

## **POLICY BRIEFS:**

- A. INSTITUTIONAL RELATIONSHIPS
- B. POLITICAL FRAMEWORK
- C. PERMITTING PROCESS
- D. TRANSPORTATION FUNDING

**Discussion Draft**  
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The attached policy briefs are intended to accompany the Transportation Planning & Policy Framework Organizational Chart, and were developed from a review of current transportation literature, based on an outline of issues developed in association with CCMPO staff.

## A. INSTITUTIONAL RELATIONSHIPS

### Background

The transportation planning and policy framework, as indicated on the accompanying chart, involves a number of complex institutional arrangements that necessarily influence regional transportation planning and program development. This is particularly true in Vermont, where mandated regional transportation (and land use) planning efforts exist apart from any accompanying form of county or regional government. As a result, transportation planning occurs in relative isolation from other regional delivery programs; and the responsibilities of transportation planning, project financing and development, and systems management and operations are divided and shared among several entities and jurisdictions.

MPOs were first authorized under federal rules in 1975 to serve as the forum for cooperative regional transportation decision-making by principal elected officials, and to carry out urban transportation planning in association with the state. The MPO role in transportation planning increased significantly under subsequent federal transportation acts, including the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and most recently the 1998 Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). MPOs are designated by the governor for any urbanized area with a population of more than 50,000, and, to the extent feasible, are to be established by state legislation.<sup>1</sup>

The CCMPO, in existence since 1983 by virtue of federal and subsequent state statute,<sup>2</sup> is currently responsible only for transportation planning and project development as mandated by such statute (i.e., TEA-21). These efforts, however, require the financial and program support of various other agencies and authorities, including but not limited to the U.S. Department of Transportation, the Vermont Agency of Transportation, the Chittenden County Transportation Authority, and eighteen local governments. To be most effective, they also require the support and participation of the county's other regional planning agency—the Chittenden County Regional Planning Commission. The CCMPO, as a consequence, must be increasingly creative in forging and sustaining institutional relationships with other organizations—as formalized through carefully crafted memoranda of understanding, contracts, and board and committee representation.

### Issues

- **Expanding Role.** Transportation planning under recent federal legislation has become much broader, more complex, and ambitious in its scope and requirements. The focus of planning, in response to increasingly limited resources, is shifting from project-oriented infrastructure development (road building) to more intermodal, performance-based systems management. The relationship between transportation and land use, and impacts on the environment and community, are also given much more weight in planning and project development. These fundamental shifts demand expanded and more integrated institutional relationships, greater organizational capacity, and more effective coordination, communication and information exchange.
- **Institutional Setting.** While the flow of money for transportation is generally top down (as tied to matching funds), planning and project development rely on a bottom up process that requires the effective involvement of municipalities, affected interest groups, and the public. The MPO, given its expanding role and key position in the institutional hierarchy, increasingly serves as the forum for a variety of disparate, sometimes competing, interests.

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<sup>1</sup> Weiner, E. 1999. *Urban Transportation Planning in the United States: An Historical Overview*. Westport, CT: Praeger Publishers.

<sup>2</sup> MPOs are authorized in state statute under 19 V.S.A. §1502(b), specifically as required to “carry out the transportation planning process required by the Intermodal Surface Transportation Efficiency Act of 1991...as amended.”

- **Institutional Inertia.** Long standing decision-making processes which have operated with political support and state legislative authority are slow to change and adapt to new roles and relationships; the process is evolving slower than the expectations of some interest groups.
- **Jurisdiction.** Vermont’s weak regional governmental structure creates a number of jurisdictional issues at the MPO level that are not readily resolved. The CCRPC shares transportation planning responsibilities for the region under state planning statute; and the boundaries of planning and service (e.g., transit) areas do not generally coincide. Relationships between federally mandated state (VTrans) and regional (CCMPO, CCTA) transportation programs also continue to evolve, in accordance with federal definitions of “consultation,” “cooperation” and “coordination.”
- **Accountability.** Planning is becoming more “customer oriented” and inclusive, and thus more accountable to a wide range of interests. One method used to hold MPOs accountable is the federal certification process. Advocacy groups, including those championing environmental justice issues, argue that this process should be used proactively to ensure quick and full compliance with federal requirements. Nationally, at least, there is a widening gap between the expectations of advocacy groups and the functional capacity of MPOs, which commonly evolves more slowly over time.

## Considerations

### Effecting Institutional Change

MPOs are not required nor enabled under federal legislation to raise money, operate, maintain or management transportation systems, control land use, or in any way act as a surrogate regional government. Such roles may be granted only through the authority of the state. MPOs, however, are uniquely positioned to help effect institutional change.<sup>3</sup> By providing a regional framework for collaborative decision-making, the MPO has the opportunity to forge a variety of links – between local and state government, between social service and transportation providers, between affected interest groups and decision-makers – that are impossible at the federal level, difficult at the state level, and beyond the reach of local government.<sup>4</sup> Institutional change, however, will require cultural changes at all levels, and new combinations of knowledge, skill and ability. It is recommended that MPOs:<sup>5 6 7 8</sup>

- Involve all affect parties, including the general public, in transportation decision-making through committee representation and aggressive public involvement programs.
- Focus on collaborative problem solving strategies, using consensus building tools throughout the decision-making process, and dispute resolution to resolve conflict.
- Maintain a regional perspective that incorporates and, to the extent feasible, balances the needs of all affected groups and interests.
- Establish a vision of transportation planning that departs from the past by being performance rather than project driven, with a focus on the efficient delivery of transportation services, increased capacity through systems management, and customer (traveler) satisfaction.

<sup>3</sup> Dempsey, P.S., A. Goetz, and C. Larson 2000. *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process*. Report to Congress. Denver, CO.: University of Denver Intermodal Transportation Institute & The National Center of Intermodal Transportation, March 2000

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> National Association of Regional Councils 1995. “Program for Community Problem Solving.” Report issued by the Federal Transit Administration, May 1995.

