

Appendix D. Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

Statewide Procedures for TIP/STIP Revisions

Among the

**Delaware Valley Regional Planning Commission,
North Jersey Transportation Planning Authority,
South Jersey Transportation
Planning Organization,
New Jersey Transit Corporation,
and New Jersey Department of Transportation**

PURPOSE

This Memorandum of Understanding (MOU) establishes a set of procedures to be used for processing and implementing revisions to the Regional Transportation Improvement Program (TIP) of each of the three Metropolitan Planning Organizations (MPOs), as well as the New Jersey Statewide Transportation Improvement Program (STIP). The three MPOs responsible for TIP revisions are the Delaware Valley Regional Planning Commission (DVRPC), the North Jersey Transportation Planning Authority (NJTPA), and the South Jersey Transportation Planning Organization (SJTPO). The two state agencies responsible for STIP revisions are the New Jersey Department of Transportation (NJDOT) and the New Jersey Transit Corporation (NJ TRANSIT).

This MOU represents the parties' entire understanding and agreement with respect to TIP/STIP revisions and supersedes all prior agreements between and among any of the parties with respect to such revisions.

DEFINITIONS

For the purposes of this MOU the following meanings will apply:

Advance Construction – A technique which allows a State to initiate a project using non-federal funds while preserving eligibility for future federal-aid funds. Eligibility means that the Federal Highway Administration (FHWA) has determined that the project technically qualifies for federal-aid; however, no present or future federal funds are committed to the project. After an Advance Construction project is authorized, the State may convert the project to regular federal-aid funding provided federal funds are made available for the project.

e-STIP¹ – A transaction tool to enhance the development and management of the TIP/STIP through Internet-based submission, processing and approval of amendments and modifications to the TIP/STIP. e-STIP reports financial information, tracks and archives amendment and modification actions and promotes interagency collaboration. It supports policy makers in making better informed decisions and promotes electronic Government services.

Fiscal Constraint – A demonstration of sufficient funds (federal, state, local or private) to implement proposed transportation system improvements, as well as to operate and maintain the entire system, through the comparison of revenues and costs.

Flexing Funds – The transfer of federal funds between the federal highway and transit programs (i.e., from Title 23 of the highway program to transit projects and from Title 49 of the transit program to highway projects) pursuant to the provisions of the Intermodal

¹ Note, for TIP/STIP actions that amend or modify "Unobligated Prior Year Balance", these TIP/STIP actions may advance provided that the affected parties are notified in writing until such time that e-STIP is capable of processing such actions in a manner acceptable to FTA Region 2.

Surface Transportation Efficiency Act of 1991 (ISTEA) and subsequent Transportation Equity Act for the 21st Century (TEA-21).

Interagency Consultation Group (ICG) – A group of stakeholders consisting of state and federal agency representatives empowered to guide the transportation conformity process, review and approve the conformity demonstration’s assumptions and methodology, and fulfill the federal requirement for interagency consultation. Included are members from the United States Department of Transportation—including both the FHWA and the Federal Transit Administration (FTA)—the United States Environmental Protection Agency (USEPA), the New Jersey Department of Environmental Protection, the NJDOT, NJ TRANSIT, and an MPO. This group works cooperatively to insure the MPO’s conformity demonstrations and processes are following federal guidance and meeting federal requirements.

Memorandum of Understanding (MOU) – An official agreement among the MPOs, the NJDOT, and NJ TRANSIT establishing the principles that will govern how revisions to the TIP/STIP are processed and implemented.

Metropolitan Planning Organization (MPO) – A federally mandated and federally funded transportation policy-making organization that is made up of representatives from local government and governmental transportation authorities. MPOs plan all federally funded transportation investments and serve as a forum for local officials, public transportation providers, and state agency representatives to cooperatively plan to meet a region’s current and future needs.

Program Line Item – A commitment of funds to an item identified in the TIP/STIP with a specific scope of work but not a precise geographic location, the effort of which will improve the transportation system.

Project – A commitment of funds to an item identified in the TIP/STIP with a specific scope of work at a precise geographic location, the effort of which will improve the transportation system.

