



# Research and Recommendations for Locally Administered Projects and Devolution

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# EXECUTIVE SUMMARY

## A. INTRODUCTION

The consultant conducted research regarding the potential benefits and/or negative impacts on the jurisdictions in the George Washington Region involving Locally Administered Projects (LAP) (i.e., projects traditionally overseen by VDOT) and the Devolution (i.e., assumption to some extent of VDOT responsibilities) of the secondary road system. There is a considerable body of information on both subjects, as well as activities in the Commonwealth that address many of the same matters.

The consultant met with key personnel on the FAMPO staff and VDOT as well as counties and the city of Fredericksburg to conduct this work, including a progress report to the FAMPO Technical Advisory Committee.

## B. BACKGROUND

Both in the case of LAP and Devolution, the Virginia General Assembly and the Administration, through VDOT, are genuinely interested in encouraging local jurisdictions to do more with regard to the state highway system.

Looking at both LAP and Devolution, it is necessary to look at what are the issues that would lead local jurisdictions to decide to assume greater responsibilities that they already have with regard to projects and road system responsibilities.

## C. LOCALLY ADMINISTERED PROJECTS (LAP)

The potential benefits to FAMPO and its constituent jurisdictions of undertaking more locally administered projects include:

- Establishing higher funding and implementation priorities for selected projects that are important to the region cities and counties;
- Developing better local support for a needed project, potentially leading to a less contentious project development process;
- Expediting the projects, both in terms of beginning the project and completing the project;
- Possibly reducing and/or controlling the cost of the project by reducing development time, eliminating the “stop/start” phenomenon of pending projects in the VDOT system and/or reduce project scope or scale, and
- Influencing the design elements of the project, for example, design speed, amenities, cross-section, lightening, traffic signals, etc.

VDOT is clearly committed to working with local jurisdictions to jointly implement transportation projects within the Commonwealth. In February 2008, VDOT published a Departmental Memorandum that unequivocally commits the Department to cooperation with local governments to deliver project.

## D. LAP RECOMMENDATION

George Washington Region local governments ought to consider undertaking Locally Administered Projects (LAP) in cooperation with VDOT. Based on the determination by the county that there are projects on the Six-Year Plan that are

LAP candidates, the counties should undertake a joint process with VDOT that evaluates the project and proceeds as indicated by the results of each phase, as depicted in the flow chart in the body of the report.

This approach should provide the best of both worlds to the cities and counties of the George Washington Region – input and control on the schedule and elements of the project that are most important to them – while VDOT delivers the elements of the project that it is best capable of completing. The situation will not be perfect; it requires close cooperation and communication between the local jurisdiction and VDOT. However, the attitudes shown by all parties in this research indicate that the recommended system should work, but the concept should be further tested with real projects.

## E. DEVOLUTION

With regard to Devolution, Virginia, along with just a handful of other states, has responsibility for the secondary road system. In the vast majority of other states, local jurisdictions take care of these roads, with the state DOT being responsible for the primary system. The General Assembly of the Commonwealth of Virginia has explicitly encouraged local governments to consider devolution of the secondary road system to their oversight. In 2001, the Virginia General Assembly enacted the “Devolution Statute” (§33.1-84.1 of the *Code of Virginia*), which provides that the Board of Supervisors of any county that wishes to assume responsibility for any portion of the State secondary system of highways within such county’s boundaries, may do so. However, it appears that only James City County is moving towards Maintenance and Construction devolution over 24 months beginning in July 2008.

Stafford County was one of two jurisdictions chosen for close analysis as to the implications of devolution. VDOT’s consultant conducted an exhaustive study of the details and specifics of devolution. Upon review and reflection of Stafford County staff identified many problems associated with the devolution of the secondary road system to the County. The bottom line was that, despite a very detailed study, there were many unanswered questions. Moreover, the inevitable conclusion of the work is that the County would assume responsibilities without adequate current funding and certainly without the guarantee of adequate funding in the future. This position has been reinforced by information from VDOT staff who reported that Henrico and Arlington Counties, the two jurisdictions that opted into devolution in 1932, currently spend tens of millions of dollars above the funding they received from the Commonwealth for the maintenance of the secondary road system in their counties.

## F. DEVOLUTION RECOMMENDATION

Based on the information contained in the VDOT Devolution Study, particularly as it applies to Stafford County and based on other research and discussions with key individuals, it appears clear there is far more risk than benefit in considering devolution of the secondary road systems in the George Washington Region. Therefore, under the existing circumstances, it is recommended that devolution not be considered at this time. Potentially beneficial aspects that may derive from devolution can be accomplished through cooperation with VDOT similar to the steps discussed in the Locally Administered Projects portion of this report.

# I. LOCALLY ADMINISTERED PROJECTS (LAP)

## A. INTRODUCTION

Local governments across the country are interested in greater participation in state highway system transportation projects. In many cases, the basis for cooperation, both institutionally and legally, does not exist to accomplish the goals desired by the local government. But the situation is different in the Commonwealth of Virginia. First, almost the entire secondary highway system is the responsibility of the Commonwealth of Virginia. Second, VDOT seems truly willing to work with local governments to implement projects on the secondary system.

## B. POTENTIAL BENEFITS FROM LOCALLY ADMINISTERED PROJECTS

With regard to LAP, the potential benefits to FAMPO and its constituent jurisdictions of undertaking more locally administered projects include:

- Establishing higher funding and implementation priorities for selected projects that are important to the region's local governments; and
- Developing better local support for a needed project, potentially leading a less contentious project development process; and
- Expediting the projects, both in terms of beginning the project and completing the project; and
- Possibility reducing and/or controlling the cost of the project by reducing development time, eliminating the "start/stop" phenomenon of pending projects in the VDOT system and/or reduce project scope and scale; and
- Influencing the design elements of the project, for example, design speed, amenities, cross-sections, lightening, traffic signals, etc.

Many of these objectives are interrelated and mutually support. In addition, choosing to advance projects and then taking the necessary steps to make construction occur focuses the resources of all the parties involved on a single objective. This leads to better cooperation and a model for future projects.