<sup>7</sup> McDowell, B. D. 1999. “Improving Regional Transportation Decisions: MPOs and Certification.” Discussion paper prepared for the Brookings Institution, Center on Urban and Metropolitan Policy, September 1999

<sup>8</sup> Transportation Research Board 1996. “Institutional Barriers to Intermodal Transportation Policies and Planning in Metropolitan Areas.” Transit Cooperative Research Program, Report 14. Washington D.C.: National Academy Press.

- Foster and/or participate in coalitions at local, regional, state and national levels, and among agencies and associations.
- Incorporate multimodalism in regional transportation planning and project development.
- Integrate capital and management and operations planning prior to facility development.
- Redirect the allocation of resources, including the investment of funds, to multimodal and systems management and operations activities.
- Help set the research agenda in support of MPOs' expanded roles and responsibilities.
- Expand the organizational capacity of the MPO through staff recruitment and training, ongoing professional development, and the use of new analytical tools and techniques.
- Serve as the region's transportation modeling and database manager; and
- Provide related educational and technical services.

### **Organizational Structure**

Although ISTEA and TEA-21 identify institutional requirements, federal statute and implementing regulations contain very little guidance regarding MPO structure or organization. This is evolving primarily through the certification process.<sup>9</sup> The CCMPO currently incorporates four basic components shared by most MPOs: a policy board, a technical advisory committee, staffing to maintain programs, and a public involvement mechanism. How well these four components function in relation to each is critical to the credibility and long-term effectiveness of the MPO.<sup>10</sup> Board and committee structures, including voting representation, staffing levels and assignments, and public involvement programs. The following should be periodically reviewed for their effectiveness in relation to the MPO's changing roles and responsibilities and available resources:

- jurisdictional boundaries, e.g., in relation to service provider territories (and air quality nonattainment areas where applicable),
- board and committee structures, to ensure that the organization is representative and inclusive,
- voting representation (some MPOs have gone to weighted voted systems allowing for proportional representation between rural and urban communities, but this can be divisive),
- staffing levels and assignments as they relate to organizational capacity, and
- public involvement mechanisms.

Frequently the right staff and leadership can make do with a less than perfect organization structure, but not the other way around.<sup>11</sup>

### **Interdisciplinary Ties**

MPOs exist as transportation planning organizations, but under new federal requirements must consider broad factors that view transportation programs as a means of achieving a number of social and environmental goals—the fulfillment of which goes far beyond the reach of traditional transportation programs.<sup>12</sup> TEA-21 added growth management, sustainable development, social and environmental justice considerations, outcome based performance management, and an expanding list of planning and implementation tools. As a result, ties to other disciplines that may affect or be affected by transportation programs are increasingly important.

The CCMPO, unlike a majority of MPOs nationwide, is not housed within county or city government, a regional council of government (COG), or other regional planning agency. It has been suggested that the

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<sup>9</sup> Dempsey, et. al. 2000.

<sup>10</sup> U.S. Advisory Commission on Intergovernmental Relations (ACIR) 1997. "Planning Progress: Addressing ISTEA Requirements in Metropolitan Planning Areas." Report issued February 1997.

<sup>11</sup> Ibid.

<sup>12</sup> McDowell, B.D. 1999.

council of government model is preferable in light of the many intergovernmental and non-transportation factors that MPOs must now consider; however the organizational structure that works best within a any given metropolitan area must derive from and reflect the specifics of that area.<sup>13</sup> There appears to be limited, but growing, support for stronger regionalism within Chittenden County, as infrastructure and service issues spill over municipal lines. This, however this would require much stronger political support from member municipalities, and state enabling legislation. Until that time, important interdisciplinary ties, such as that with the CCRPC, need to be established and sustained through other means, particularly in the following areas.

## **Land Use**

ISTEA and TEA-21 both highlight the importance of land use as an area of particular importance, given that land use and transportation are inextricably linked. Within fast growing regions, transportation needs often outpace existing infrastructure and available funds, resulting in a disjunct between the MPO transportation planning process and land development. In order to respond to rapidly changing needs, better coordination is needed between transportation and land use, through cooperative regional planning and/or statewide growth management.<sup>14</sup> This coordination is being accomplished to date under the CCMPO's MOU with the Chittenden County Regional Planning Commission, which includes, among other provisions:

- common use of, and coordinated changes to base data, statistics and projections generated by each organization;
- the development of a shared transportation-land use decision support system model (now under way);
- consultation with the RPC for the development of the long range transportation plan, including the incorporation of land use and demographic assumptions endorsed by the RPC;
- CCMPO opportunities to review and comment on the draft regional plan (issued in March 2001);
- RPC review of the draft transportation plan and candidate improvement program projects for conformance with the regional plan;
- incorporation of the long range transportation plan as the transportation element of the regional plan; and
- future co-location of staff and facilities.

Under the current arrangement, the strength of the MPO's transportation planning process depends largely on coordinated, collaborative data collection and analysis, and the strength of the regional planning commission's land use planning efforts.

## **Management & Operations (M&O)**

Perhaps the most difficult institutional shift called for by federal legislation at all levels is the change in mindset from one of implementing discrete projects to one of customer service, systems management, and performance. MPOs, it is suggested, can play a number of important roles in facilitating institutional change and the successful implementation of M&O strategies – many agencies involved are already at the table. When MPOs understand how M&O fits in to the goals of the regional transportation plan, they can help direct investments accordingly. “MPOs that retain a “capital only” approach to their plans will not succeed in meeting the expectations of their customers– the transportation system users.”<sup>15</sup>

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<sup>13</sup> As reported in Dempsey, et. al, 2000, in 1993 48% of MPOs were housed in COG-type regional councils, and another 28% within urban or regional planning agencies. Only 22% were single function transportation organizations, which were typically newer, smaller MPOs.

<sup>14</sup> McDowell 1999.

<sup>15</sup> Gayle, S. Gayle, S. 2001 “The Role of MPOs in Management & Operation of Transportation Systems.” *Metropolitan Transportation Management & Operations: ITS*. Jan/Feb 2001. Web site: [www.ampo.org](http://www.ampo.org).

