

IV.

Northern Virginia Transportation Authority

MEMORANDUM

TO: Christopher Zimmerman, Chairman
Northern Virginia Transportation Authority

Members
Northern Virginia Transportation Authority

FROM: Tom Biesiadny, Chairman
Jurisdiction and Agency Coordinating Committee
Northern Virginia Transportation Authority

John Mason, Executive Director
Northern Virginia Transportation Authority

SUBJECT: Approval of Resolution on Reduction in NVTA Operating Activities (Item IV.)

DATE: September 5, 2008

Recommendation:

The Jurisdiction and Agency Coordinating Committee and Executive Director recommend that the Northern Virginia Transportation Authority approved the attached resolution regarding a reduction in NVTA's Operating Activities, due to a lack of funding.

Background:

Despite NVTA's good faith efforts to implement HB 3202 (2007), on February 29, 2008, the Virginia Supreme Court ruled that the Virginia General Assembly did not have the constitutional authority to delegate its taxing powers to NVTA. During the 2008 Regular Session and a subsequent Special Session, the General Assembly was unable to agree on a new funding mechanism for NVTA. Consequently, although the Virginia Department of Transportation continues to provide NVTA with an annually \$50,000 planning grant, there is not sufficient funding to maintain NVTA's current operations. NVTA's Executive Director, the Jurisdiction and Agency Coordinating Committee and the Council of Counsels have worked cooperatively to prepare the attached resolution to implement changes to NVTA's activities to reflect current funding levels.

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The resolution contains five parts. These parts are summarized as follows:

1. It directs that NVTA terminate its lease, close its administrative offices and transfer the functions of its Executive Director to a combination of its Finance Committee, the Jurisdiction and Agency Coordinating Committee and the Council of Counsels;
2. It approves a new reduced meeting schedule that will allow NVTA to continue to meet its basic statutory responsibility. This new meeting schedule proposes a December 11, 2008, meeting primarily to adopt a 2009 legislative program; approve FY 2010 Congestion Mitigation and Air Quality funds and Regional Surface Transportation Program recommendations; endorse NVTA final testimony to the Commonwealth Transportation Board; and accept NVTA's FY 2008 Audit. It also proposes a joint meeting with the Northern Virginia Transportation Commission in Richmond on February 5, 2009, primarily to discuss legislation introduced during the 2009 General Assembly session.
3. It temporarily suspends Article 4 subsection A of its By-laws, and establishes December 11, 2008, as the NVTA Annual Meeting for 2009, rather than January 8, 2009. This meeting would include the selection of officers for 2009.
4. It ratifies the letter from Chairman Zimmerman to John Mason, dated August 15, 2008, terminating the "Employment Agreement" executed on January 11, 2008.
5. It directs the Jurisdiction and Agency Coordinating Committee to continue its efforts on behalf of NVTA. These efforts specifically include:
 - a. finalizing testimony for the CTB's Fall Transportation Public Hearing;
 - b. incorporating NVTA's suggestions into the 2009 Legislative Program and having the program ready for consideration by NVTA on December 11, 2008;
 - c. preparing a list of recommended FY 2010 CMAQ and RSTP projects;
 - d. continuing to monitor regional transportation projects such as:
 - i. The I-95/395 HOT Lanes Project
 - ii. The Beltway HOT Lanes Project
 - iii. The I-66 Transit/TDM Study
 - iv. The Statewide Rail Plan
 - v. VTrans 2035 Planand prepare a status report for the December 11, 2008, NVTA meeting;
 - e. approving requests to reallocate CMAQ and RSTP funds between projects that NVTA has approved in the past. Give provisional approval to reallocate funds to projects not previously approved by NVTA, subject to NVTA's concurrence at the NVTA next meeting; and
 - f. continuing to coordinate regional transportation issues, based on past NVTA direction.

We will be available at the Authority meeting on September 11, 2008, to answer questions.

Cc: Members, Jurisdiction and Agency Coordinating Committee and Counsel of Counsels

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

- RESOLUTION ____ -

REDUCTION IN OPERATING ACTIVITIES

WHEREAS, the Northern Virginia Transportation Authority ("NVTA") was created by the General Assembly in 2002 to, among other things, prepare a regional transportation plan for Planning District Eight; construct or acquire the transportation facilities included in the transportation plan; set regional transportation policies and priorities for regional transportation projects; provide general oversight of regional mass transit and congestion mitigations programs and regional transportation issues; develop regional transportation priorities and policies to improve air quality; advocate for the transportation needs of Northern Virginia; and collect and impose taxes and fees authorized by law; and

WHEREAS, on July 12, 2007, the NVTA did impose seven taxes and fees authorized by the General Assembly in Chapter 896 of the Code of Virginia, to be effective on January 1, 2008; and