Project Sponsor – The lead agency with primary responsibility for implementing a project, typically the NJDOT or NJ TRANSIT, but may also include an MPO, a county or city government, or an independent authority.

Regional Transportation Plan – A federally mandated long-range transportation plan prepared by an MPO for its region.

Statewide Transportation Improvement Program (STIP) – A staged, multi-year, statewide, intermodal program of transportation projects, consistent with the statewide transportation plan and planning processes as well as metropolitan plans, TIPs, and processes.

Sub-region – The jurisdictions that comprise an MPO.

Transportation Improvement Program (TIP) – A document prepared by an MPO that lists projects that are drawn from the Regional Transportation Plan and are to be funded with FHWA/FTA funds for a multi-year period, as well as all regionally significant projects regardless of funding source.

Unobligated Prior Year Balance – The portion of the funds authorized by a federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

AGREEMENT

In adopting a TIP, the parties to this MOU (DVRPC, NJTPA, SJTPO, the NJDOT, and NJ TRANSIT) agree to a shared set of capital investments that implement each of the MPO's Regional Transportation Plans. After approval of the TIPs by the MPOs and the Governor of the State of New Jersey or the New Jersey Commissioner of Transportation, if so designated, each of the three TIPs for New Jersey is consolidated without revision into the New Jersey STIP, pursuant to 23 U.S.C. § 135 (Statewide Transportation Planning). The New Jersey STIP is submitted to the FHWA and the FTA for joint approval. The approved STIP serves as the reference document required under federal regulations (23 CFR § 450.216) for use by the FHWA and the FTA in approving the expenditure of federal funds for transportation projects in New Jersey.

The Federal Statewide and Metropolitan Planning regulations contained in 23 CFR Part 450 govern the development of individual MPO TIPs, the STIP, and the process for revisions of these documents. 23 CFR § 450.326 permits the use of expedited procedures to revise the TIP/STIP, as agreed to by the cooperating parties consistent with federal regulations for TIP/STIP development and approval. This MOU shall in its entirety constitute such agreement.

The parties agree to demonstrate Fiscal Constraint for all amendments and modifications to a TIP/STIP pursuant to 23 CFR Part 450 and 49 CFR Part 613 and to identify all projects involved in such revisions on a Fiscal Constraint chart to be developed by each party. The parties agree to provide the information via e-STIP. These confines apply to statewide projects and Program Line Items as well as regional and local projects.

A. AMENDMENTS

The parties agree that a TIP/STIP amendment shall be required under the following circumstances. There are two classes of amendments:

1. Major Amendment

Any TIP/STIP action which affects air quality conformity and would require a new regional conformity determination is a Major Amendment. This type of amendment requires the approval of the FHWA and the FTA. The MPO, in consultation with the ICG as necessary, will determine if the change to or addition of a project would:

- a) Add a new project that is non-exempt from conformity analysis as per the Transportation Conformity Rule (40 CFR §§ 93.126 and 93.127) (unless it is deemed “Not Regionally Significant (NRS)” or can be subject to a project level analysis that would not change the conformity finding);
- b) Change the project scope so that it becomes non-exempt from conformity analysis as per the Transportation Conformity Rule (40 CFR §§ 93.126 and 93.127); or
- c) Change the project completion date such that it would change the conformity analysis year.

If the MPO determines that any of these conditions exists, then the change qualifies as a Major Amendment. If none of these conditions exists then the change qualifies as either a Minor Amendment or Modification.

2. Minor Amendment

Any TIP/STIP amendment which does not affect air quality conformity and does not require a new regional conformity determination may be a Minor Amendment or Modification. A Minor Amendment, like a Major Amendment, requires the approval of the FHWA and the FTA. The parties agree that, provided the TIP/STIP action is not a Major Amendment, it is a Minor Amendment under any of the following circumstances:

- a) When there is an addition of a new project or program into the TIP/STIP that uses federal funds or unobligated prior year balances;
- b) When there is a deletion of a project or program from the TIP/STIP that uses federal funds in its entirety from the TIP/STIP;
- c) When there is an addition of a development phase to a project that results in moving all major phases of work (e.g., Construction and Right-of-Way for the NJDOT) out of the TIP/STIP;

- d) When there is a funding source change for a project in the TIP/STIP from the use of non-federal funds to the use of federal funds;
- e) When there is a swap of FHWA or FTA funds in exchange for a commensurate amount of non-federal funding between the NJDOT and NJ TRANSIT; or
- f) When any phase of work of a project has a cost increase of more than \$15,000,000.