Operations planning is an increasingly important element in the overall design of transportation systems which maximize available resources, integrate multimodal services, and are responsive to customer needs. To date M&O activities nationwide have focused largely on the development of intelligent transportation systems (ITS) to reduce congestion; but ITS is only one aspect of systems management. Most agencies remain focused on infrastructure development rather than management and operations to increase system capacity and safety. There is no single appropriate strategy, but in the future, it is anticipated that M&O will be as critical to transportation planning and programming as infrastructure development.<sup>16 17</sup> MPOs increasingly will need the knowledge, skills and tools to evaluate:

- operational needs of the transportation system,
- operation opportunities to satisfy identified needs,
- tradeoffs between operations enhancements and infrastructure investments, and
- systems performance, including the effectiveness of operations enhancements.

### **Air Quality**

The state of Vermont is currently classified as an “attainment area” that meets national ambient air quality standards (NAAQS) established under the federal Clean Air Act (CAA) and related amendments. As such the CCMPO does not have to meet federal air quality “conformity” requirements as they affect transportation funding, planning and project development. The tightening of controls on ground level ozone (referred to as the “8-hour ozone standard”), once implemented, however, holds the possibility that many exempt small and medium sized MPOs will at some point have to meet the requirements of the Act.<sup>18</sup> This is unlikely to affect the activities of the CCMPO in the near future, but bears monitoring.<sup>19</sup>

In the event that the CCMPO does fall within a designated nonattainment area, conformity requirements would have to be addressed through a more formal relationship with the state’s Air Pollution Control Division. This is particularly important with regard to the development of appropriate transportation control measures (TCMs) to be included in the state’s (air quality) implementation plan (SIP), and in regional and state transportation improvement programs. Such measures may include land use strategies, as well as more traditional emission reduction measures.<sup>20</sup>

### **Relationship with State Agencies**

ISTEA and TEA-21 fundamentally changed the relationship between state transportation agencies and MPOs. Where this relationship remains in flux, there is the potential for conflict. Typically there are two primary causes of friction between a state transportation agency and an MPO: the apportionment of authority over funding categories, and the accuracy and timing of the flow of information from the state to the MPO.<sup>21</sup> To avoid conflict it is recommended that governing MOUs include a statement of common principles and objectives, clearly defined responsibilities for the coordination of planning and project development, and associated schedules– as exist in the CCMPO’s current MOU with VTrans.

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<sup>16</sup> Mason, J. 2001 “Planning for Operations—An Opportunity for Transportation Improvement.” *Metropolitan Transportation Management & Operations: ITS*. Mar/Apr 2001. Web site: [www.ampo.org](http://www.ampo.org).

<sup>17</sup> US DOT 2000 “Operations & Management Activities within the Transportation Planning Process,” prepared by the Volpe National Transportation Systems Center, March 2000.

<sup>18</sup> Schutz, J.B 2000. “Transportation Planning Needs for Small and Medium Sited Communities,” prepared for the Transportation Research Board, January 2000.

<sup>19</sup> According to Paul Wisniski, Planning Section Chief in the state’s Air Pollution Control Division, it is unlikely that this will occur within the next two to five years. Because of the transport of ozone from out of state, Vermont has been on the margin, but has never exceeded, ozone standards as defined. Personal contact, June 26, 2001.

<sup>20</sup> EPA 2000. “Recognizing the Air Quality Benefits of Local and State Land Use Policies and Projects in the Air Quality Planning Process.” Technical report issued by the Office of Transportation and Air Quality, June 2000.

<sup>21</sup> Dempsey, et. al. 2000.

## B. POLITICAL FRAMEWORK

### Background

The transportation planning process is defined at the federal level most recently under TEA-21, and a variety of related laws, regulations, and orders.<sup>22</sup> These specify partners to the process (to include local government and providers), required products, and related public involvement, certification and approval requirements. In particular, the region's transportation improvement program (TIP) must be approved by the governor, and incorporated in the state's transportation improvement program (STIP). The state process is further outlined in state statute (Title 19). This statute recognizes the roles of regional and state agencies in transportation planning and STIP development (with no specific mention of the MPO), but also clarifies that final authority for adoption of the STIP, and associated allocation of transportation funds, rests with the legislature and governor. The process as defined provides opportunities for political participation—or intervention—at a number of junctures, within all levels of government.

Transportation decision-making is inherently a dynamic, political process. It occurs principally in the public realm, involves a variety of interests, and directs the allocation of limited public resources – including enormous sums of public money. Because transportation expenditures are so large, and the consequences so vital, many groups become actively involved, at least at the project level, to ensure that their own transportation (or other) objectives are achieved. Moreover, federal requirements mandate that the needs of disabled, minority and low income populations be considered in transportation decisions at all levels, particularly as they may affect such groups. Differing, often conflicting, objectives inevitably lead to controversies “that are among the most dramatic of political struggles.”<sup>23</sup> Defining the “politic”<sup>24</sup> amid the politics is one of the most difficult challenges facing an MPO.

### Issues

- **Managing the Process.** Given that the transportation policy and decision-making process— as generally set forth in federal and state law – is inevitably political, the real challenge is how to work most effectively within it to ensure that the region's objectives are equitably defined and clearly transmitted, and priority projects are advanced.<sup>25</sup> Most planners are ill-prepared in this regard.<sup>26</sup>
- **Parochialism.** MPOs by their very nature are confronted by political fragmentation within their own boundaries; this is compounded by the fact that rural, suburban, and urban communities within the same MPO may have very different transportation needs. Municipalities (or interest groups) with specific agendas make it difficult for elected officials to support regional objectives and solutions, and result in a piecemeal approach to planning and project development.<sup>27</sup>
- **Engaging the Public.** Typically, public involvement is most apparent at the end of the process—in the funding and/or permitting stage of project development. The challenge is to shift the participation of affected parties, and the public, from the end to the beginning of the process, in the identification of issues, objectives, and alternatives. It is difficult, but necessary to generate and maintain public

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<sup>22</sup> Federal rules implementing the planning and participation requirements of TEA-21 have yet to be adopted.

