorneys' services would be contributed and utilized for this purpose and until rescinded by NVTA and/or the designated localities.
 2. The second will be for NVTA to direct that its staff begin the process of assembling an initial bond issuance with the input of the Financial Working Group and direct staff to begin the process of preparing a bond validation suit.
 3. The third will be for NVTA to consider retaining adequate executive staff to perform critical and essential functions, including an executive director and CFO.
- The Council of Counsels will review the existing NVTA bylaws and the NVTA's Liability and Insurance
 - The Council of Counsels will coordinate with the state's Attorney General's office on how the state will work with the NVTA. The LWG will invite Joanne Maxwell with VDOT and Jeff Allen with the Office of the Attorney General to the next meeting of the Legal Working Group.
 - The Legal Working Group will prepare a an Interim Report of its discussions/ actions/ recommendations to be submitted to the NVTA for consideration at its May 23, 2013, meeting and a Final Report for NVTA's consideration at its June 20, 2013, meeting.
 - The next Legal Working Group meeting is scheduled for Wednesday, June 19th at 10:00 am at the Falls Church Community Center

NVTA LEGAL WORKING GROUP

AGENDA

May 15, 2012

10 am

Falls Church Community Center (near City Hall)

223 Little Falls Street

Falls Church, Virginia

1. Working Group Members
2. Meeting notice and minutes responsibility
3. Issues for consideration
 - a. Legal
 - i. Project selection
 1. Criteria for project selection
 2. Priority determination -- greatest congestion reduction relative to cost
 3. Calculation and tracking of locality's long term benefit in proportion to revenues
 4. Town projects -- Enactment Clause 8
 - ii. Eligibility of rolling stock projects
 - iii. Eligibility of operating costs
 - iv. Need for approval by jurisdiction in which project is located
 - v. HB 2313 constitutional and other legal considerations
 1. Potential challenges and strategies
 2. Refund issues
 - b. Organizational
 - i. Appointment of council of counsels
 - ii. Need for administrative and/or legal staff/contractors
 - iii. Administrative expenses
 - iv. Alternates

Guidance to Working Groups

Draft: April 30, 2013

Draft Agenda for First Meeting

Introductions

Selection of Staff Coordinator and Assistant Staff Coordinators, including Recorder

- These staff will be responsible for summarizing the working group's activities and recommendations. This core group of staff will be responsible to writing the group's report and circulating it to other working group members for review.

Explanation of Bill Provisions

Review Overarching Working Group Question

Financial

- How will NVTA distribute taxes and fees, establish financial systems, and sell bonds, if desirable? How will funds be allocated to the Towns?

Legal

- How will NVTA secure legal support for implementing distributing taxes and fees, issuing bonds and defending NVTA's actions in the event of court challenges? How will funds be allocated to the Towns?

Project Implementation

- How will NVTA implement projects once funding is available? How will NVTA proceed with project selection for FY 2014? How will NVTA prepare a Six Year Program for the future?

Public Outreach

- How will NVTA organize its public outreach efforts to ensure that it receives reasonable feedback from the public its activities including projects and services it is considering?

Organizational

- Based on the information provided by the other four working groups, how should NVTA be organized to effective and efficiently undertake that work it has been assigned, and what are the interim steps that need to be taken to reach that end?

Review and Discuss Individual Questions

- Determine general priority order for answering questions
- Identify additional questions that should be discussed
- Work towards consensus answers to the questions
- Ensure that decisions and recommendations are recorded.

- Identify any area where additional information is needed and identify working group member to secure information.

Review Calendar and Discuss Dates for Next Steps

- Second meeting to discuss questions, if not all have been discussed
- Date draft report is to be sent to working group members
- Date to discuss Draft Report
- Date comments are due back to staff coordinators
- Date report is forwarded to NVTAs members – June 2013

Confirm Date, Method and Location for Next Meeting

Summarize Decisions Made by Working Group; Additional Information Needed and Person Responsible to Securing Information

Adjourn

Northern Virginia Transportation Authority

MEMORANDUM

TO: David Snyder, Chairman
Legal Working Group
Northern Virginia Transportation Authority

FROM: Martin E. Nohe, Chairman
Northern Virginia Transportation Authority

SUBJECT: Information for Legal Working Group

DATE: May 1, 2013



Thank you for your willingness to chair the Legal Working Group. Attached is a draft agenda and materials to facilitate your first working group meeting. The materials include an “overarching question” for your working group, as well as a list of additional questions that may help to guide the discussion of the working group. If there are other questions that need to be addressed in order to answer the overarching question, please pursue those questions as well.