In order to be able to take advantage of the benefits of increasing the number of Locally Administered Projects, the local jurisdictions of the George Washington Region need to plan for their ability to meet these increased obligations. There may be a need for professional staff people and consultants for the local governments to acquire the expertise and resources to accomplish the tasks necessary to advance those projects they determine are the most important to them.

## C. VDOT AND LOCALLY ADMINISTERED PROJECTS

### VDOT POLICY

The Virginia Department of Transportation is committed to working with local jurisdictions to jointly implement transportation projects within the Commonwealth. In February 2008, VDOT issued a Department Policy Memorandum (DPM8-7) entitled "Delivery of Locally Administered Programs and Projects". A copy of the DPM is attached as Appendix A.

The essence of the policy is to acknowledge the transit of VDOT from a solely implementing agency into an oversight and stewardship agency with regard to projects on its system to be administered by local jurisdictions.

The DPM is a succinct document that emphasizes the specifics of the policy while articulating the underlying philosophy of VDOT. It points out the various requirements and challenges of this change in policy, but remains clearly committed to the philosophy that VDOT encourages the expansion of locally administered projects and stands ready to assist local governments in developing and building these projects. This policy memorandum has significant impressions for the constituent jurisdictions of FAMPO, the FAMPO Board and the FAMPO staff.

The message is clear – VDOT encourages local governments to joint with VDOT to advance projects on the State highway system. This tone of cooperation appears to be genuine and to extend from the top to the bottom of the VDOT organization

## **VDOT ISSUES**

Attached, as Appendix B, is an excerpt from the VDOT website that describes the various requirements for localities in Virginia to administer projects. The key elements of this list are additional federal requirements and Commonwealth requirements:

- State Environment Review Process (SERP)
- Federal auditing requirements for local governments that use more than \$500,000 per year from all sources.
- VDOT/Commonwealth Transportation Board (CTB) concurrence on project awards, jurisdiction of VDOT Commissioner or the CTB based on the amount of funding for the project.

Attached, as Appendix C, is a copy of VDOT's "Request to Administer" form which shows the information and approval process necessary for a local government to request that VDOT allow it to administer a project on the secondary highway system. The form allows the local government to select the phase of the project to administer and also shows the hierarchy of VDOT in the process.

## **D. FEDERAL REGULATIONS AFFECTING LOCALLY ADMINISTERED PROJECTS**

Administering publicly funded transportation projects is a complicated business. It is made more complicated if the assumption is made that federal funds will be used in the course of the project. This is a necessary assumption in Virginia, since the unpredictability of state funding means that every project must be assumed to be "federalized", that is, subject to all the requirements for federal-aid transportation projects, as administered by the Federal Highway Administration (FHWA).

The FHWA developed its procedures to make the National Environmental Policy Act (NEPA) process an integral part of its highway project planning process. The FWHA NEPA process is an "umbrella" process focusing on integrating numerous requirements of federal laws, regulations and agencies into decision-making and analysis related to projects. The NEPA document required for the project, discussed below, addresses all the federal requirements, not just the NEPA ones, so that one process meets the totality of the federal requirements.

Federal laws and regulations included in this category include (among others):

- National Environmental Policy Act (NEPA)

- Section 404 of the Clean Water Act
- Farmland Protection Policy
- Endangered Species Act
- Title VI of the 1964 Civil Rights Act
- Uniform Relocation Assistance and Land Acquisition Policies Act

The implementation of the National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, that is used for the acquisition of real estate and right-of-way (ROW) for transportation projects, require unique skill sets that many or most local governments do not have and are difficult to either develop internally or engage with consulting firms. VDOT has the staff and experience to meet these needs and stands ready to assist and work cooperatively with local governments.

These two federal laws, taken with the resulting federal regulations, are the most important and complex requirements for developing and advancing transportation projects. In addition, the body of federal laws and regulations that deals with civil rights, non-discrimination and procurement issues are also complex and important and deserve more detailed discussion.

## **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

The NEPA process regarding transportation involves evaluating the impacts of the proposed projects on the environment, including wetlands, air quality, wildlife habitat, historic resources, parks and many other issues impacted by the projects.

The law and rules prescribe a specific process, including public comments, and involvement with relevant state and federal resource agencies before the appropriate environmental documents can be approved and thus have the project advance towards construction.

Each project is different, and the potential requirements vary greatly depending on the nature of the project. A simple project with little impact may only need a document called Categorical Exclusion (CE or CATEX) that means that the project will have almost no impact on the environment as defined by NEPA. A CE is usually a simple document that can be compiled quickly and inexpensively so the project can move ahead. At the other end of the spectrum is an Environmental Impact Statement (EIS) that is required of project that will have a significant impact on the environment. The EIS process is open-ended, sometimes taking years and costing many millions of dollars. There are other documents along this continuum whose complexity depends directly on the nature of the project.

Part of the beneficial work that can be accomplished by the jurisdictions, FAMPO staff and VDOT staff, working together, is to assess the NEPA-related environmental implications for each potential LAP project so the time and cost of the NEPA documents can be factored in the decision-making process as projects are selected. Non-compliance with NEPA is a fatal flaw for advancing a project and is the source of much of the litigation surrounding transportation projects. In this case, truly, an ounce of prevention is worth a pound of cure.

## **UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT**

This body of law and regulations, referred to as the Uniform Relocation Act or (URA) deals with the requirement on public entities to acquire land and other rights associated with federal projects, in this case, transportation projects. This also includes arrangements for relocation of utilities as part of the project's construction. The rights of the persons and other



entities from whom property or rights will be obtained are spelled out in great detail. The law and regulations describe the various notice requirements, appraisal processes and other related activities that are necessary for federal funds to be used to carry out these acquisitions. The purpose here is not to describe the requirements in detail, but to point out the complexity and precision of the steps that makes this activity an appropriate task for VDOT to accomplish, with input and assistance from FAMPO jurisdictions as part of the overall recommended LAP process described herein.