<sup>23</sup> Wachs, M. 1995. “The Political Context of Transportation Planning,” in *The Geography of Urban Transportation Planning*, S. Hanson, ed. New York: Guilford Press.

<sup>24</sup> According to the *Oxford American Dictionary*, that which “shows good judgement,” or is “prudent.”

<sup>25</sup> Wachs, M. 1995.

<sup>26</sup> Dempsey, S. M., A. Goetz, C. Larson 2000. *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process*. A Report to Congress. Denver, CO: University of Denver Intermodal Institute and the National Center for Intermodal Transportation., March 2000.

<sup>27</sup> McDowell, B.D. 1999. “Improving Regional Transportation Decisions: MPOs and Certification.” Discussion paper prepared for the Brookings Institution, Center on Urban and Metropolitan Policy, September 1999.

interest in long range planning that is often technical and complex. It is also difficult to effectively reach and engage some segments of the community, as required by federal law.<sup>28</sup>

## Considerations

### Political Effectiveness

ISTEA and TEA-21 redefined the role of MPOs in the transportation decision-making process. In addition to providing MPOs with greater authority in defining regional transportation objectives and systems, federal acts emphasize greater community and private sector involvement in development plans and programs. In order to be most effective in the political realm, it is recommended that MPOs:<sup>29 30 31</sup>

- Strive to balance parochial and regional concerns, principally through a collaborative, consensus building, decision-making process, and formal dispute resolution procedures—establish a shared vision and associated objectives.
- Nurture leadership and communication skills in staff, board members, and within the community; and provide ongoing leadership training.
- Demonstrate strong and effective leadership in conducting public forums and negotiating policy and technical issues, without alienating stakeholders.
- Actively participate in the setting of state and federal policy and research agendas, particularly as they effect regional priorities.
- Maintain staff confidence and credibility through professional development and evaluation.
- Analyze planning and policy issues thoroughly, use available analytical tools effectively—and openly disclose assumptions, methods and limitations.
- Aggressively promote meaningful public participation in all stages of the decision-making process, but particularly up front in the planning process—in accordance with an adopted, multi-tier program for public involvement.
- Build constituencies—foster long-term networks and relationships with key partners, stakeholders, agency officials, state legislators, and the governor.
- Attach a “face” and contact (staff, board, and/or community leader) to champion and track MPO projects through the process, and to respond to information requests.
- Increase public visibility of the MPO by attending chamber luncheons, interest group meetings, etc.
- Provide briefings for the press, community leaders, legislators, etc.
- Involve the media in publicizing MPO activities.
- Establish organizational, policy and program performance measures and benchmarks, and use them in periodic self-evaluations.
- Remain accountable to stakeholders, elected officials, and the general public.

### Public Involvement

Public involvement, as required by federal law, extends beyond mandated hearings to the aggressive pursuit of involvement by all affected parties, in each stage of planning and project development. Under TEA-21, public involvement requirements have been extended to certification review. Currently regulations and statutes provide general guidelines for public involvement processes and procedures. Great flexibility remains, however, in the development of specific programs—every situation is unique, and as such may require a unique approach. Given the importance of public involvement in transportation

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<sup>28</sup> Ibid.

<sup>29</sup> National Association of Regional Councils 1995. “Program for Community Problem Solving.” Report prepared for the Federal Transit Administration, May 1995.

<sup>30</sup> McDowell, B.D. 1999.

<sup>31</sup> Dempsey, et.al. 2000.

decision-making, however, a number of guidance, technical assistance and case study documents are now available.<sup>32</sup>

Public involvement, like consensus building, can consume considerable time and energy. Ensuring that MPO planning and decision-making is inclusive and collaborative may make the initial process more complicated, time-consuming, inefficient, and cumbersome; but the failure to do so runs the risk that important interests in the region will feel left out, become alienated, and act in ways that may interfere with plan implementation. Meaningful public involvement is needed to develop trust among diverse groups.<sup>33</sup> A key consideration, especially for smaller MPOs, is how to most effectively commit limited time, staff, and resources to public involvement activities. It is suggested that MPOs:<sup>34 35 36</sup>

- Incorporate a strategic, multi-tiered approach that provides different levels and opportunities for public involvement (e.g., work sessions among partners, forums for affected interests, informational meetings and briefings for the public at large).
- Consider creating one or more citizen advisory committees to educate and more directly involve citizen groups.
- Schedule meetings at convenient times, and make them accessible.
- Incorporate direct outreach to minority, low income and other underrepresented groups.
- Make effective use of available technology (e.g., CCMPO web site, public access television, etc.)
- Make long range planning interesting and accessible to average citizens—link transportation to other to quality of life issues, and use hard-hitting, practical examples.
- Provide staff training in a variety of public involvement techniques.
- Consider hiring the services of professional facilitators and public relations consultants.
- Maintain good documentation of all public involvement activities, including responses and outcomes.

## **Environmental Justice**

For many years, federal transportation planning requirements have mandated compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, which identifies protected minority groups. In 1994 these were expanded by President Clinton, under an “Environmental Justice” order, to include both minority and low income populations. This executive order specifically requires that federal agencies identify and address “disproportionately high and adverse human health or environmental

### **Three fundamental principles of environmental justice:**

- To avoid, minimize or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low income populations.
- To ensure the full and fair participation by all potentially affect communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Source: “An Overview of Transportation and Environmental Justice.”  
U.S. Department of Transportation, May 2000.

<sup>32</sup> These include, for example, the “FHWA/FTA Questions and Answers on Public Involvement in Transportation Decision Making” issued in association with FHWA Docket No. 94-27 and their Interim Policy on Public Involvement; and “Public Involvement Techniques for Transportation Decision-Making,” published by FHWA and FTA in September 1996 (Publication No, FHWA-PD-96-031. Both are available through the FHWA web site: [www.fhwa.dot.gov](http://www.fhwa.dot.gov).

<sup>33</sup> Dempsey, et. al. 2000.

<sup>34</sup> Ibid.

<sup>35</sup> McDowell, B.D. 1999.

