

EXHIBIT L

COOPERATIVE AGREEMENT

[see attached]

AGREEMENT
By and Between

FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

AND

VIRGINIA STATE DEPARTMENT OF TRANSPORTATION

THIS COOPERATIVE AGREEMENT (“Agreement”), made and entered into this 4th day of September, 2009, by and between the Commonwealth of Virginia Department of Transportation, hereinafter referred to as “VDOT,” and the Federal Highway Administration, United States Department of Transportation, hereinafter referred to as the “FHWA” hereby provides as follows:

WITNESSETH:

WHEREAS, Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, as amended by section 1216(a) of the Transportation Equity Act for the 21st Century (TEA-21), and section 1604 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA- LU), Pub. L. 109-59 (August 10, 2005), establishes the Value Pricing Pilot Program, hereinafter referred to as the “pilot program,” and requires the Secretary of Transportation to solicit the participation of State and local governments and public authorities for one or more pilot programs, or projects; and

WHEREAS, Section 1012(b) of ISTEA, as amended, authorizes the Secretary of Transportation to enter into cooperative agreements with as many as fifteen (15) State or local governments or public authorities to establish, maintain, and monitor value pricing programs, or projects; and

WHEREAS, VDOT entered into a cooperative agreement, dated September 30, 2003, establishing a value pricing program with the Northern Virginia Region of Virginia, as amended on March 8, 2005 to include the Hampton Roads Region of Virginia and amended on February 1, 2007; and

WHEREAS, VDOT has requested that the FHWA enter into a cooperative agreement related to establishing, maintaining and monitoring of a value pricing project to construct and operate toll lanes on the Downtown Tunnel/ Midtown Tunnel/ MLK Extension Project

(hereinafter referred to as the "Facility" or "Project"). (See Attachment A for relevant National Environmental Policy Act (NEPA) documents); and

WHEREAS, the September 30, 2003, cooperative agreement, including the March 8, 2005, and February 1, 2007, amendments, provided pre-implementation funding to study various value pricing projects including the implementation of the Project subject to this cooperative agreement; and

WHEREAS, Section 1012 (b) of ISTEA, as amended, requires that all revenues received from the operation of a value pricing project be applied only toward the project's operating costs (including project implementation costs; mitigation measures to deal with adverse financial effects on low-income drivers; the proper maintenance of the facility; any reconstruction, rehabilitation, restoration, or resurfacing of the facility; any debt service incurred in implementing the project; a reasonable return on investment of any private person financing the project), and other projects eligible for assistance under title 23, United States Code; and

WHEREAS, the FHWA has approved the request by VDOT for the Project to be a value pricing project.

NOW, THEREFORE, VDOT and the FHWA hereby agree as follows:

1. That VDOT may operate the Facility (directly or through a third party public authority or private entity) as a toll facility, as part of its value pricing program, and in accordance with the provisions of this Agreement. VDOT agrees to comply with the following provisions regarding the use of toll revenues.
2. Pursuant to Section 1012(b) of ISTEA, as amended, VDOT will use all revenues received from the operation of the Facility first for operating costs of the project (including project implementation costs; mitigation measures to deal with adverse financial effects on low-income drivers; the proper maintenance of the facility; any reconstruction, rehabilitation, restoration, or resurfacing of the facility; any debt service incurred in implementing the project; a reasonable return on investment of any private person financing the project), and any revenues in excess of these costs for other projects eligible for assistance under title 23, United States Code.
3. That the toll rates charged for the use of the Facility will vary pursuant to the terms of this Agreement establishing the project and the applicable regulations and guidance pertaining to Section 1012(b) of ISTEA, as amended.
4. That VDOT agrees, upon reasonable notice, to make all of its records pertaining to the Facility subject to audit by the FHWA. The VDOT agrees to annually audit the records of the Facility for compliance with the provisions of this Agreement and report the results thereof to FHWA. In lieu of the performing said audit, a report of an independent auditor furnished to FHWA, VDOT or any private operator may satisfy the requirements of this section.