As you know, the working groups need to provide their recommendations by mid-June 2013. Your staff coordinators are Ellen Posner (Fairfax County), Steve MacIsaac (Arlington County) and Angela Horan (Prince William County). Ellen, Steve and Angela can prepare a draft report for the larger working group to review. The report should include your recommended response to the overarching question and a list of specific actions for NVTa to consider to implement your recommendation. (A draft format for the report is also attached.) Please be prepared to present the recommendation recommendations at the Authority’s mid-June meeting. This date will be finalized at the May 23rd meeting.

Ellen, Steve and Angela will assist you with the logistics for your first meeting. Ellen can be reached at (703) 877-5661, Steve can be reached at (703) 228-3100 and Angela can be reached at (703) 792-6620.

Thank you again for your work on this critical regional issue. Feel free to contact me at (703) 792-4620 if you have any questions.

Staff Coordinators by Working Group May 1, 2013

Financial

- Monica Backmon, Prince William County
- Tom Biesiadny, Fairfax County

Legal

- Steve MacIssac, Arlington County
- Ellen Posner, Fairfax County
- Angela Horan, Prince William County

Project Implementation

- Ricardo Canizales, Prince William County
- Jennifer Fioretti, Arlington County

Public Outreach

- Kala Quintana, NVTC
- Under Review

Organizational

- Noelle Dominguez, Fairfax County
- Charles Yudd, Loudoun County

Northern Virginia Transportation Authority
 Estimate of Start-Up Costs

Assumptions

1. State continues to provide \$50,000 annual grant.
2. NVTA taxes become effective January 08 with revenue postings beginning in March 08.
3. State provides revenue anticipation loans, per HB 3202.
4. NVTA adopts 6-year construction plan in November 07, bonds issued in January 08, verified by bond validation suit.
5. Project six staff by end of FY 08 (Exec. Director, CFO, accountant, admin. staff, two proj. mgmt. staff)
6. Assume building lease will include basic build-out, furniture provided by lessee.
7. 20% contingency covers unanticipated expenditures/underassumptions.

Initial Phase (Thru March 2008)

Legal	\$100,000	Per working group recommendation
Public Outreach	20,000	Per working group recommendation
Organizational	150,000	Hire executive director and temporary support staff in September 07
Financial	100,000	Contractual financial management through March 08.
Project Implementation	60,000	Hire 2 project management staff in January 08
Office Space Lease	52,500	Shared space with VDRPT, est. 3,000 sf @ \$35/sf beginning in September 07
Office Space Build-Out	81,000	Estimate 2 hardwall offices, 8 systems furniture
Office Equipment	9,000	Estimate \$3,000 one-time cost for additional employees (computers, fax, etc.)
Vehicle/Transportation	26,530	Purchase one vehicle, add transit allowance for employees
Operating Expenses	15,000	Estimate \$10,000 annual rate per employee (supplies, telecommunications, etc.)
Insurance	5,000	Estimate \$10,000 per year for NVTA board coverage and liability insurance
Subtotal:	619,030	
<u>Contingency (20%):</u>	<u>123,806</u>	
Total Initial Phase:	\$742,836	

State Grant: \$50,000

Revenue Anticipation Loan: \$692,836

Balance of FY 08 (Thru June 30, 2008)

Legal	\$25,000	
Public Outreach	5,000	Contingency for continued outreach, website maintenance
Organizational	62,500	
Financial	62,500	Hire CFO & accountant in April 08
Project Implementation	60,000	
Office Space Lease	26,250	
Office Equipment	9,000	
Vehicle/Transportation	9,030	Vehicle depreciation + transit allowance
Operating Expenses	15,000	
Insurance	2,500	
Subtotal:	276,780	
<u>Contingency (20%)</u>	<u>55,356</u>	
Total Balance of FY 08:	\$332,136	Paid by NVTA Tax Revenue

Strawman Proposed Project List for Consideration for FY 2014 Funding (May 10, 2013)
Geographic Balance and Summary