<sup>36</sup> FHWA/FTA 1996. “Public Involvement Techniques for Transportation Decision Making.” Publication No. FHWA-PD-96-031, September 1996.

effects of policies, programs, and activities on minority and low-income populations.”<sup>37</sup> The USDOT published its most recent memorandum addressing environmental justice in transportation planning in October 1997. This has not been superseded by environmental justice requirements included in draft rules, proposed subsequent to the passage of TEA-21, which have yet to be adopted.

It is clear under existing rules and related guidance that environmental justice issues must be addressed in all stages of transportation planning and project development, including but not limited to:

- public involvement efforts as included in the annual work program,
- the preparation of the long range transportation plan,
- the development of the transportation improvement program,
- alternatives identification and analysis (e.g., under major investment or similar studies),
- at the scoping stage of project development, and
- in categorical exclusions, environmental assessments, and environmental impact statements under NEPA.<sup>38 39</sup>

As noted, the certification process has been recommended to hold MPOs accountable to the requirement that the planning process seek out and consider the needs of those traditionally underserved by existing transportation systems – including but not limited to low income and minority populations– and to evaluate the impact of transportation systems on such groups.<sup>40 41</sup>

It is emphasized in related guidance that incorporating such considerations in the earliest planning phases, especially through public involvement, is needed to truly respond to environmental justice issues, meet certification requirements, and avoid potential litigation. Strengthening the role of neighborhood and community-based organizations in the planning process, and the use of liaison organizations to form links and networks are also strongly recommended.

Key planning considerations include:

- the identification of minority and income groups (e.g., at the census block level), and
- an analysis of whether such groups will be “disproportionately” impacted by proposed transportation policies and programs (e.g., through neighborhood outreach, GIS modeling, and statistical analysis).

Types of impacts include, but may not be limited to economic impacts (e.g., access to employment), social impacts (e.g., neighborhood and community cohesion) and environmental impacts such as air pollution and noise.<sup>42</sup>

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<sup>37</sup>Executive Order 128908, “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,” issued February 11, 1994. Copies of all federal documents and related guidance are available on the FHWA’s Environmental Justice web page: [www.fhwa.dot.gov/environment/](http://www.fhwa.dot.gov/environment/).

<sup>38</sup>“Environmental Justice Looms as Planning Emphasis.” *AASHTO Journal*, December 10, 1999.

<sup>39</sup>“A Overview of Transportation and Environmental Justice.” U.S. Department of Transportation, May 2000.

<sup>40</sup>Mizumo, M. 1995. “Justice in Decision-Making,” in *Transportation: Environmental Justice and Social Equity Conference Proceedings*. FTA Report No. FTA-DC-26-6025-95-1, July 1995.

<sup>41</sup>McDowell, B.D. 1999.

<sup>42</sup>Forkenbrock, D. J. and L.A. Schweitzer. 1997. *Environmental Justice and Transportation Investment Policy*. Iowa: Public Policy Center, University of Iowa.

## C. PERMITTING PROCESS

### Background

Transportation projects, depending on their size, location, and sources of funding, are typically subject to federal (e.g., NEPA), state (Act 250), and in some cases local (zoning) permitting requirements. Permit requirements specific to a project are typically identified during project development;<sup>43</sup> but for larger projects may be addressed earlier in the planning process. Under ISTEA, MPOs were authorized to prepare major investment studies (MISs) that included an analysis of project alternatives for consideration under NEPA review, to help expedite the permitting process. It was found however, that such analyses typically were ignored in environmental review—resulting in an extended planning process that had no effect on project development. The MIS, as a separate study, was eliminated with TEA-21, but is to be integrated, as appropriate, in the analyses required under the Act’s planning provisions and NEPA.<sup>44</sup>

The permitting process is also important to review potential impacts that a proposed development may have on traffic safety and existing and planned transportation infrastructure. Act 250 in particular includes a review criterion specific to transportation impacts, and others related to investment in public infrastructure.<sup>45</sup> These criteria have become a key component in managing Vermont’s traffic through the project development stage.<sup>46</sup> It is less apparent how well multi-modal or long-term incremental impacts are addressed—in the vast majority of cases, traffic is the only issue considered.<sup>47</sup>

Local permitting requirements pertaining to transportation projects and transportation impacts vary significantly by community. Public transportation projects are often exempted, or subject to limited review. As in Act 250, local requirements relating to development tend to emphasize parking, road construction, access and level of service standards (e.g., under subdivision, site plan or conditional use review, and local road ordinances). There is minimal enabling language in state planning statute (24 V.S.A. Chapter 117) specific to the consideration of multi- or intermodal transportation; however, statutory review criteria are defined broadly enough to allow for local review as appropriate.

### Issues

- **Role of the MPO.** The role of the CCMPO in Act 250 is currently established under two separate MOUs with VTrans and the CCRPC. The role as defined under each differs slightly, but includes the provision of technical assistance to both parties. The potential for conflict exists in the event that the agency and the RPC, with separate party status, are at odds over a particular transportation or development project, or the CCMPO decides to seek separate party status. The CCMPO may also be called on to assist member municipalities, who are statutory parties to Act 250 proceedings.
- **Permitting Process.** The time and expense of permitting is often cited as the reason for lengthy transportation project delays and cost overruns – as a result there has been much interest nationally and statewide in streamlining and simplifying project planning and permitting.

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<sup>43</sup> For example, as outlined in the Vermont Agency of Transportation’s *Project Development Manual*.

<sup>44</sup> Association of Metropolitan Planning Organizations. “TEA-21 Implementation.” at [www.ampo.org/policy/](http://www.ampo.org/policy/).

<sup>45</sup> Criterion 5 specifies that a subdivision or development “will not cause unreasonable congestion or unsafe conditions with respect to the use of the highways, waterways, railways, airports and airways, and other means of transportation existing and proposed.” [10 V.S.A. §6086 (a)(5)]. Transportation infrastructure issues also are commonly considered under Criterion 9(k) dealing with effects on public investments.

<sup>46</sup> Vermont Agency of Transportation 2001. Draft Long Range Transportation Plan, issued February 2001.