5. Effective on the date of this Agreement, the Project is approved as a pilot program project, and the following requirements apply:
 - a. The FHWA and VDOT will cooperate and work together in the implementation of the Project. Such cooperation shall include, as may be applicable, the monitoring of the project for a period of at least 10 years from the date of implementation on the effects the project has on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.
 - b. No value pricing program funding has been authorized or requested to be allocated under the pilot program by VDOT or approved or allocated by FHWA for implementation of the Project. This provision does not preclude future requests for or use of federal funding, from any source, for the Project.
6. VDOT agrees to obtain the prior approval of FHWA for any significant change related to the approach to tolling the Project.
7. VDOT and FHWA have discussed tolling in advance of construction completion on this project. FHWA has agreed VDOT can proceed with advance tolling upon execution of a tolling agreement and completion of the review process required under the National Environmental Policy Act (NEPA), as provided in paragraph 8.
8. Authorization for tolling under this Agreement shall be contingent upon completion of any required review under the NEPA review process.
9. VDOT agrees to comply with all applicable Federal laws with respect to the implementation of the Project, including, but not limited to, the Section 1012(b) of ISTEA, as amended, as well as guidance implementing Section 1012(b) of ISTEA.
10. This Agreement will be prepared in duplicate originals so that each signatory will have a signed Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original and taken together shall constitute one and the same Agreement.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed, the day and year first written above.

Virginia Department of Transportation

Signature on file with VDOT

BY:

Name: David S. Ekern, P.E.

Title: Commonwealth Transportation Commissioner

**Federal Highway Administration
U.S. Department of Transportation**

Signature on file with VDOT

BY:

Name: Jeffrey Paniati

Title: Executive Director

Attachment A – relevant National Environmental Policy Act (NEPA) documents

TO: FILE
FROM: John McCambridge
DATE: 05/13/2009

PROGRAMMATIC CATEGORICAL EXCLUSION DOCUMENTATION

Route: 58
Project Number: 0058-965-107, PE101
From: Western Terminus of the Midtown Tunnel
To: Eastern Terminus of the Midtown Tunnel
Federal Project: STP-965-5(057)
County/City: Portsmouth, Norfolk
PPMS/UPC ID: 76642

The subject project meets the criteria for Programmatic Categorical Exclusion in accordance with:

- 23 CFR 771.117 (c)(1)
- Agreement approved by the Federal Highway Administration on December 29, 2004 (d)(1) (see attached).



PCE Agreement.pdf

Description of CE Category: c19 Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

Project Description: The proposed improvements to the Midtown Tunnel consist of modifications to the existing tunnel necessary for the facility to conform to the National Fire Protection Association Standard 502 "Standard for Road Tunnels, Bridges, and Other Limited Access Highways" (NFPA 502). These modifications will include but may not be limited to: communications/intelligent transportation systems, lighting, flood prevention, fire detection and suppression, ventilation, and power systems, as well as any other system identified in NFPA 502 or its successor. All work will take place within the existing tunnel facility.

USGS Map
N/A (For Non-highway construction only)

IMPACTS:

	YES	NO
Significant Impacts to Planned Growth or Land Use	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Relocations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Innovative Projects Delivery Division	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Substantial Land Acquisition	<input type="checkbox"/>	<input checked="" type="checkbox"/>
USCG Construction Permit, USACE Individual Section 404 Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Water Quality Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Adverse Effect on Historic Properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Cultural Resource Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Use of Land Protected by Section 4(f)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Significant Air, Noise or Water Quality Impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Water Quality Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Significant Impacts on Travel Patterns	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Changes in Interstate Access Control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Individual or Cumulative Significant Environmental Impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>

No further environmental document will be required.

cc:	Mr. Nicholas Nies, VDOT	cc:
cc:	Mr. Ken Myers, FHWA	cc:
cc:	Miss Deborah Grant, VDOT	cc:

TO: FILE
FROM: John McCambridge
DATE: 05/22/2009

PROGRAMMATIC CATEGORICAL EXCLUSION

Route Number: 58
Project Number: 0058-965-107, PE101
Federal Project Number: STP-965-5(057)
From: Hampton Boulevard
To: Brambleton Avenue Interchange
County/City: Norfolk
UPC Number: 76642

The subject project meets the criteria for a Programmatic Categorical Exclusion in accordance with:

- 23 CFR 771.117
- Agreement approved by the Federal Highway Administration on December 29, 2004 VA-20 (select from list in attachment).



PCE Agreement.pdf

Description of PCE Category: ITS related activities including traffic signal interconnect and synchronization projects.

Project Description: The ITS and signalization improvements to the Brambleton Avenue/Hampton Boulevard Interchange will help accommodate new traffic patterns, turning movements, and volumes resulting from the addition of the new parallel tube at Midtown Tunnel.

- USGS Map
- N/A (For Non-highway construction only)

The action does not involve:

	YES	NO
Significant impacts to planned growth or land use	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Unusual circumstances as described in <u>23 CFR 771.117(b)</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The relocation of significant numbers of people <i>Source: VDOT Innovative Projects Delivery Division</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
More than minor amounts of temporary or permanent right of way acquisition	<input type="checkbox"/>	<input checked="" type="checkbox"/>
USCG construction permits, USACE Individual Section 404 permit <i>Source: VDOT Hampton Roads District Water Quality Staff</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A determination of adverse effect on historic properties <i>Source VDOT Hampton Roads District Cultural Resource Staff</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A use of properties protected by Section 4(f)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A determination that the action is likely to adversely affect any federally listed endangered species or their designated critical habitat <i>Source: VDOT Hampton Roads Water Quality Staff</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Significant air, noise, or water quality impacts <i>Source: VDOT Hampton Roads Water Quality and Documents Staff</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Significant impacts on travel patterns	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Changes in Interstate access control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Individual or cumulative significant environmental impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>

TO: FILE
FROM: John McCambridge
DATE: 05/13/2009

PROGRAMMATIC CATEGORICAL EXCLUSION DOCUMENTATION

Route: 264
Project Number: 0058-965-107, PE101
From: Western Terminus of the Downtown Tunnel
To: Eastern Terminus of the Downtown Tunnel
Federal Project: STP-965-5(057)
County/City: Portsmouth, Norfolk
PPMS/UPC ID: 76642

The subject project meets the criteria for Programmatic Categorical Exclusion in accordance with:

- 23 CFR 771.117 (c)(1)
- Agreement approved by the Federal Highway Administration on December 29, 2004 (d)(1) (see attached).



PCE Agreement.pdf

Description of CE Category: c19 Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

Project Description: The proposed improvements to the Downtown Tunnel consist of modifications to the existing eastbound and westbound tunnels necessary for the existing facility to conform to the National Fire Protection Association Standard 502 "Standard for Road Tunnels, Bridges, and Other Limited Access Highways" (NFPA 502). These modifications will include but may not be limited to upgrades to: the existing water supply, ventilation, electrical, and emergency response systems, as well as any other system identified in NFPA 502 or its successor. Additional modifications may include communications and intelligent transportation systems software and equipment. All work will take place within the existing tunnel facility.