If none of these conditions exist, and the action does not affect conformity, then the change qualifies as a Modification and section B applies.

3. Procedures

Whenever any circumstance requiring a Major or Minor Amendment occurs, the Project Sponsor shall give the MPO (whose TIP the revision affects) sufficient notice (as defined by the MPO) to acquire the necessary technical and policy level approvals. The Project Sponsor shall provide documentation with a clear explanation justifying the amendment. The Project Sponsor shall also provide the necessary project data required for the TIP/STIP listing including the funding source(s), how Fiscal Constraint shall be maintained, and sufficient descriptive information for a conformity and/or congestion management process (CMP) determination, if required.

The MPO, in consultation with the ICG, shall determine if the proposed amendment requires a new TIP/State Implementation Plan (SIP) conformity determination. If the project is exempt under the USEPA Air Quality Conformity Rule (40 CFR Parts 51 and 93), no such determination by the MPO shall be required and this MOU's procedures pertaining to Minor Amendments shall apply. If the project is not exempt, the MPO shall determine through consultation with the ICG whether a new TIP/SIP air quality conformity determination will be required and request that the ICG determine whether a project is NRS. The Project Sponsor shall provide information on the project design and scope to enable the MPO to code the travel networks for the regional emissions analysis. Upon receipt of the project design and scope information, the MPO shall conduct the regional emissions analysis.

For amendments requiring a new MPO conformity determination, the NJDOT shall forward the conformity determination for its projects to the FHWA and the FTA and apply for a joint conformity finding to be made by the FHWA and the FTA after consultation with the USEPA. Following FHWA/FTA approval, the NJDOT will notify the MPO of the approval. NJ TRANSIT shall follow the same procedures for its projects and programs.

Amendments to the TIP/STIP require public review according to their classification as Major or Minor. Major Amendments must have a 30-day public comment period as

delineated by the MPO. Minor Amendments must comply with the MPO public policy document but do not require a 30-day review period.

Following amendment approval by the MPO Board, the MPO shall forward to the NJDOT or NJ TRANSIT via e-STIP a completed package containing the following documents: (a) a document acknowledging Board approval, requesting approval from the FHWA or the FTA for the amendment and providing assurance of all necessary compliance (i.e., adherence to public participation, congestion management, conformity and Fiscal Constraint requirements); (b) the TIP Modification Request Form (which states the type of project change, the action taken and the reason for the action); and (c) the revised TIP/STIP page(s). Upon receipt of this approval package from the MPO the NJDOT shall submit the STIP amendment via e-STIP to the FHWA for review and approval. NJ TRANSIT shall submit the STIP amendment via e-STIP to the FTA for review and approval.

B. MODIFICATIONS

The parties agree that all changes to the TIP/STIP that are not amendments as described above shall be considered modifications (of which there are three classes as defined below).

1. Modifications Not Requiring Further MPO Action Beyond This MOU (Informational Modifications)

The parties agree that changes to the TIP/STIP under the following circumstances do not require further MPO action and are referred to as Informational Modifications:

- a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by an amount less than or equal to \$500,000.
- b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by an amount less than or equal to \$1,000,000.
- c) When the cost of a Construction phase of work of a project increases by an amount less than or equal to \$5,000,000.
- d) When the cost of a Program Line Item increases by an amount less than or equal to \$5,000,000.
- e) When there is additional cost for incidental right-of-way. Incidental right-of-way is the purchase of real property or a property interest (e.g., an easement) for an amount less than or equal to \$250,000 that shall not involve the taking of residential or business structure(s) or environmentally sensitive property. The parties agree that if a project is listed in an approved TIP/STIP for a Final Design or Construction phase of work and an incidental right-of-way need is discovered

during the Final Design phase, the right-of-way purchase may be authorized and funded as part of the Final Design or Construction phase of work of the project without modifying the TIP/STIP.