<sup>47</sup> Argentine, C.C. 1998. *Vermont Act 250 Handbook*, 2<sup>nd</sup> ed. Newfane, Vermont: Putney Press.

- **Multimodal Shortcomings.** As noted, multi-modal alternatives can be –but are typically not– addressed in development review. There is the need to go beyond traffic impact analyses.

## **Considerations**

### **The role of the MPO in Permitting & Review**

At the federal level, the role of the MPO in permitting and project review is limited primarily to identifying and addressing, in the initial phases of project development, the potential need for environmental review. Several annual work program items are intended to bridge transportation planning with project development—including major investment studies, and project prioritization, scoping, and tracking. As noted, MISs are no longer a federal requirement, however under the current MOU with VTrans, project definition studies carried out by the CCMPO are to include:

- the identification of environmental, historic and archaeological issues and constraints;
- the identification of the need for a categorical exclusion, environmental assessment, or environmental impact under NEPA; and
- the identification of Act 250 issues.

As noted, however, there is no specific assurance that such analyses will actually be incorporated in subsequent NEPA or Act 250 reviews.

The CCMPO, unlike state agencies and regional planning commissions, is not a statutory party to Act 250 proceedings. The MPO, however, may participate on behalf of the Chittenden County Regional Planning Commission, and/or the Agency of Transportation under provisions established within respective memoranda of understanding, or may petition for separate status as a “materially assisting” party.<sup>48</sup> The CCMPO’s long range plan and TIP do not receive separate consideration in Act 250 reviews; but development projects must conform to the CCRPC’s regional plan which, under separate planning statute (24 V.S.A. Chapter 117), must include a transportation element. Under the current MOU, the CCMPO’s long range transportation plan is to be adopted as the transportation element of the CCRPC’s regional plan, and as such would receive consideration in Act 250. Project conformance with municipal plans is also required. Until such time as separate statutory party status is granted to the CCMPO (which would require legislative action), the CCMPO can:

- continue to clarify its role in federal and state permit proceedings, and in particular in Act 250, under related memoranda of understanding,
- ensure that the MPO’s long range transportation plan, transportation improvement program, and related analyses (e.g., of alternatives or impacts) are given due consideration in federal and state permitting processes, through direct participation as appropriate;
- support consistency in the transportation elements of municipal, regional and state agency plans, as called for under state planning statute (Act 200), and between Act 200 plans and the MPO’s long range transportation plan– through coordinated planning efforts and the provision of information and technical assistance.

### **Permit Streamlining**

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<sup>48</sup> The MOU with the state is less restrictive in this regard than that with the CCRPC, which requires that nature and level of MPO involvement in Act 250 proceedings be determined through consultation and agreement between the chairs or designated representatives of the two organizations.

Federal streamlining prior to TEA-21 focused mainly on the coordination of federal agency review under NEPA. With TEA-21 this was expanded to emphasize concurrent federal review, and to also incorporate concurrent state review where appropriate, under a coordinated environmental review process.<sup>49</sup> State statute [19 V.S.A. 10g(h)] also requires that the Agency of Transportation – in coordination with the Agency of Natural Resources and the Division for Historic Preservation – establish provisions for expediting the permit process. A legislative summer study committee (included as part of the 2001 Act 250 bill, H.475) will also be looking at ways to better coordinate Act 250, state agency and local permitting in an effort to expedite the development review process.

As noted, part of the streamlining effort as it may affect the MPO is to ensure, at least for large transportation projects, that the identification of potential environmental, historic, archaeological, social and economic impacts – and associated alternatives or mitigation measures – are framed early in the process—in planning, prioritization, and the initial stages of project development. Though MPOs are no longer required to prepare major investment studies; alternatives analyses are to be integrated in MPO transportation planning efforts. The extent to which this will be required has not yet been clarified under federal rule.<sup>50</sup>

### **Addressing Intermodalism in Permitting & Project Review**

Research has shown that organizational legacies, regulatory processes, and the culture of federal, state, regional and local transportation entities impede intermodalism at all levels of government. The lack of intermodal considerations in permitting and project review reflects larger institutional barriers, including but not limited to:

- federal and state organization structures that continue to separate modes,
- extensive modal orientation (e.g., highway) in planning and project development,
- insufficient track records for other modes of transportation,
- state laws that limit funding flexibility for other modes,
- poorly integrated land use and transportation decision-making processes
- inadequate information on intermodal benefits, and
- insufficient intermodal planning resources.<sup>51</sup>

The planning process that precedes project permitting and development (and at the local level, bylaw development) should identify viable alternative modes (e.g., existing and proposed rail or transit routes) linked to anticipated land use and development patterns, related management objectives, and associated mobility and performance measures. If alternate modes are identified up front, it is much easier to give them consideration and weight in the permitting process; and at the local level, to incorporate related review criteria (e.g., for levels of service or modal tradeoffs) in local bylaws. Apart from working to overcome very significant institutional barriers, the MPO can:<sup>52</sup>

- evaluate intermodal alternatives, and related management strategies, in relation to regional and local land use and development patterns (which may require significant modeling capabilities),
- define mobility and performance measures in long range planning (e.g., for use in impact analyses),
- direct funding to intermodal projects,
- coordinate an initiative to inform local officials about intermodal planning, and

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<sup>49</sup> Federal Highway Administration 1998. “TEA-21 Fact Sheet: Environmental Streamlining.”

<sup>50</sup> FHWA/FTA Memorandum “Implementing TEA-21 Planning Provisions,” issued February 2, 2001.

<sup>51</sup> Transportation Research Board 1996. “Institutional Barriers to Intermodal Transportation Policies and Planning in Metropolitan Areas.” Transit Cooperative Research Program, Report 14. Washington D.C.: National Academy Press.

<sup>52</sup> Ibid.

- raise intermodal considerations in permitting and review processes (e.g., NEPA, Act 250).