USGS Map
N/A (For Non-highway construction only)

IMPACTS:

	YES	NO
Significant Impacts to Planned Growth or Land Use	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Relocations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Innovative Projects Delivery Division	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Substantial Land Acquisition	<input type="checkbox"/>	<input checked="" type="checkbox"/>
USCG Construction Permit, USACE Individual Section 404 Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Water Quality Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Adverse Effect on Historic Properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Cultural Resources Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Use of Land Protected by Section 4(f)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Significant Air, Noise or Water Quality Impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Source: VDOT Hampton Roads District Water Quality Staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Significant Impacts on Travel Patterns	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Changes in Interstate Access Control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Individual or Cumulative Significant Environmental Impacts	<input type="checkbox"/>	<input checked="" type="checkbox"/>

No further environmental document will be required.

cc:	Mr. Nicholas Nies, VDOT	cc:
cc:	Mr. Ken Myers, FHWA	cc:
cc:	Miss Deborah Grant, VDOT	cc:

**FEDERAL HIGHWAY ADMINISTRATION
FINDING OF NO SIGNIFICANT IMPACT
FOR**

ROUTE: Martin Luther King Freeway Extension
LOCATION: City of Portsmouth, Virginia
FEDERAL PROJECT: STP-965-5(057)
STATE PROJECT: 0058-965-107, P101

The Federal Highway Administration has determined that Alternative E, Option 4 will have no significant impact on the environment. This Finding of No Significant Impact is based on the Revised Environmental Assessment which has been independently evaluated by the Federal Highway Administration and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

Signature on file with VDOT

2/26/09

Date

for: FHWA Division Administrator

Rationale for the Finding of No Significant Impact
Martin Luther King Freeway Extension
State Project Number 0058-965-107 (ID 76642)

I have reviewed the Virginia Department of Transportation's February 19, 2009 letter requesting a Finding of No Significant Impact, the Revised Environmental Assessment (REA), the transcript from the Location and Design Public Hearing, and documentation prepared pursuant to Section 4(f) of the U.S. Department of Transportation Act of 1966 and Section 106 of the National Historic Preservation Act. The REA is attached to the Finding of No Significant Impact (FONSI) and is hereby incorporated by reference into this rationale supporting the FONSI.

The project area lacks adequate north-south controlled access between Interstate 264 and Route 58. This lack of controlled access forces traffic, including large trucks, onto local streets that do not have the capacity to carry current and projected traffic volumes. The project would provide improved highway system linkage and continuity and reduce through traffic and related congestion on local streets.

Environmental Impacts

The environmental impacts for Alternative E, Option 4 were described in the Environmental Assessment (EA). The EA was transmitted to numerous federal and state environmental resource agencies and was made available for public review prior to and at the Public Hearing. Substantive comments were addressed in the REA. No comments were received from the environmental resource agencies or any member of the public that suggested that the project would have a significant environmental impact.

The following is a summary of the impacts of Alternative E, Option 4 as identified in the REA:

Land Use

The project area consists of varied land uses as seen in a typical urban community (See Exhibit 5). There are no agricultural activities or prime farmland within the study area, and no Virginia Outdoors Foundation easements would be affected. Based on the City of Portsmouth's comprehensive plan, land uses in the project study area will generally remain consistent with the existing land use pattern, with or without the project.

FHWA finds that the impacts to land use would not be significant.

Social

Community Facilities/Services. Alternative E, Option 4 would not directly impact any public community facilities. Additional right of way would be required from the Bethel

Temple Church; however, none of the structures on the property would be displaced. There are also two private non-profit community facilities that may be displaced by Alternative E, Option 4: the Young People's Guild, and the Intelligent, Qualified, Resourceful, Academic Achiever Academy (IQRAA) and Resource Center. Both facilities provide educational and other social services.

Neighborhood and Community Cohesion. The study area consists of isolated residential homes with interspersed commercial and industrial uses. Alternative E, Option 4 would replace Harbor Drive with an elevated controlled access facility with interchanges at London Boulevard, High Street and I-264. Existing east-west vehicular access would be closed at MacArthur Ave, King Street, County Street and Meander Road. However, east-west pedestrian and non-motorized vehicle access would be allowed under the facility at locations to be determined during final design. In addition, the following arterial and secondary roads in the project vicinity would remain open to both vehicular and pedestrian traffic under Alternative E, Option 4: Turnpike Road, Cassell Ave, High Street, Queen Street, and London Boulevard. Although patterns of vehicular and pedestrian access would change with the project, the closing of these streets would not split defined neighborhoods and should not substantially reduce community cohesion. In addition, the inclusion of pedestrian paths under the roadway and the continued operation of some existing roads under the facility would help retain existing community connections.