## **CIVIL RIGHTS/NON-DISCRIMINATION REQUIREMENTS**

Title VI of the 1964 Civil Rights Act and related statutes require that no person because of race, color or national origin be excluded from participation in, denied benefits of or subjected to discrimination under any program receiving financial assistance. It is FHWA policy to assure that non-discrimination is an integral part of the project development process. While most of the projects that would be built under the LAP program are of relatively minor scale, the requirements of this portion of federal obligations must be dealt with in each case.

## **SUMMARY OF FEDERAL REGULATORY IMPLICATIONS**

The federal and state requirements described above show the inevitable complexity of federal-aid transportation projects. Because of the nature of the federal reimbursement policy there is little flexibility in meeting the requirements for the projects. Therefore, local governments in the George Washington Region, should consider a strategy and action plan to administer local VDOT projects. The approach that is developed should be designed so as to achieve the results they desire – to influence the key elements of federal/state transportation projects – without having to recreate the staff and expertise in place with VDOT for the phases of the projects that depend upon meeting requirements.

### **E. GEORGE WASHINGTON REGION EXAMPLE OF LOCALLY ADMINISTERED PROJECTS**

Two jurisdictions within the FAMPO region provide examples of useful approaches to Locally Administered Projects (LAP) – Spotsylvania County and the City of Fredericksburg. Both situations contain successful approaches to locally administered projects in the region.

#### **SPOTSYLVANIA COUNTY**

In 2005, sixty-one percent (61%) of the voters of Spotsylvania County passed the following item:

*Shall the County of Spotsylvania, Virginia contract a debt and issue its General Obligation Public Improvement Bonds in the maximum amount of \$144,046,859 to provide funds, together with other available funds, to undertake a program of Capital Improvement Projects for the improvement of all or portions of the following public roads: Harrison Road, Bragg Road, Gordon Road, Hood Drive, Jones Powell Road, Leavels Road, Lee Hill School Drive, Massaponax Church Road, Mine road, Smith Station Road, Tally Road, Hams Ford Road, Sunnybrooke Farm Road, and other public roads, and to acquire land and undertake a Capital Improvement Project for the construction of Spotsylvania Station, a passenger rail station to serve the Spotsylvania Line of the Virginia Railway Express.*

*State funding for roads is insufficient and many important secondary road projects have been put on hold. This bond referendum will fully fund all the projects on the Spotsylvania County Secondary Road Six-Year Construction Program and associated priority list.*

In response to this action, Spotsylvania County decided to expand its professional staff and undertake projects on the secondary system, establishing a Capital Projects Management group. This decision and the resulting activities by the County occurred before the VDOT Department Policy Memorandum 8-7 regarding Delivery of Locally Administered Programs and Projects, so the initial circumstances were somewhat different from what would be the situation today, in that the policy of VDOT was less clear regarding the respective roles of VDOT and local governments.

Nonetheless, Spotsylvania County has worked with VDOT, not without some complications, to advance projects that are important to the County. Consistent with discussions and recommendations contained elsewhere in this report, the County chose a project to widen a one-mile segment of Route 3 to six lanes from four lanes from Chewing Lane/Rutherford Drive to Gordon Road. This project had been pending for several years on the VDOT six-year program and was a good candidate for an innovative approach. The project had lingered on many lists and had been the victim of the “stop/start” process that sometimes occurs in State DOT’s when funding, policies, priorities and even regulatory requirements change, leading to necessary redesigns of the same project if it is not developed and advanced in a timely manner. This is not a criticism of VDOT, but a fact of life for public entities in dynamic times. Unfortunately, this process sometimes results in excessive design costs and inconsistent design objectives.

## **CITY OF FREDERICKSBURG**

The City of Fredericksburg is also an example of Locally Administered Projects in the George Washington Region. The City, unlike the counties, has control and responsibility for the secondary highway system within its jurisdiction and routinely maintains and improves the system as necessary. However, the bridges on the secondary highway systems and the higher classified roads on the VDOT system are of interest to the City. City staff has worked with VDOT to identify projects that the City can undertake to meet local priorities, including bridge rehabilitation projects, traffic signal upgrades and some categories of projects on collectors and arterials.

The process by which the projects are identified and the cooperation with VDOT is structured similar to the process recommended in this report, but less formal. The longer history of cooperation and the size, depth and experience of the City staff make the definition of responsibilities simpler and the close coordination routine.

The City of Fredericksburg is an example of a mature relationship with VDOT regarding LAP and should be a resource to the counties as they determine their approach to LAP.

## II. DEVOLUTION

### A. DEVOLUTION BACKGROUND

#### Legislative History (From Devolution Handbook)

*The Byrd Road Act, enacted by the Virginia General Assembly in 1932, established the secondary system of State highways, but granted counties the option to maintain their own road systems and receive annual State funding to pay for these activities. Four counties elected to opt out of the State system at that time – Henrico, Arlington, Warwick, and Nottoway. Of these, Warwick became Warwick City and merged with the City of Newport News, and Nottoway County petitioned for re-admittance to the secondary system of State highways. From time to time, some counties have discussed assuming secondary system responsibility and Fairfax County conducted a fairly extensive study on this issue in the early 1990s. In 2001, the Virginia General Assembly enacted the “Devolution Statue” (§33.1-84.1 of the Code of Virginia), which provides that the Board of Supervisors of any county that wishes to assume responsibility for any portion of the State secondary system of highways within such county’s boundaries for the purposes of planning, constructing, maintaining, and operating such highways, may request that the Commonwealth of Transportation Commissioner enter into and implement an agreement to do so. **No County has implemented this provision since it was enacted.** (Emphasis added).*

*(Note: The Board of Supervisors of James City County has taken preliminary steps to assume maintenance and construction responsibilities for the secondary road system on July 1, 2010, But the decisions is not yet final.)*

As described above, the history of the Commonwealth of Virginia assuming the responsibility for virtually all the state’s roads took place in the context of the Great Depression in 1932. The counties of Virginia were financially unable to maintain their highway system so the state undertook the responsibility and, except for two counties that opted out at that time, the system has remained the same for 76 years.

