

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 Seventh Interim Report

DATE: November 21, 2013

Background and Recommendations:

On Monday, November 18, 2013, NVTA's Legal Working Group held a meeting in the City of Falls Church.

I presided at that meeting. Also in attendance were Steve MacIsaac, Angela Horan, Ellen Posner, Rob Dickerson, Cindy Mester, and Tom Biesiadny.

The meeting was called to order at 9:30 a.m., at which time participant introductions were made.

An agenda was circulated and approved by the participants.

The next order of business was a brief mention of the previous Legal Working Group Report relative to the Group's October, 2013, meeting and whether there were any updates needed. There being none noted, the Legal Working Group then discussed matters pertinent to the development of the various Memoranda of Agreement necessary for NVTA's management and distribution of HB 2313 funds.

The Legal Working Group discussed the status of: 1) NVTA's MOA with its constituent counties and cities regarding the management and distribution of the 30% funds under HB 2313; 2) the status of the MOA as between NVTA's constituent counties and their respective qualifying towns regarding the management and distribution of those towns' shares of their constituent counties 30% funds; 3) the draft MOU as between NVTA and the Commonwealth regarding the use of NVTA's funds as local match funds for VDOT/VDRPT grants and other programs; and 4) the status of the development of a standardized project agreement as between NVTA and its recipient agencies for the management and distribution of all 70% project funds.

Ellen Posner and Steve MacIsaac reported that substantial progress had been made toward the development of the 30% MOAs with an eye toward having NVTA consider and approve the

final versions of these MOAs at NVTA's December 12, 2013, meeting. The Legal Working Group reiterated its recommendation that, in order to ensure fairness region-wide and in order to facilitate uniformity and ease of administration region-wide, there should be only one standardized MOA as between NVTA and its constituent cities/counties and one standardized MOA as between NVTA's constituent counties and their respective towns. For essentially the same reasons, the Legal Working Group also agreed that, in consideration of the requirements of HB 2313's Enactment Clause 8, NVTA needs to formally approve the County/Town MOA and that both MOAs should be submitted to NVTA for approval at the same time.

Tom Biesidany advised that both MOAs were scheduled for discussion at NVTA's Financial Working Group meeting on November 19, 2013, and that NVTA's FWG/LWG MOA joint subcommittee was scheduled to meet Thursday, November 21, 2013, to address any outstanding, major issues.

With regard to the Commonwealth/NVTA MOU, Steve MacIsaac advised that he had made an outreach to Rick Walton at VDOT in order to communicate NVTA's counsel and staff concerns with regard to the draft that the Commonwealth had forwarded to NVTA. In particular, Mr. MacIsaac advised that, in order to fulfill its statutory mission, NVTA needed clarity from the Commonwealth that both VDOT and VDRPT would agree that HB 2313's 30% and 70% funds could be used for local match purposes. The Legal Working Group was of the opinion that, in consultation with NVTA's Council of Counsels, NVTA's Interim Executive Director and its JACC should prepare a letter to the Commonwealth's Secretary of Transportation for NVTA's consideration; in which letter NVTA would request that the Commonwealth acknowledge that NVTA could use its 70% and 30% funds to match VDOT and VDRPT grants. That letter would be submitted to NVTA for consideration and action at its January, 2014 meeting.

The Legal Working Group next discussed the issue regarding State Department of Taxation's imposition of what appeared to be an "additional" sales tax administrative fee (beyond what it already imposes for its Northern Virginia-related sales tax collections) in collecting NVTA's HB 2313 sales tax. Mr. Biesiadny advised that NVTA's staff is continuing to look into that matter and would report back to NVTA with its findings. The Legal Working Group suggested that once staff had reported its findings to NVTA, NVTA might want to formally address this matter by a letter directed to state Treasury.

The Legal Working Group next discussed the development of a standardized project agreement as between NVTA and its project funding recipient agencies with regard to the 70% funds. Ellen Posner suggested that, in the development of such a project agreement, NVTA's joint FWG/LWG MOA subcommittee might want to consider using a variant of the VDOT standardized project agreement that most Northern Virginia localities use for their joint VDOT/locality project funding. She indicated that she would make a copy of that standardized project agreement available for the MOA subcommittee's review and discussion at its November 21, 2013, meeting.

Ellen Posner then delivered a brief update regarding NVTA's bond validation proceeding. She advised that NVTA's Council of Counsels had become apprised that Delegate Marshall had filed an untimely notice of appeal with the Fairfax County Circuit Court in that proceeding, NVTA had been advised as to this development, and NVTA's counsel would address that matter appropriately.

The last item discussed by the Legal Working Group was the upcoming meeting and conference call that VDOT staff had initiated and requested with members of NVTA's staff and counsel regarding HB 2313's Enactment Clause 17. Because NVTA has not directed either its staff or counsel to seek any legislative changes to any aspect of the NVTA Act, including but not limited to HB 2313; and because NVTA is in the process of implementing the NVTA Act, HB 2313, and its statutory mission as originally envisioned and as adopted by the legislature (including but not limited to NVTA having successfully initiated a bond validation proceeding regarding the validity of NVTA's implementation process); and because NVTA's technical staff and counsel see no legal reason to seek any amendments to the NVTA Act or HB 2313, the Legal Working Group unanimously agreed that there was no legal reason for NVTA's technical or legal staff to request that any changes be sought on NVTA's behalf at this juncture.

The Legal Working Group's next meeting will be held either on December 19, 2013, or December 20, 2013, 2:30 p.m. in the City of Falls Church or at such other location to be determined by the Chair.