- f) When either the NJDOT or NJ TRANSIT deems it appropriate to shift funding between interchangeable federal funding sources, to change the federal or state funding mix of a project and/or to introduce state funds to a project
- g) When the NJDOT and NJ TRANSIT modify and use statewide Program Line Item funds throughout the State. Both agencies shall list these items, broken out by MPO, wherever appropriate. The amount of funds authorized within each program by the MPO(s) shall be included in a written notice submitted to the MPO(s) and in the updated e-STIP report available to the MPO(s).
- h) When the Project Sponsor can apply federal Advance Construction procedures to a project in the TIP/STIP, provided the federal funding is shown for the project in the TIP/STIP.
- i) When correcting technical information (including non-material changes to any text of the TIP/STIP, typographical errors, misspellings, and coding corrections).

2. Modifications That May Be Approved by Administrative Action (Administrative Modifications)

The parties agree that, under the following circumstances, changes to the TIP/STIP may be handled by the Executive Director of the MPO as Administrative Modifications. In each case, the Executive Director of the MPO upon consultation with the affected sub-regions may approve the action administratively.

- a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by an amount more than \$500,000 but less than or equal to \$1,000,000.
- b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by an amount more than \$1,000,000 but less than or equal to \$4,000,000.
- c) When the cost of a Construction phase of work of a project increases by an amount more than \$5,000,000 but less than or equal to \$7,500,000.
- d) When the cost of a Program Line Item increases by an amount more than \$5,000,000 but less than or equal to \$10,000,000.
- e) When a phase of work of a project is moved among the constrained years of the TIP/STIP.

- f) When a major phase of work is added to or deleted from the current year of the TIP/STIP and the overall project schedule is not adversely affected (i.e., the Construction phase of work of a project is not delayed).
- g) When the Project Sponsor chooses to apply federal Advance Construction procedures to a project listed in the current year of the TIP/STIP for which federal funding has not been provided in any future year.
- h) When changing a federally funded, NRS project to non-federal funding.
- i) When the project experiences an excessive bid overrun subject to a 30-day acceptance by the NJDOT. An excessive bid overrun occurs when the following conditions are met:
 - 1) When the scope of the project has not expanded from that anticipated in the TIP/STIP;
 - 2) When the final estimated cost in the Plans, Specification and Estimate (PS&E) package agrees with the TIP/STIP programmed amount or is within the threshold permitted for a Construction phase of work by administrative action, as per section B.2.(c); and
 - 3) When the NJDOT has received written concurrence from the FHWA that the bid would otherwise be acceptable.
- j) When federal unobligated prior year balances are added to a federally-funded project or program.
- k) When other modifications, not defined in this sub-section, are identified as an administrative action.
- l) When the Executive Director of the MPO determines that administrative action is appropriate.

3. Modifications Requiring Committee Action (*Committee Modifications*)

The parties agree that the following circumstances require action by the MPO at the Committee level. Additionally the Executive Director of the MPO can determine at any time that Board action is necessary.

- a) When the cost of a Concept Development or Preliminary Engineering phase of work of a project increases by more than \$1,000,000.
- b) When the cost of a Final Design, Right-of-Way, or Utility phase of work of a project increases by more than \$4,000,000.
- c) When the cost of a Construction phase of work of a project increases by more than \$7,500,000 but not more than \$15,000,000.

- d) When the cost of a Program Line Item increases by more than \$10,000,000.
- e) When breaking out a new Project from the MPO's Local CMAQ Initiatives Line Item. The act of flexing those CMAQ funds to FTA for breakout Projects from the Local CMAQ Initiatives Line Item and listing them in the transit program does not require processing of an additional Project action.
- f) When the Executive Director of the MPO determines that Committee action is appropriate.