### B. DEVOLUTION CONTEXT

Control of the secondary road system by local jurisdictions is the norm throughout most of the country. Typically, a state department of transportation (DOT) will be responsible for the more important classifications of highways (interstates, principal arterials, and major collectors) while local jurisdictions – cities and counties will be responsible for the secondary and local road systems. There is usually some form of financial support provided to localities based on classifications and lane miles. There are different ways to handle the issue of the control of higher classified roads that pass through local jurisdictions, generally involving some form of structured cooperation and communication between the state DOT and the local governments.

The Virginia context is different from most states due to the action of the Commonwealth in 1932, as described above. In most other states, the local jurisdiction has built up the physical and personnel infrastructure to conduct the various operations that are necessary to maintain the secondary road system. Since this is not the case in Virginia, the decision to undertake responsibility for the secondary road system from VDOT by a county is complex and significant.

The more obvious reasons that a jurisdiction might take over the responsibility for the secondary road system are to improve the operation of the system and have more control over projects and priorities. There is not scenario that would save the counties financially by taking over the secondary road system in their jurisdiction. In fact, Arlington and Henrico

Counties expend considerable more than provided by the Commonwealth to maintain and operate the secondary road system in their counties.

Potential downsides of this action are:

- incur a permanent financial obligation in excess of the costs provided for the system,
- incur an initial start-up expense for facilities and equipment that would not be fully funded

This report will examine these issues and make recommendations for an optimal course of action in the light of devolution options.

### C. VDOT STUDY

VDOT undertook an effort to help counties assess the implications of assuming responsibilities for the secondary road system by engaging a consultant, Transtech Management, Inc., to conduct a study entitled: *Feasibility Analysis for Assumption of the Secondary Road System of State Highways by Counties of the Commonwealth of Virginia*. The products of the study were three:

- Devolution Guidebook – a resource guidebook that defines different secondary system options, identifies a wide range of issues counties may wish to evaluate in considering and planning for assumption of secondary system responsibilities, and provides a devolution “road map”;
- Feasibility Model for Secondary System Assumption by Virginia Counties (Secondary System Analysis Model) – a tool for estimating costs and institutional needs (staffing, equipment, and facility needs) of assuming different sets of secondary system responsibilities for individual counties, and
- Prototype Analysis – detailed analysis of secondary system assumption options and implication for the two counties that participated in the Study (James City and Stafford County), to include county-specific reports.

### D. STAFFORD COUNTY DEVOLUTION REPORT

The following is a synthesis and excerpt from the Stafford County Devolution Analysis Report. It describes the issues and the process necessary to determine the feasibility and desirability of assuming responsibilities for the secondary road system in Stafford County. The issues and principles are relevant for the entire George Washington Region.

#### DEVOLUTION OPTIONS

Based on the Devolution Statute, Stafford County may assume all or a portion of the responsibilities associated with its entire secondary system as follows:

- Maintenance only;
- Construction only;
- Maintenance and construction; and
- Maintenance, construction, and operations (full devolution and operational responsibility, similar to the arrangements currently in place for Henrico and Arlington Counties.

The four devolution options offer varying degrees of responsibility and control, but also come with corresponding levels of program delivery effort, administrative implications, and liability. The following are general descriptions of these options and their implications/requirements. The actual scope and terms of Stafford County's secondary road responsibilities will be determined through a negotiated memorandum of understanding (MOU) between VDOT and the Stafford County Board of Supervisors and an executed "devolution agreement" in accordance with the Devolution Statute.

- Maintenance Only

Stafford County may elect to assume responsibilities for just the maintenance of the secondary system within its jurisdiction. By statute (Section 33.1-23.02 of the *Code of Virginia*), maintenance is defined as including ordinary maintenance (activities to preserve roadway structures and facilities), maintenance replacement (activities to restore roadway structures and facilities to their originally constructed condition), and any other categories of maintenance which may be designated by the VDOT Commissioner.

Under the *maintenance only* option, Stafford County would be accountable for all maintenance activities related to the secondary system in the County, but would not have responsibilities for the construction program or operations of the secondary system. Actual ownership of the system would remain with VDOT. The following is a summary of the primary activities Stafford County would need to perform as part of a secondary system maintenance program:

- Vegetation control (mowing, brush cutting, etc.);
- Removal of roadside hazards;
- Surface repairs and resurfacing;
- Sign repair and replacement;
- Traffic control device maintenance and replacement (except traffic signals);<sup>2</sup>
- Shoulder maintenance;
- Guardrail repair/replacement;
- Ditch and drainage cleaning;
- Pavement marking repair/replacement;
- Roadside cleaning (removal of dead animals and litter);
- Snow and ice control;
- Landscaping;
- Bridge inspection, repair and rehabilitation;
- Receiving and responding to customer calls; and
- Emergency/incident response.

Key policy considerations and administrative functions associated with the *maintenance only* devolution option include the following:

- **Planning, Programming, and Scheduling** - Stafford County would have full control to determine maintenance priorities, allocate maintenance funding to different maintenance activities, and schedule recurring and non-recurring maintenance work.
- **Permitting** – since VDOT would maintain ownership of the system under this scenario, all permitting responsibilities associated with the system would remain with VDOT.
- **Standards** – Stafford County would need to maintain secondary roads in accordance with VDOT standards or VDOT approved local standards for road maintenance and in accordance with federal standards for bridge maintenance.

- **Project/Program Delivery** – requirements for how Stafford County’s maintenance activities would need to be administered would be tied to the source of funds. Thus, for state-funded and federally-funded activities, the County would still need to comply with all applicable Virginia and-or federal laws and regulations relating to eligible expenses, procurement, environmental review, civil rights, etc.
- **Reporting** – audit and reporting requirements would be tied to the source of funds. Similar to other localities receiving quarterly payments, Stafford County would need to include information on the use of all funds in their annual audits. This information would subsequently be reported to VDOT on an annual basis. For federal funds, the County would need to comply with the reporting requirements described in the Office of Management and Budget (OMB) Circular A-133. Additional reporting may be required to meet VDOT’s oversight requirements.
- **Public Outreach** – Stafford County would be responsible for receiving and responding to public comments and complaints related to secondary system maintenance activities.
- **Funding** – Stafford County would receive annual maintenance allocations from VDOT based on the work assumed. Those allocations would be based on the same approach identified in §33.1-23.5:1 of the *Code of Virginia* for counties which elect to assume responsibility for their secondary roads after 1986 and would be defined in the terms of the County’s devolution agreement and MOU with VDOT. Payments from VDOT would be provided on a quarterly basis.
- **Liability** – Stafford County would assume responsibility for maintenance-related liabilities (e.g., tort claims tied to work zone incidents) for work performed by or on behalf of the County and share other secondary system liabilities based on the terms of the devolution agreement and MOU.