	Phase/s	Allocation
Alexandria		
DASH Bus Expansion (5 new buses)	FY 14 Revenue Service	3,250,000
Amtrak/VRE Parking Lot Improvements.	FY 14 Construction Start	482,000
Traffic Signal Upgrades/Transit Signal Priority	FY 14 Construction / FY 14 Design Start	660,000
Shelters and Real-Time Transit Information for DASH/WMATA.	FY 14 Construction Start	450,000
Potomac Yard Metrorail Station EIS	FY 14 Planning Complete, Begin Design	2,000,000
Subtotal		6,842,000
Arlington		
Columbia Pike Multimodal Street Improvements	FY 14 Construction Start	12,000,000
Boundary Channel Drive Interchange	FY 14 Design Complete, FY 15 Const.	5,835,000
Silver/Blue Line Mitigation (ART Fleet Expansion) (4 buses)	FY 14 Revenue Service	1,000,000
Crystal City Interim Multimodal Center	FY 14 Construction Start	1,500,000
Subtotal		20,335,000
Fairfax City		
Chain Bridge Road Widening/Improvements	FY 14 ROW and Construction Start	5,000,000
Fairfax County		
Route 28 Widening 6 to 8 lanes (SB from the Dulles Toll Road to Route 50)	FY14 Design/Build	20,000,000
Route 28 Widening 6 to 8 lanes (NB from McLearen Road to Dulles Toll Road)	FY14 Design/Build	11,100,000
Innovation Center Metrorail Station	FY14 Design/Build	41,000,000
Herndon Parkway Intersection Improvements at Van Buren St.	FY 14 ROW	500,000
Herndon Parkway Intersection Improvements at Sterling Road	FY 14 ROW	1,000,000
Herndon Metrorail Intermodal Access Improvements	FY 14 ROW	600,000
Subtotal		74,200,000
Falls Church		
Transit Alternatives Analysis Study in the Route 7 Corridor (King Street, Alexandria to Tysons Corner). (PHASE II)	FY 14 Planning Start	838,000
Pedestrian Access to Transit	FY 14 Design Complete	700,000
Funding for Bus Shelters	FY 14 Construction Start	200,000
Pedestrian Bridge at Van Buren Street	FY 14 Design Start	300,000
W&OD Trail Lighting connecting to Future Intermodal Plaza	FY 14 Design Complete / Const. Start	500,000
Subtotal		2,538,000
Loudoun		
Belmont Ridge Road between Portsmouth Boulevard and Hay Road	FY 14 Design/Build Start	20,000,000
Route 28 Hot Spot Improvements -- Loudoun Segment (Sterling Boulevard and the Dulles Toll Road)	FY 14 Construction Start	6,400,000
(Leesburg) Edwards Ferry Road at the Route 15 Leesburg Bypass Grade Separation.	FY 14 Design Start	1,000,000
Leesburg Park and Ride	FY 14 ROW and Construction Complete	1,000,000
2 New Transit Buses	FY 14 Revenue Service	880,000
Subtotal		29,280,000

Prince William

Route 1 from Featherstone Road to Mary's Way	FY 14 Design Start	3,000,000
Route 28 form Linton Hall Road to Fitzwater Drive	FY 14 Construction Start	25,000,000
Subtotal		28,000,000

PRTC

PRTC New Gainesville Service (1 bus)	FY 14 Revenue Service	580,000
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VRE

VRE Lorton station second platform	FY14 Design	7,900,000
VRE Alexandria station tunnel and platform improvements	FY 14 Construction	1,300,000
VRE Gainesville-Haymarket Extension Project Development	FY 14 Planning and Design Start	1,500,000
Subtotal		10,700,000

WMATA

Traction Power Upgrades on the Orange Line in Virginia	FY 14 Design Start	5,000,000
Ten New Buses on Virginia Routes	FY 14 Contract Start / FY 15 Rev Svc.	7,000,000
Subtotal		12,000,000

Total FY 14 Construction Projects	12	54,492,000
Total FY 14 Revenue Service Projects	4	5,710,000
Total FY 14 Design/Build Projects	6	104,935,000
Total FY 14 ROW Acquisition Projects	3	2,100,000
Total FY 14 Design Projects	8	21,400,000
Total FY 14 Planning Projects	1	838,000
Total FY 14 Projects (1)	34	189,475,000

(1) All FY 14 construction/rev svc projects included in Strawman

Mode Balance	Projects	Allocation
Total Roadway Projects	12	110,835,000
Total Transit/Multimodal Projects	22	78,640,000

	% Share
Roadway	58%
Transit	42%