4. Procedures

TIP/STIP modifications shall be processed via e-STIP with a completed package containing the following documents: (a) a document acknowledging Board approval, requesting approval from the FHWA or the FTA for the amendment and providing assurance of all necessary compliance (i.e., adherence to public participation, congestion management, conformity and Fiscal Constraint requirements); (b) the TIP Modification Request Form (which states the type of project change, the action taken and the reason for the action); and (c) the revised TIP/STIP page(s). Upon receipt of this approval package from the MPO the NJDOT shall submit the STIP amendment via e-STIP to the FHWA for concurrence. NJ TRANSIT shall submit the STIP amendment via e-STIP to the FTA for concurrence.

C. FISCAL CONSTRAINT BANK

The federal statewide and metropolitan planning rules (23 CFR Part 450 and 49 CFR Part 613) stipulate that each year of the TIP/STIP must be fiscally constrained to available resources. The parties agree to manage the demonstration of Fiscal Constraint for amendments and modifications through the establishment of a "Fiscal Constraint Bank" for each MPO and NJ TRANSIT, plus four Fiscal Constraint Banks for NJDOT (one for statewide projects and programs and one for each of the three MPO regions). Fiscal Constraint for amendments and modifications may be demonstrated by using available balances in a Fiscal Constraint Bank.

1. Addition of Funds

Funds may be added to a Fiscal Constraint Bank for a given year through any of the following means:

- a) De-obligation of funds from projects that were authorized under prior TIP/STIPs.
- b) Excess funds available from low bids or awards on current projects.
- c) Deletions of projects from the current four-year TIP/STIP.

- d) Modification to the current constrained TIP/STIP which results in a net decrease to the cost of project(s) in a given year.
- e) Modification to the current constrained TIP/STIP which moves a phase of work of a project from that year to another year in the constrained TIP/STIP or to a year beyond the current constrained TIP/STIP period.
- f) Additional appropriations.

In addition, federal obligation authority may be transferred from one Fiscal Constraint Bank to another Fiscal Constraint Bank at the transferring party's discretion and only when such obligation authority is available and necessary for the receiving party's projects.

2. Procedures

The NJDOT shall provide to the MPOs, via e-STIP and other formats as needed to provide sufficient information for MPO purposes, reports listing programmed projects by fund source and MPO region that have not been obligated during the current federal fiscal year. MPO action (as per section A., B.2., or B.3.) may be required for such projects for which it is determined funds will not be obligated in the current federal fiscal year. The unobligated funds may be used for subsequent amendments or modifications to address Fiscal Constraint within the MPO.

The parties agree that in accounting for Fiscal Constraint when making TIP/STIP amendments (as per section A.) or modifications (as per section B.2. or B.3.), the net result for the first fiscal year must be that the Fiscal Constraint Bank has a zero or positive balance and that the net result for the constrained TIP/STIP period must also be a zero or positive balance. This will allow for temporary imbalances in the second, third, and fourth years, but will still maintain the overall Fiscal Constraint of the TIP/STIP.

If there are no outstanding balances in the Fiscal Constraint Bank, the parties shall demonstrate Fiscal Constraint for each amendment and modification. Fiscal Constraint by year shall be demonstrated by the parties through such other amendments and/or modifications as may be necessary.

The parties agree that the NJDOT shall apply these same procedures to the statewide program Fiscal Constraint Bank. NJ TRANSIT shall apply similar procedures to its Fiscal Constraint Bank.

D. PUBLIC PARTICIPATION

The MPO shall follow its adopted public participation procedures for amendments, modifications and conformity determinations to provide the appropriate level of public involvement prior to the MPO Committee or Board taking action. The parties agree that the MPO public participation procedures shall also serve as the public participation procedures for the STIP. The NJDOT shall provide access to public participation by linking to the MPO's website sites via e-STIP. The MPO shall state in notices to the public that comments received on the proposed action to the TIP are comments on the same action to the STIP.