WHEREAS, on February 29, 2008, the Virginia Supreme Court ruled that the General Assembly did not have the authority under the Virginia Constitution to delegate its taxing powers to the NVTA; and

WHEREAS, on March 3, 2008, the NVTA ceased collection of the seven taxes and fees authorized by Chapter 896 of the Code of Virginia; and

WHEREAS, the General Assembly has not restored any transportation funding to NVTA;

NOW, THEREFORE, BE IT RESOLVED, THAT effective September 30, 2008, the Northern Virginia Transportation Authority shall terminate its lease, close its administrative offices and transfer the functions of its Executive Director to a combination of its Finance Committee, the Jurisdiction and Agency Coordinating Committee and the Council of Counsels, as described in Attachment I; and

BE IT FURTHER RESOLVED THAT the NVTA will only meet on a reduced schedule to address its on-going statutory responsibilities, as described in Attachment II or at the call of the Chairman;

BE IT FURTHER RESOLVED THAT the NVTA temporarily suspends Article 4 subsection A of its By-laws, and adopts the revised FY 2009 meeting schedule described in Attachment III, including the establishment of December 11, 2008, as the NVTA Annual Meeting for 2009, rather than January 8, 2009.

BE IT FURTHER RESOLVED THAT the NVTA ratifies the letter from its Chairman, Christopher Zimmerman, to its Executive Director, John Mason, dated August 15, 2008, included as Attachment IV, terminating the "Employment Agreement" executed on January 11, 2008. In doing so, the NVTA expresses its appreciation to Mr. Mason for his efforts on NVTA's behalf over the past nine months.

BE IT FURTHER RESOLVED THAT the NVTA directs the Jurisdiction and Agency Coordinating Committee to continue its efforts on behalf of NVTA, as described in Attachment V.

Approved by the Northern Virginia Transportation Authority on this 11th day of September 2008.

By: _____
Chairman

Attest: _____
Vice Chairman

Proposed Transfer of Operating Functions

Functional Activities				
Coord of various staffs	ED	No ED	JACC (TB)	
Coordination of meetings	ED	No ED	JACC (TB)	9/30/08
Planning & programming	JACC	No change	JACC (TB)	
Legislative support	JACC	No change	JACC (TB)	
Records maintenance	ED	No ED	JACC (TB)	9/20/08
Mail and distribution	ED	No ED	JACC (TB)	9/30/08
Coord of TAC & PCAC	ED	Not anticipated		
Public outreach/PR	NVTC	No change	NVTC (KQ)	
Website management	NVTC	No change	NVTC (ER)	
Banking	ED/Arl	No ED	Arlington	9/30/08
Accounting/audit	ED/NVTC	No ED	NVTC (SK)	9/30/08
Financial files maintenance	ED/NVTC	No ED	NVTC (SK)	9/30/08
Insurance coverage	ED	No ED	NVTC (SK)	9/30/08
Information focal point	ED	No ED	NVTC (KQ)	9/30/08
Legal advice	C of C's	No change	C of C's	
Financial advice	Fin Comm	No change	Fin Comm	
Staff spt to Finance Comm	ED		FWG staff	9/30/08
Clerk	Various		TBD	
Audit	ED/NVTC	No ED	NVTC (SK)	9/30/08

NVTA Statutory Responsibilities Assuming No Specific Funding

Pursuant to §15.2 – 4833 of the Code of Virginia

The Authority shall employ a chief executive officer and such staff as it shall determine to be necessary to carry out its duties and responsibilities under this chapter.

Pursuant to §15.2 – 4838 of the Code of Virginia

The Authority shall be responsible for long-range transportation planning for regional transportation projects in Northern Virginia. In carrying out this responsibility, the Authority shall, on the basis of a regional consensus, whenever possible, set regional transportation policies and priorities for regional transportation projects.

Pursuant to §15.2 – 4840 of the Code of Virginia [1]

The Authority shall have the following duties and responsibilities:

1. General oversight of regional programs involving mass transit or congestion mitigation, including, but not necessarily limited to, carpooling, vanpooling, and ridesharing;
2. Long-range regional planning, both financially constrained and unconstrained;
3. Recommending to state, regional, and federal agencies regional transportation priorities, including public-private transportation projects, and funding allocations;
4. Developing, in coordination with affected counties and cities, regional priorities and policies to improve air quality;
5. Allocating to priority regional transportation projects any funds made available to the Authority and, at the discretion of the Authority, directly overseeing such projects;
6. Recommending to the Commonwealth Transportation Board priority regional transportation projects for receipt of federal and state funds;
8. General oversight of regional transportation issues of a multijurisdictional nature, including but not limited to intelligent transportation systems, signalization, and preparation for and response to emergencies;
9. Serving as an advocate for the transportation needs of Northern Virginia before the state and federal governments;
10. Applying to and negotiating with the government of the United States, the Commonwealth of Virginia, or any agency, instrumentality, or political subdivision thereof, for grants and any other funds available to carry out the purposes of this chapter and receiving, holding, accepting, and

administering from any source gifts, bequests, grants, aid, or contributions of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this chapter subject, however, to any conditions upon which gifts, bequests, grants, aid, or contributions are made. Unless otherwise restricted by the terms of the gift, bequest, or grant, the Authority may sell, exchange, or otherwise dispose of such money, securities, or other property given or bequeathed to it in furtherance of its purposes;

[1] Items not listed have been accomplished or do not apply given the lack of funding.

Revised Meeting Schedule to Address Statutory Responsibilities

December 11, 2008

- Election of Officers
- Adopt 2009 Work Program and Meeting Schedule
- Endorse Testimony for the CTB's Fall Transportation (Pre-Allocation) Public Hearing
- Adopt 2009 Legislative Agenda
- Adopt FY 2010 CMAQ/RSTP Project List
- Receive Briefing and Accept FY 2008 Audit
- Receive Briefing on a Major Regional Transportation Study or Project
- Discuss TPB/MWAQC/MWCOG Issues, if any

February 5, 2009 (*VaCo/VML Day in Richmond; Joint Meeting with NVTC*)

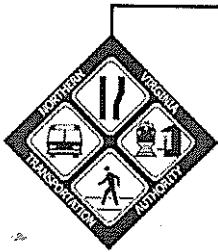
- Discuss Relevant Transportation Legislation Introduced During the General Assembly Session
- Adopt Guidance for Testimony for CTB Public Hearing on Six Year Program
- Discuss TPB/MWAQC/MWCOG Issues, if any

(Future meeting schedule will depend on General Assembly action during the 2009 session)

Attachment IV

Letter to Executive Director

Attached



The Authority
for Transportation in Northern Virginia

The Northern Virginia Transportation Authority

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August 15, 2008

Mr. John Mason
Executive Director
Northern Virginia Transportation Authority
4031 University Drive (Ste 200)
Fairfax, Virginia 22030

Dear Mr. Mason:

It is with regret that, on behalf of the Northern Virginia Transportation Authority and in accordance with our employment agreement with you, I must notify you that your employment with the Northern Virginia Transportation Authority will end effective September 30, 2008, or sooner as described below. This termination action is necessitated by the failure of the General Assembly to agree an approach to dedicated funding for the Authority. I recognize that you will want to complete any tasks resulting from the Authority's meeting of September 11 and to ensure an orderly closure of the NVTa office thereafter. It may be possible to conclude all necessary tasks before September 30. Accordingly, following the meeting of September 11, please notify me whether September 30 or an earlier date is the most suitable final work date to conclude your employment with the Authority.

Consistent with your proposed budget for FY09 presented at the June 12 meeting and the subsequent update of NVTa's financial posture (reflecting a positive balance through September 30, 2008) provided at the July 10 meeting, it is confirmed that you will be paid from July 1 through to your final working date at a half-day rate, to include pro rata benefits as described in your employment agreement.

My colleagues join with me in extending appreciation for your energetic and professional leadership in starting the process of establishing the Authority as an effective operating agency.

Sincerely,

Christopher Zimmerman
Chairman

Cc: Members, Northern Virginia Transportation Authority

Direction to Jurisdiction and Agency Coordinating Committee

The Jurisdiction and Agency Coordinating Committee is directed to take the following actions prior to the NVTA's December 11, 2008, meeting:

- Finalize testimony for the CTB's Fall Transportation (Pre-Allocation) Public Hearing;
- Incorporate NVTA's suggestions into the 2009 Legislative Program and have the program ready for consideration by NVTA on December 11, 2008;
- Prepare a list of recommended FY 2010 CMAQ and RSTP projects
- Continue to monitor regional transportation projects such as:
 - The I-95/395 HOT Lanes Project
 - The Beltway HOT Lanes Project
 - The I-66 Transit/TDM Study
 - The Statewide Rail Plan
 - VTrans 2035 Planand prepare a status report for the December 11, 2008, NVTA meeting
- Approve requests to reallocate CMAQ and RSTP funds between projects that NVTA has approved in the past, following one week notice (via email) to NVTA members to provide an opportunity for objections. Give provisional approval to reallocate funds to projects not previously approved by NVTA, subject to NVTA's concurrence at the NVTA next meeting.
- Continue to coordinate regional transportation issues, based on past NVTA direction.