## CONSTRUCTION ONLY

Stafford County may elect to assume responsibilities for only construction activities on its secondary system. For purposes of devolution, “construction” is defined as the planning, design, and construction of projects that add new capacity, completely replace existing facilities, or significantly improve the functionality of existing facilities. It also may include selected countywide, operations-related functions that are funded through secondary construction allocations, such as private entrance pipe installation.

Under the *construction only* option, Stafford County would be responsible for construction activities related to the secondary system based on the devolution agreement and MOU but would have no responsibilities for maintenance or operations of the secondary system, and ownership of the system would remain with VDOT. The following is a summary of the primary activities Stafford County would need to or could perform as part of a *construction only* devolution initiative:

### Mandatory Activities:

- Planning/Six-Year Plan development;
- Environmental studies and permits;
- Public hearings;
- Design;
- Right-of-way acquisition, utilities, and permits;
- Project letting;
- General project management;
- Environmental inspection; and

- Construction, engineering, and inspection (CEI).

Optional Activities (Countywide items currently funded from construction funds):

- Private entrance pipe installations;
- Rural additions;
- Traffic calming;
- Traffic services; and
- Incidental engineering and surveying.

If Stafford County were to assume construction responsibilities, it would need to work closely with the residency if it wants VDOT to perform some of the optional county-wide items. This discussion should include VDOT's availability/capacity to perform the work and the funding to address those activities. If Stafford County were to take over maintenance and construction activities, the optional activities also should be assumed by the County.

Key policy considerations and administrative functions associated with the *construction only* devolution option include the following:

- **Planning, Programming, and Scheduling** – responsibility for developing and programming County projects in the Secondary Six-Year Plan (SSYP) would continue to be shared between Stafford county and VDOT. The County would have full responsibility for the prioritization and scheduling of all construction projects and would continue to coordinate with the Fredericksburg Metropolitan Planning Organization (MPO) to incorporate projects into the FAMPO Transportation Improvement Program (TIP). Since a significant portion of secondary construction allocations is currently comprised of federal funds, Stafford County would need to closely monitor the obligation of federal funds and coordinate through VDOT to receive federal authorization and changes in the obligation schedule (i.e., the State Transportation Improvement Program (STIP).
- **Permitting** – since VDOT would maintain ownership of the system under this scenario, all permitting responsibilities associated with the system would remain with VDOT.
- **Standards** – design standards for construction projects would be tied to the source of funds, the category of a roadway and maintenance responsibility. Federally-funded projects on National Highway System (NHS) routes would need to conform to VDOT design standards, which exceed American Association of State Highway and Transportation Officials (AASHTO) standards. Federally-funded projects on non-NHS routes and state or locally-funded projects (on non-federal routes) would need to conform to VDOT standards, AASHTO standards, or other standards that are developed by the County and approved by VDOT.
- **Reporting** – financial reporting requirements would be tied to the source of funds. For State construction funds, Stafford County would need to submit an annual audited statement accounting for the use of state funding. For federal funds, the County would need to comply with the reporting requirements of OMB Circular A-133. Additional reporting may be required to meet VDOT's oversight requirements.
- **Public Outreach** – Stafford County would be responsible for complying with all applicable federal and state public outreach and review requirements.
- **Funding** – the overall secondary construction allocation for Stafford County (based on FY07 SSYP, approximately \$2.3 million for numbered projects and \$0.2 million for countywide cost centers per

year) would be unchanged by devolution. The actual quarterly payments the County would receive from VDOT would include the state portion of the secondary allocation less amounts for countywide construction functions that are not assumed or for projects that will be completed by VDOT). Some federal funds are only provided as a reimbursement of qualifying expenditures, the federal portion of the County's construction allocation would be provided on a project-specific, reimbursement basis. Stafford County would need to follow existing processes for working with the Fredericksburg MPO to identify opportunities and apply for federal funds that are allocated through MPOs (e.g., Congestion Mitigation and Air Quality (CMAQ) or Regional Surface Transportation Program (RSTP) funds).

- **Liability** – Stafford County would assume liability as a result of actual construction work performed by or for the County, and VDOT would retain general liability for the system. VDOT will assume liabilities for a highway once construction is complete and the project is accepted by the Department.

## MAINTENANCE AND CONSTRUCTION

Stafford County may elect to assume responsibilities for maintenance and construction activities on the secondary system within its jurisdiction. Under this option, all of the responsibilities, policy considerations and administrative functions listed above in the *maintenance only* and *construction only* sections would apply. Stafford County would have no operational responsibility for the secondary system and ownership of the system would remain with VDOT.

## MAINTENANCE, CONSTRUCTION, AND OPERATIONS (ALL FUNCTIONS)

Stafford County may elect to assume responsibilities for maintenance, operations, and construction activities on the secondary system within its jurisdiction. By choosing this option, it is assumed the County wants to assume full responsibility of all secondary system assets. Under this scenario, Stafford County would assume all of the responsibilities for maintenance and construction listed above, as well as take over all operational functions (e.g., traffic engineering, land development, and permitting) and gain control of the facilities (e.g., conducting plan reviews, performing inspections, and issuing permits). VDOT's oversight role would be much less than with the other devolution options.