## D. TRANSPORTATION FUNDING

### Background

Funding for transportation comes primarily from federal highway and transit programs as authorized under TEA-21. The Highway Trust Fund (HTF) is the source of funding for most TEA-21 programs. Federal law regulates not only the imposition of taxes that support the HTF, but also their deposit into and expenditure from the fund. In a major budgeting change under TEA-21, most programs are now guaranteed a minimum level of spending through FY2003. The Act specifies state shares of aggregate funding under several programs, apportioned by formulas specific to each program. Shares also are adjusted each year to ensure that each state receives apportionments in relation to its contribution to the federal highway account.<sup>53</sup> The prior need-based allocation system more directly benefited Vermont, but the contribution-based approach provides more stable expectations of federal funding availability.

Vermont maintains a state Transportation Fund for transportation appropriations, including the state match required for federal funds. The Transportation Fund raises approximately \$180 million per year—principally from gas taxes, and vehicle purchase and registration fees—but includes no mechanism to adjust for inflation. Revenues from existing sources are expected to grow slowly over the next 25 years; and each year transportation funds are transferred to the general fund for other purposes, making forecasting difficult. The state legislature retains authority over the Transportation Fund, including the imposition of taxes and fees, and the allocation of transportation dollars to regions around the state.<sup>54</sup>

The CCMPO has no direct control over transportation financing, but is responsible for planning, programming and approving the use of about \$30 million in transportation funds each year, including \$1 million in planning funds. These figures represent federal, state, and local shares of transportation financing, and include funds for roadways, public transit, bike and pedestrian facilities, and system preservation and maintenance. Local shares are raised principally through property taxes.<sup>55</sup>

### Issues

- **Availability.** It is widely acknowledged that transportation funding at all levels is, and will continue to be, insufficient to meet anticipated need—particularly for the development of new infrastructure. This has resulted in a fundamental shift in funding priorities from infrastructure development to systems maintenance, management and operation. Federal requirements mandate that state and regional transportation plans and improvement programs be fiscally constrained, based on reasonable projections of costs and revenues. TEA-21 requires that the state, the MPO, and the CCTA coordinate in the development of financial estimates. Effective financial planning, including more accurate revenue forecasting, has since been identified as a major issue for small and medium sized MPOs.<sup>56</sup>
- **Allocation.** Given the availability of funds and changing program priorities, ISTEA and TEA-21 were designed to provide flexibility in the use of program funds at the state and regional level— as state programs and allocations permit. The majority of funding identified in the regional transportation improvement program is controlled by the state. As such, the state funding allocation

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<sup>53</sup> U.S. Department of Transportation 1998. *Transportation Equity Act for the 21<sup>st</sup> Century: A Summary*. July 14, 1998. Available on the FHWA's TEA-21 web site [www.fhwa.dot.gov/tea21](http://www.fhwa.dot.gov/tea21).

<sup>54</sup> VT Agency of Transportation 2001. Draft Long Range Transportation Plan. February 2001.

<sup>55</sup> CCMPO 2000. "Guide to Transportation Planning in Chittenden County," 1<sup>st</sup> ed. October 2000.

<sup>56</sup> Texas Transportation Institute 1999. *Metropolitan Transportation Planning Issues: A Primer/Anthology for Small and Medium MPOs*. Prepared for the U.S. DOT Travel Model Improvement Program, April 1999.

process is the most important factor that determines how much transportation funding will be available to assist the MPO in meeting regional transportation needs.<sup>57</sup>

## Considerations

### **Coordinated Revenue Forecasting**

As noted, TEA-21 included minimum guaranteed levels of federal funding to ease the level of budgeting uncertainty at the federal level, but considerable uncertainty remains nationwide in the annual allocation of state transportation funds. MPOs are largely dependent on state cooperation in developing future funding estimates and providing information on the status of state projects. Disjunctions between state and MPO programming, which tend to operate on different cycles, are common nationwide; and have resulted in unpredictability in the state allocation process that precedes regional TIP development.<sup>58</sup>

- TEA-21 now requires state agencies to more closely coordinate with MPOs in the forecasting of available revenues for planning, project development and financing. This is addressed to a certain extent under the CCMPO's current MOU with VTrans and CCTA. Currently both agencies are required to inform the MPO by January 31<sup>st</sup> of each year of available federal funds for the following three fiscal years, for use in TIP development. TIP development, however, generally coincides with Vermont's legislative session – revenue estimates and project schedules must then be updated following legislative adjournment. The coordination of agency revenue forecasting could be strengthened under the MOU as called for under TEA-21; however uncertainty over the allocation of state funding will remain unless otherwise addressed by the state legislature.
- The state legislature, under the FY2002 appropriations bill (H.485), has called for a 2001 “Legislative and Executive Study on Transportation Revenues & Programs” to examine state transportation funding and appropriations issues in more detail (attached).

### **“Fair Share Campaign”**

ISTEA assured distribution of funds to metropolitan areas. Though this was retained under TEA-21, the increase in funding to MPOs has been substantially less than the increase in overall funding provided by the Act. As a result, a national “Fair Share Campaign” is being mounted to ensure that metropolitan areas receive their fair share of funding under TEA-21. The Association of Metropolitan Planning Organizations (AMPO), is recommending that MPOs:<sup>59</sup>

- work with locally elected officials, their governors, state legislators, and transportation agencies to ensure that project investment priorities are based principally on function and need, rather than geography or jurisdictional responsibility;
- work with state agencies and transit operators to cooperatively develop a set of procedures governing the projection of future revenues that will be allocated to metropolitan and non-metropolitan areas within each state, in accordance with TEA-21 requirements for cooperative revenue forecasting; and

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<sup>57</sup> Dempsey, P.S., A. Goetz, and C. Larson 2000. *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process*. Report to Congress. Denver, CO.: University of Denver Intermodal Transportation Institute & The National Center of Intermodal Transportation, March 2000.

<sup>58</sup> Swanson, J. 1998. “The AMPO Recognizes ISTEA Goals in Practice.” March 1998. [www.ampo.org/programs](http://www.ampo.org/programs).

<sup>59</sup> AMPO. “TEA-21 Implementation.” Policy paper available on AMPO's web site: [www.ampo.org/policy/tea\\_21](http://www.ampo.org/policy/tea_21).

- seek modifications in the administrative requirements governing the administration of funds under the minimum guarantee program to reinstate the balance originally established for equity programs under ISTEA.