E. PROJECT REPORTING

The NJDOT and NJ TRANSIT agree to provide information on the TIP/STIP and project status to the MPOs. The NJDOT maintains a Project Reporting System (PRS). Project-specific information from the PRS including schedule dates, authorization dates, project costs, and pertinent issues are available to the MPOs on-line. It will be the NJDOT's responsibility to keep the information in the PRS current. It will be the responsibility of the MPOs to reformat the data into reports they deem usable.

The NJDOT Division of Capital Program Management will be the clearinghouse for additional information related to MPO project inquiries. The NJDOT shall respond to all MPO inquiries within seven (7) business days. The NJDOT Office of Community Relations will be the clearinghouse for project inquiries from local elected officials.

NJ TRANSIT is required to submit Progress Reports to the FTA on a quarterly basis. These reports will continue to be shared with the MPOs in a database format. NJ TRANSIT shall respond to all MPO inquiries within seven (7) business days.

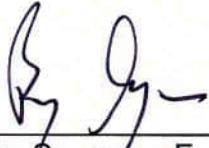
The MPOs may request meetings for projects with critical issues at any time. Invited attendees may include local elected officials and staff, MPO staff, NJDOT and/or NJ TRANSIT project management staff, capital programming staff, and NJDOT and/or NJ TRANSIT liaison staff. The purpose of the meetings on key projects is to enhance the information flow on important projects to the community and shall supplement information provided to the MPO in the reporting requirements enumerated above.

The NJDOT and NJ TRANSIT will each produce an Annual Listing of Obligated Projects report within sixty (60) days after the close of the federal fiscal year. The report will contain all federally funded projects that were obligated during the previous federal fiscal year. The NJDOT and NJ TRANSIT reports shall be available in e-STIP. A similar listing for state funded programs and projects will be provided under separate cover.

F. DISPUTE RESOLUTION

Any party with a dispute under this MOU shall promptly notify the involved party or parties in writing. Those parties shall then submit to non-binding informal dispute resolution and meet within fifteen (15) days. The disputing parties shall endeavor in good faith to resolve their differences within thirty (30) days after meeting, or may mutually agree to extend the time for resolution.

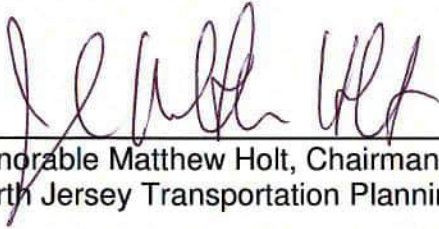
We, the undersigned, agree to use the above procedures to amend and modify the Metropolitan Planning Organizations' Transportation Improvement Programs (TIPs) and the New Jersey Statewide Transportation Improvement Program (STIP).



Barry Seymour, Executive Director
Delaware Valley Regional Planning Commission

9/27/12

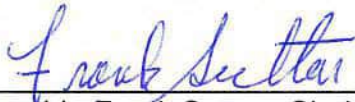
Date



Honorable Matthew Holt, Chairman
North Jersey Transportation Planning Authority

9/26/12

Date



Honorable Frank Sutton, Chairman
South Jersey Transportation Planning Organization

10-1-2012

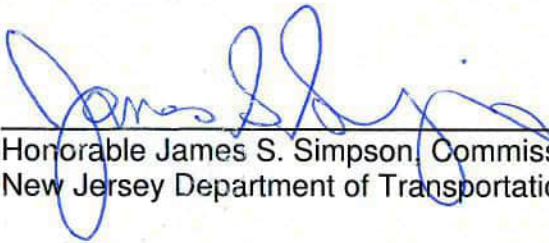
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James Weinstein, Executive Director
New Jersey Transit Corporation

10-9-2012

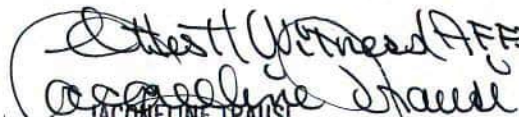
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Honorable James S. Simpson, Commissioner
New Jersey Department of Transportation

10/24/12

Date


JACQUELINE TRAUSI
SECRETARY
NEW JERSEY
DEPARTMENT OF TRANSPORTATION

October 24, 2012