Key policy considerations and administrative functions associated with the *maintenance, construction, and operations* or "*all functions*" devolution option include the following:

- **Planning, Programming, and Scheduling** – Stafford County would have full responsibility for prioritizing, programming, and scheduling the use of all maintenance, operations, and construction funds. The County would still need to coordinate with the Fredericksburg MPO and follow federally-mandated planning process for the use of federal funds, as well as coordinate with VDOT for the authorization of federal funds.
- **Permitting** – Stafford County would assume all permitting responsibilities, including issuance and enforcement of utility permits, entrance permits, and "subdivision street connection" permits.
- **Standards** – design and construction standards would remain tied to the source of funds and the type of facility. Federally-funded projects on NHS routes would need to conform to VDOT standards, which exceed AASHTO standards, or other standards that are developed by the County and approved by VDOT.
- **Project/Program Delivery** – the same conditions as with the maintenance and construction options would apply, with requirements tied to the source of funds. Thus, for State- or federally-funded



projects and activities, Stafford County would need to comply with all applicable Virginia and/or federal laws and regulations relating to eligible expenses, public involvement, procurement, environmental review, civil rights, etc.

- **Reporting** – even with full operational responsibility, financial reporting requirements would remain tied to the source of funds. Stafford County would submit an annual audited statement accounting for the use of all funding – this information would subsequently be reported to VDOT in accordance with the *Code of Virginia* on an annual basis. For federal funds, the County would need to comply with reporting requirements outlined in OMB Circular A-133. Additional reporting may be required to meet VDOT’s oversight requirements.
- **Public Outreach** – Stafford County would be responsible for all public outreach activities associated with the secondary system. This would include receiving and responding to citizen and stakeholder issues and complaints associated with the maintenance and operations of the system, as well as complying with all applicable State and federal public outreach and review requirements associated with the development and implementation of construction projects and programs.
- **Funding** – Stafford County would receive annual allocations from VDOT for maintenance and operations based on the established methodology and terms of the devolution agreement and/or MOU, with funding provided on a quarterly basis. Funding for the construction would be provided as described in the *construction only* section above.
- **Liability** – Stafford County would assume all liabilities associated with the secondary system within jurisdiction.

## E. STAFFORD COUNTY RESPONSE TO THE DEVOLUTION STUDY

The Stafford County Transportation Commission appointed a subcommittee on Devolution of Roads from VDOT. The subcommittee reported to the Commission on March 8, 2007. Their concerns were as follows:

- Right-of-Way (WOW) – while the two counties that retained control of their secondary road system in 1932 have a standard ROW, Stafford County does not. Stafford County would carry an unknown cost and create undefined issues.
- Existing parts of the secondary road system in the county do not currently meet design and operation standards. The subcommittee felt that all secondary roads should meet full standards before the County should consider assuming control.
- The subcommittee also expressed concerns about the state of stormwater management in the entire secondary road system. This is an evolving issue with much greater constraints and requirements than in the past. Once again, the subcommittee felt this issue should be fully examined with an objective of full compliance with all state and federal requirements before any devolution might take place.
- The subcommittee saw no benefit in having Stafford County assume the “maintenance only” devolution option since VDOT performs as well as possible given their own funding constraints. The subcommittee did not feel the County could do a better job with the same funding. Despite a guarantee of equivalent VDOT funding to the County for maintenance, there appeared to be no benefits to the County taxpayers but rather a potential liability since future funding and road conditions are not possible to predict.
- The subcommittee also noted that VDOT would retain approval of designs and other project details, even if devolution took place, begging the question – “Why proceed with devolution without full authority and responsibility?”

- The subcommittee recommended “no” on most devolution options. The only possibly attractive option was the “Construction Only” option that is currently underway in some form using the two percent (2%) tax. County staff, working with VDOT, undertakes small projects dividing responsibilities with VDOT. Adopting a comprehensive and aggressive policy with regard to locally administered projects may accomplish many of the objectives of “Construction Only” devolution with negative aspects.

## F. SUMMARY

Stafford County was one of two jurisdictions chosen for close analysis as to the implications of devolution. VDOT’s consultant conducted an exhaustive study of the details and specifics of devolution. Upon review and reflection, the Stafford County staff identified many problems associated with the devolution of the secondary road system to the County. The bottom line was that, despite a very detailed study, there were many unanswered questions. Moreover, the inevitable conclusion of the work is that the County would assume responsibilities without adequate current funding and certainly without the guarantee of adequate funding in the future. **This position has been reinforced by information from VDOT staff who reported that Henrico and Arlington Counties, the two jurisdictions that opted into devolution in 1932, currently spend tens of millions of dollars above the funding they receive from the Commonwealth for the maintenance of the secondary road system in their counties.**

## G. DEVOLUTION RECOMMENDATION

Based on the information contained in the VDOT Devolution Study, particularly as it applies to Stafford County and based on other research and discussions with key individuals, it appears clear there is far more risk than benefit in considering devolution of the secondary road systems in the George Washington Region.

Key Reasons:

- Future funding for the secondary system from VDOT and/or the Commonwealth will be subject to the same forces that VDOT is currently subject to – a function of the economic and political environment that may not produce adequate funding.
- There may be unresolved issues regarding the extent and ownership of the Right-of-Way for the secondary road system, a situation that must be resolved before devolution can be considered.
- Before any consideration of devolution, the entire secondary road system must be brought up to current standards – pavement condition, drainage, signals, structures, etc.
- Significant capital and personnel expenditures must be made prior to undertaking devolution for garages and other facilities, necessary equipment, staff and other personnel.

**Therefore, under the existing conditions, it is recommended that devolution not be considered at this time. Potentially beneficial aspects that may derive from devolution can be accomplished through cooperation with VDOT similar to the steps discussed in the Locally Administered Projects (LAP) portions of this report.**

### III. ACTION PLANS/NEXT STEPS

#### A. LOCALLY ADMINISTERED PROJECTS (LAP)

Each local government in the George Washington Region will have a different perspective on locally administered projects depending on staff availability and expertise, as well as the existence of candidate projects on the VDOT Six-Year Plan. FAMPO staff can assist local governments, if necessary, to begin this process.

A first step for each government is to engage the VDOT District staff and examine the secondary road system projects on the Six-Year Plan in their county and decide whether projects are of sufficient priority and importance to begin the steps defined in the flow chart below.