The proposed improvements also would not impact bus routes or bus stops. There are several Hampton Roads Transit (HRT) routes which access the study area including a bus stop located on High Street, at Florida Avenue west of MLK Freeway. Access to High Street, via MLK Freeway and London Boulevard, would not change due to the proposed MLK Extension and therefore transit operations would not be impacted.

There is an existing raised, covered pedestrian overpass that extends over I-264, from Manteo Street to Choate Street. Pedestrian access between these neighborhoods is planned to be maintained.

FHWA finds that the social impacts are not significant.

Environmental Justice

This project has been developed in accordance with Title VI of the Civil Rights Act of 1964 as amended, and Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

Public Participation. A comprehensive and ongoing public participation program has been established for this project to allow affected parties to review the proposed project concepts and provide comments. A public hearing was held for the project in order to gather input from affected citizens and additional public outreach was conducted. In an effort to understand the effects of tolling on the local minority and low income communities within the project study area, VDOT identified 11 churches that were

located within the immediate project vicinity. VDOT contacted the churches and offered to meet with church representatives. The purpose of the meetings was to gain an understanding of how tolling would effect the church and the congregations they serve. Representatives of VDOT met with members of these churches and discussed the possibility of tolling on the project. The primary concerns conveyed by the leaders and members of the churches include: the belief that tolls would be a deterrent for those coming from Norfolk to Sunday services; economic impact to the low income senior citizens who frequently travel to and from Sentara Hospital in Norfolk via the Midtown Tunnel; and the impact on low income students that go to Norfolk for school but live in apartments on the Portsmouth side. Overall, the comments and concerns focused on the ramifications of potentially tolling the Midtown and Downtown tunnels – which provide direct access to and from Norfolk – and not the proposed Martin Luther King Freeway Extension.

As depicted in the REA, the block groups directly affected by Alternative E, Option 4 contain similar percentages of minority and income populations as the remainder of the study area. In other words, the project impact area's social and demographic characteristics are representative of the surrounding study area, which is predominately low income mostly comprised of minority residents.

Environmental Justice Impacts of Tolling. In light of Executive Order 12898, a review of the potential disproportionate effects of tolling the MLK Extension was conducted. As mentioned above, environmental justice populations exist throughout the entire project study area. Some of the affected public expressed more concern with the potential tolling of the Midtown Tunnel rather than the MLK Extension. These concerns are supported by the traffic studies that show major traffic movement between central Portsmouth to central Norfolk via the Midtown Tunnel.

The MLK Extension project would, when completed, provide an alternative access route to I-264 and Route 58. If the roadway is tolled, local traffic could continue to utilize the existing local road network to connect I-264 to Route 58 without being subject to tolls. Therefore, a non-tolled route would still be available.

FHWA finds that the Alternative E, Option 4 would not have disproportionately high and adverse effects on minority and low income populations, and finds that the impacts would not be significant.

Historic Properties

Minimization and Mitigation. Four historic properties are in the vicinity of the project: the Potter's Field, the Mt. Calvary Cemetery Complex, Calvary Baptist Church, and the Cottage Place Neighborhood Historic District. Numerous measures have been incorporated into the project that will minimize and mitigate the project's impact on historic properties. These measures are included in a Memorandum of Agreement (MOA) that was developed pursuant to Section 106 of the National Historic Preservation Act. The MOA among FHWA, the State Historic Preservation Officer (SHPO), and