### **Management & Operations**

Opportunities to construct new infrastructure are increasingly limited by cost, as well as community and environmental concerns. As noted previously, TEA-21 requires that greater emphasis be placed on integrated, intermodal systems management and operations, to include a shift from capital intensive project to performance and service-based planning and programming. Funding management and operations requires a different approach that capital funding—including the need for ongoing funding streams; yet transportation programs, and associated funding, remain principally driven by capital investment in infrastructure. MPOs, it is suggested, can play an important role in facilitating the integration of systems management and operations into transportation programming and financing by:

- working with state agencies and legislators to identify sources and levels of funding for management and operations, and take advantage of funding flexibility under federal programs;<sup>60</sup>
- avoiding a “capital only approach,” to include the determination of how management and operations fit into long range transportation planning and improvements (e.g., through full life-cycle costing of major projects), and directing the investment of funds at the regional level accordingly—which may require modifications in TIP project selection criteria,<sup>61 62 63</sup> and
- helping to identify, and make the case for, tradeoffs between investments in operations enhancements and investments in infrastructure.<sup>64</sup>

### **Innovative Financing**

The need to identify new, innovative sources funding for transportation has been identified regionally and statewide.<sup>65</sup> Federal legislation does not require or enable MPOs to raise money, operate, maintain or manage transportation systems, control land use, or in any way act as a surrogate regional government—these functions can only be added to an MPO’s portfolio by specific state legislation. As it stands, it is necessary for federal, state and local government to create the revenue streams allocated for transportation through the MPO.<sup>66</sup> The CCMPO, however, can attempt to influence the process by:

- continuing to support the need for maximum flexibility in the use of existing federal funding sources to meet regional transportation needs;
- encouraging the state legislature to provide for creative use of the state’s Transportation Fund, and limit transfers from the fund that reduce its availability for transportation projects;

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<sup>60</sup> National Dialogue on Transportation Operations, April 2000.

<sup>61</sup> Mason, J. 2001 “Planning for Operations—An Opportunity for Transportation Improvement.” *Metropolitan Transportation Management & Operations: ITS*. Mar/Apr 2001. Web site: www.ampo.org.

<sup>62</sup> Gayle, S. 2001 “The Role of MPOs in Management & Operation of Transportation Systems.” *Metropolitan Transportation Management & Operations: ITS*. Jan/Feb 2001. Web site: www.ampo.org.

<sup>63</sup> Volpe National Transportation Systems Center 2000. “Operations and Management Activities within the Transportation Planning Process.” Prepared for the U.S. Department of Transportation, Federal Highway Administration, Office of Metropolitan Planning and Programs, March 2000.

<sup>64</sup> Ibid.

<sup>65</sup> The Legislature’s 2001 Transportation Revenue and Program study is to identify additional state revenues necessary to meet state project completion goals, and also innovative transportation financing techniques.

<sup>66</sup> Dempsey, P.S., A. Goetz, and C. Larson 2000.

- helping partner agencies identify potential sources of revenue – as in the CCMPO’s 1998 study of potential regional funding sources for public transit operations.<sup>67</sup>

**ATTACHMENT: FY2002 Appropriations Bill (H.485):**

**Sec 282. LEGISLATIVE AND EXECUTIVE STUDY ON TRANSPORTATION REVENUES AND PROGRAMS**

(a) Legislative findings. The general assembly finds that:

- (1) There are insufficient state and federal revenues to support the number of transportation projects that are currently ready to be constructed and that are planned to be constructed in the next decade.
- (2) It is necessary to establish annual project completion goals for each transportation program in order to determine the level of funding necessary to support the goals of the state’s long-range transportation plan of maintaining the state’s existing infrastructure and making strategic investments.
- (3) The amount of appropriations from the transportation fund to other agencies of state government, other than to the agency of transportation, needs to be reexamined to determine an appropriate level of appropriations.
- (4) A coordinated effort between the legislative and executive branches of government is necessary to craft solutions to this issue.

(b) Summer study working group. A summer study working group, consisting of the secretary of transportation, who shall serve as chair, the commissioner of finance and management, and the members of the joint transportation oversight committee or their designees, shall be convened to study and make recommendations regarding the following:

- (1) Annual project completion goals for each transportation program in the agency of transportation’s budget that support the goals found in the state’s long-range transportation plan of maintaining our existing infrastructure and making strategic investments.
- (2) An appropriate level of funding for each transportation program that achieves the project completion goals established by the working group.
- (3) The amount of state revenues that are necessary to support the project completion goals.
- (4) Identification of additional state revenue sources that may be necessary to achieve project completion goals.
- (5) The appropriate amount of joint transportation oversight committee (JTOC) funds that are appropriated from the transportation fund that better reflects the needs of transportation and state government as a whole, and the criteria that could be utilized in determining when these appropriations are warranted.
- (6) The development of an annual report to the legislature which shall detail the source of federal funds in the agency of transportation’s budget proposal, including the amounts of federal funds from prior federal fiscal years, from the current federal fiscal year and from the following federal fiscal year. The report shall detail each project for which federal fiscal year Statewide Transportation Improvement Program (STIP) funds are included, and shall include STIP totals for program areas.
- (7) The effect that use of federal indirect cost reimbursements has had on the agency’s capital construction program.
- (8) Innovative transportation financing techniques.
- (9) The capacity of the state to issue debt for transportation construction without affecting the state’s current credit rating.

(c) Report. The summer study working group shall issue a report which shall contain its findings and recommendations to the members of the joint transportation oversight committee, the members of the senate committees on transportation, finance and appropriations, and the members of the house committees on transportation, ways and means and appropriations, no later than November 1, 2001.

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<sup>67</sup> CCMPO 1998. “Public Transit Operations Funding in Chittenden County: Current Conditions and Potential Opportunities.” September 1998.

(d) Staffing. The agency of transportation, office of finance and management, joint fiscal office and legislative council shall provide support staff for the study group.

(e) Legislative members attending meetings shall be entitled to per diem and expenses as provided for in 2 V.S.A. § 406.