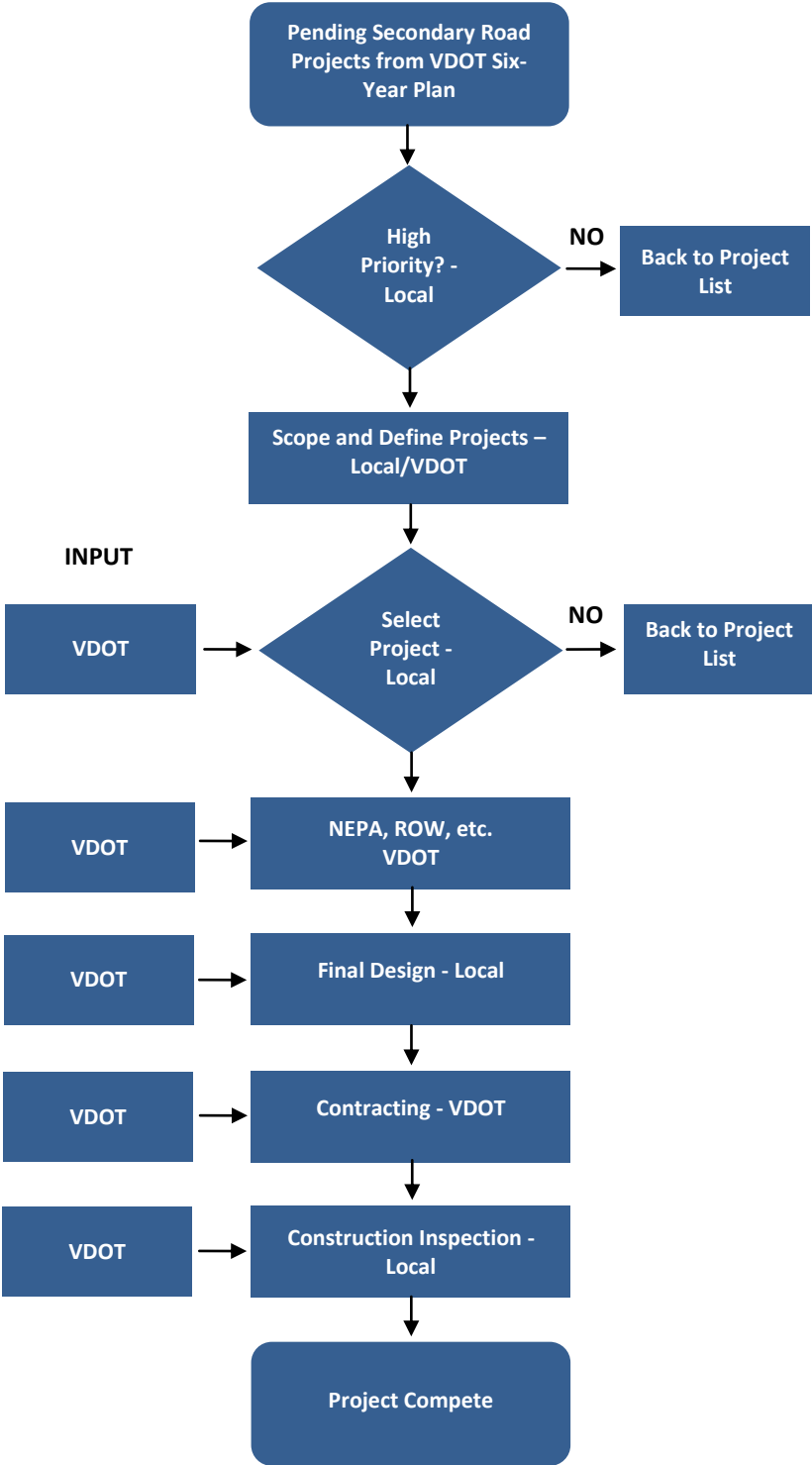
Based on this research and discussions with key players, it appears the best way for local governments to approach the expansion of locally administered projects in the George Washington Region is to work with VDOT to divide responsibilities such that:

- Scoping and definition of projects are accomplished by the counties and city, with VDOT participation and input;
- Preparation of environmental documents and ROW acquisition and/or utility relocations are accomplished by VDOT, in cooperation with the local jurisdictions;
- Final delivery the project, overseeing final design, is done by the local government if they choose to;
- Contracting for the construction of the project in most cases should be done through VDOT to be sure federal procurement rules are adhered to; and
- Construction inspection will be contracted and administered by the local government, subject to cooperation with VDOT.

These are general recommendations that will apply to most projects. Each project is unique, so the precise division of labor and responsibility may change depending on the individual circumstances of the project. For example, some projects may be much further along in design or development than others, meaning that VDOT may have overseen most of the design work.

The following Flow Chart, as Figure 1, shows the sequence of activities and the roles of VDOT and the local government. This chart may imply more separation that will actually occur in the process, since cooperation between local governments and VDOT will take place in each step. The chart defines the primary responsibility of each step in the process. While the steps of development for the project are clearly defined for the purposes of the chart, the activities also overlap in many cases. The point of the chart is to provide a graphic representation of the process in which the local jurisdictions in the George Washington Region can accomplish their objectives regarding prioritizing, and therefore, implementing projects on the secondary road system in partnership with VDOT. This partnership requires the recognition by both parties of the special expertise and roles for each.

Figure 1 – Processing Candidate Projects for LAP



## B. DEVOLUTION

Based on this research and discussions with key players, it appears that devolution of the secondary highway system from VDOT to the local governments in the George Washington Region is not recommended. Therefore, no next steps are recommended at this time.

## APPENDIX A – VDOT DPM 8-7

### VDOT DEPARTMENT POLICY MEMORANDA (DPM) MANUAL

Date: 02/13/2008  
Approved: *David S. Egan*

DPM Number: 8-7  
Supersedes: None

### **DELIVERY OF LOCALLY ADMINISTERED PROGRAMS AND PROJECTS**

#### **Introduction**

Due to changes in the Virginia Department of Transportation's (VDOT) business philosophy and mandates from the General Assembly, Virginia's transportation program delivery continues to evolve to include increasing roles and responsibilities by local governments. As a result, VDOT's role is expanding beyond the traditional one as an implementing agency with an increased role in oversight and stewardship of the transportation program. To fulfill its oversight and stewardship responsibilities and ensure effective local program delivery, VDOT establishes this policy to provide guidance and the principles for implementation of an agency-wide approach to locally administered programs and projects.

#### **Policy**

VDOT will develop programs and processes that provide local governments the necessary tools to successfully administer transportation programs and that provide consistent requirements so federal and state stewardship and oversight obligations can be met and projects can be implemented in the most efficient and effective manner possible.

#### **VDOT Responsibility**

To implement this policy, VDOT will:

- provide oversight and guidance recognizing that local governments will be responsible for successfully delivering the project or program on time, on budget, with quality workmanship and in accordance with applicable federal and state requirements. VDOT will establish appropriate milestones for review to determine that the locality is on track to meet that responsibility.
- strive to provide local governments with the maximum flexibility in how they administer their own transportation programs, while meeting all federal and state stewardship and oversight obligations. This effort includes accepting locality processes and methods as long as the end results are achieved and requirements are met.
- establish agency stewardship and oversight of local government programs in a consistent approach across Division and District lines through written direction developed under this policy.

*Continued on next page*

## APPENDIX B – VDOT LAP KEY ISSUES

Key things to remember when working on locally administered projects;

- To initiate the agreement process, a locality submits a request to administer (RAT) form to the local residency administrator or urban program manager for VDOT review. Once approved by the Chief Engineer, VDOT will begin to draft the project agreement. Any work a locality seeks reimbursement for should begin after the agreement has been executed. The request to administer form can be found at [http://www.virginiadot.org/business/keys\\_to\\_success.asp](http://www.virginiadot.org/business/keys_to_success.asp)
- State Environmental Review Process (SERP) must be processed by VDOT on all VDOT-funded projects administered by localities, except for those receiving money exclusively through the Enhancement Program. More information on environmental requirements is available at <http://www.virginiadot.org/business/bu-environmentalrequirements.asp>
- The federal USDOT-FHWA Civil Rights provisions must be processed by VDOT on all VDOT-funded projects administered by localities, except for those receiving money exclusively from the state transportation general fund. More information on Civil Rights requirements is available at <https://www.fhwa.dot.gov/civilrights/>
- More information on Civil Rights requirements can be found at <http://www.virginiadot.org/business/local-assistance-civil-rights.asp>
- If a locality utilizes more than \$500,000 from federal sources in a year and administers any federally-funded highway projects, it must comply with the audit requirements of Office of Management and Budget Circular Number A-133 on the White House website.
- If the project utilizes federal funds, the approval and review process it must follow is identical to a state administered federally-funded project. Local Assistance Division has developed a checklist that must be completed by all localities working on federally-funded locally administered projects. The checklist can be modified for state-funded projects and is recommended for all projects. The checklist can be found at [http://www.virginiadot.org/business/resources/LOCALLY\\_ADMINISTERED\\_PROJECT\\_CHECKLIST.pdf](http://www.virginiadot.org/business/resources/LOCALLY_ADMINISTERED_PROJECT_CHECKLIST.pdf)
- For all funding sources except the various access program and the Revenue Sharing Program, the Commonwealth Transportation Board must concur with the project's award for construction if the total amount is over \$2 million (if under \$2 million, the Commissioner may concur in the award). This means that Scheduling and Contracting Division must be able to review the advertising documents (including project estimates) and the locality's proposed award before the first Thursday of the month (so the award may make it to the CTB that month).

# APPENDIX C – VDOT REQUEST TO ADMINISTER FORM

## Request to Administer Project

To: District Office Local Liaison

From:

(Printed Name of Responsible Local Official Issuing Request) (Email Address) (Phone)

Signature (Typed when e-mailed)

By:

Date:

Locality:	Project #:	UPC:
Project Scope (short narrative):		
Local Government Project Delivery Self-evaluation attached: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
Local Responsible Person*	Name:	Phone:
	Email:	
* See Chapter 3.1 of LAP Manual for Responsible Person qualifications		
Phase of project to be administered: <input type="checkbox"/> PE <input type="checkbox"/> RW <input type="checkbox"/> CN <input type="checkbox"/> Other; describe:		
State Funding Source(s):	<input type="checkbox"/> Federal Highway <input type="checkbox"/> State Formula (Urban / Secondary) <input type="checkbox"/> Other (specify):	
Check as applicable:	Project will be pursued through PPTA: <input type="checkbox"/> Project will be administered as Design-Build: <input type="checkbox"/>	
<b>To be completed by District Office</b>		
The project is: <input type="checkbox"/> Tier 1 (provide copy to LAD after District Administrator Approval/Denial) <input type="checkbox"/> Tier 2 (Submit with Self-evaluation to LAD for Chief Engineer Review)		
District Local Liaison Include Comments if needed	Recommendation: <input type="checkbox"/> Approval <input type="checkbox"/> Denial	
	Signature & Date (Typed when emailed)	
District Project Development Engineer/PIM or Construction Engineer Include Comments if needed	Recommendation: <input type="checkbox"/> Approval <input type="checkbox"/> Denial	
	Signature & Date (Typed when emailed)	
	VDOT Project Coordinator Assigned:	
<b>District Administrator (Tier 1 Projects) / Chief Engineer (Tier 2 Projects)</b>		
<input type="checkbox"/> Approved <input type="checkbox"/> Denied		
Signature & Date (Typed when emailed)		

Revised July 1, 2012

\*Tier 1 projects are defined in I&IM #249 ([www.extranet.vdot.state.va.us/locdes/electronic%20pubs/iim/IIM249.pdf](http://www.extranet.vdot.state.va.us/locdes/electronic%20pubs/iim/IIM249.pdf)) and generally are projects which are non-federal oversight, under \$5 Million in Construction Value, and are not Design-Build

**Upon completion, provide a copy of this form to the Local Assistance Division Director.**

Use Ctrl-Enter to create paragraph breaks within comments.  
Sheet 1 of 8