VDOT was executed on December 11, 2008 and is hereby incorporated into this document by reference. The MOA formally resolves the adverse effects on historic properties and describes the specific minimization and mitigation measures that will be incorporated into the project. Although only the Cottage Place Neighborhood Historic District would be adversely affected pursuant to Section 106, the minimization and mitigation measures address the Calvary Baptist Church and the Mt. Cavalry Cemetery Complex as well. The minimization and mitigation measures that will be incorporated include:

- Conducting a reconnaissance-level survey of the Cottage Place Neighborhood Historic District and documenting every building dating to 1958 or earlier, and transmitting the survey records to the City of Portsmouth.
- Preparing a Preliminary Inventory Form (PIF) for the Cottage Place Neighborhood Historic District, submitting the PIF to the SHPO for review and approval, and transmitting the PIF to the City of Portsmouth for their use.
- Performing an inspection of the Calvary Baptist Church to document the property's condition prior to the commencement of any construction activities as well as upon the completion of construction activities. Any resulting repairs will be completed in a manner consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*.
- Designing the project to eliminate all ground-disturbing activities within the boundaries of the Potter's Field site and the Mount Cavalry Cemetery Complex by shifting the southern portion of the Interstate 264 interchange to the west.
- Erecting a chain link fence around the western boundary of the Potter's Field site and the adjacent portion of the Mount Cavalry Cemetery Complex. In addition, erecting a temporary safety fence around the northern boundary of the Mount Cavalry Cemetery Complex where it is adjacent to Interstate 264.
- Preparing text for a state highway historic marker recognizing the history and significance of the Mount Cavalry Cemetery Complex.

Impacts. No physical impacts to the Potters' Field or the Mount Cavalry Cemetery Complex would occur. In addition, any impacts to the Cavalry Baptist Church would be repaired in a manner consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*. While there would be impacts to the Cottage Place Neighborhood Historic District, they would not be significant in the context of NEPA as described below.

Context. The Cottage Place Neighborhood District is approximately 118 acres in size and consists of a mixture of residential, public, commercial, and industrial activities. Approximately 235 buildings, constructed primarily between the late nineteenth century and 1950, have been demolished within the boundaries of the district. The loss of historic structures has occurred throughout the neighborhood. Commercial, institutional, and industrial expansion and public building projects have resulted in the loss of many historic properties and alteration of the historic circulation network. In addition, the City of Portsmouth has designated much of the area within and surrounding the district for redevelopment activities.

Intensity. Alternative E, Option 4 would require the acquisition of 24.8 acres of the approximately 118-acre district (21%) of the district for project right-of-way. There are sixty parcels within the district that would be directly impacted by project right-of-way acquisition. Sixteen of these parcels contain extant structures constructed prior to 1960 that would be directly impacted. The remaining parcels are either vacant or contain structures constructed after 1960 and therefore do not contribute to the district.

Finding. FHWA finds that the impacts to historic properties are not significant. Substantial minimization and mitigation measures are included as part of the project to minimize the impact, and the adverse effects have been formally resolved via an executed Memorandum of Agreement with the Virginia State Historic Preservation Officer. The impacted historic properties are largely owned by private property owners. As such, the property owners are under no restriction to maintain the historic significance of the properties. The project would not impact a substantial portion of the district, and the intensity of the impacts does not rise to the level requiring an environmental impact statement. The regulations implementing Section 106 of the National Historic Preservation Act are not inconsistent with FHWA's finding of no significant impact on historic properties, stating that a "finding of adverse effect on a historic property does not necessarily require an EIS under NEPA" (36 C.F.R. 800.8(a)(1)).

Right of Way / Relocation

Alternative E, Option 4 would displace 19 owner families, two tenant families and nine businesses. A study of the area's residential and commercial properties and contact with local realty offices indicated that there should be no major problems in relocating displacees in either owner-occupied or tenant-occupied dwellings. In addition, a search of the housing market demonstrated that there is an abundance of residential properties that meet the type of construction, size and bedroom requirements in all price ranges for those displaced. Since the project only displaces two tenant families, there are no foreseeable problems in relocating these families within close proximity. If necessary, VDOT would utilize housing of last resort in order to find decent, safe, and sanitary dwellings for displacees. A survey of Portsmouth's commercial real estate market revealed that suitable properties exist to allow displaced businesses to relocate. Business relocations should not affect the local economy nor deny the community of essential or irreplaceable services.

The acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation resources are available to all residential and business relocatees without discrimination.

FHWA finds that the right-of-way and relocation impacts are not significant.

Air Quality

The project would not cause or contribute to a violation of national ambient air quality standards (NAAQS). The project comes from an air quality-conforming long range transportation plan. With regard to mobile source air toxics, best available information indicates nationwide that regional levels of air toxics are expected to decrease in the future due to fleet turnover and the continued implementation of more stringent emission and fuel quality regulations. Nevertheless, it is possible that some localized areas may show an increase in emissions and ambient levels of these pollutants due to locally increased traffic levels associated with the project.

Emissions may be produced in the construction of this project from heavy equipment and vehicle travel to and from the site, as well as fugitive sources. Construction emissions are short term or temporary in nature. In order to mitigate these emissions, all construction activities are to be performed in accordance with VDOT Road and Bridge Specifications.

FHWA finds that the air quality impacts are not significant.

Noise

The noise impacts are not significant in the context of NEPA.

Context. The context of the project is a highly developed urban area. As such, a fair amount of noise is already present as evidenced by the ambient noise levels noted in the *Noise Analysis Technical Report* (51 to 73 db(A) Leq). (The *Noise Analysis Technical Report* contains a description of the characteristics of noise, including the A-weighted decibel (db) scale (db(A)) and the equivalent steady-state sound level (Leq).) By comparison, ambient noise levels in undeveloped areas can be in the low 30s (db(A)) or even lower. None of the impacted sites fall within Activity Category A of the FHWA Noise Abatement Criteria (NAC), which is defined as “Lands on which serenity and quiet are of extraordinary and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.”

Intensity. The intensity of the noise impacts consists of 195 residences, a recreation center and one section of a cemetery that would be impacted according to the NAC. The greatest noise increase for impacted properties is only one db(A) as compared to the No-Build Alternative, and would be experienced at the exterior of the residences. The predicted noise impacts identified for the project would not be continuous, but rather are based on the worst hourly traffic conditions in the project’s design year. In addition, the No-Build Alternative would result in more noise impacts than Alternative E, Option 4. This is due to the fact that, under Alternative E, Option 4, the new elevated interchange ramps at Route 58 and I-264 will shield many of the noise sensitive properties from ramp and mainline traffic noise.

FHWA noise regulations (23 CFR 772.13(d)) discuss a situation whereby noise abatement measures other than those listed can be utilized. One of the criteria is that there has to be a severe noise impact. FHWA's *Highway Traffic Noise and Abatement Policy and Guidance* sheds light on determining a severe impact, and states that "... the affected activities experience traffic noise impacts to a far greater degree than other similar activities adjacent to highway facilities, e.g., residential areas with absolute noise levels of 75 db(A) Leq(h) or more, residential areas with noise level increases of 30 db(A) or more over existing noise levels." To illustrate a 30 db difference, the background noise at a small theatre or large conference room would be about 40 db, whereas a vacuum cleaner 3 meters away would be about 70 db. Although the determination of a severe impact is in the context of noise abatement, the concept can be used to aid in the determination of a whether the project has a significant impact on the environment. The predicted noise impacts from the project are not severe for any of the 195 impacted residences, recreation center, or cemetery as the highest absolute noise levels (73 db(A)) and greatest noise level increase (6 db(A)) are below the 75 db and 30 db threshold, respectively.

Mitigation. Noise mitigation measures that have been considered for this project include traffic management, the alteration of horizontal and vertical alignment, and the construction of noise barriers. Traffic management measures normally considered for noise abatement include reduced speeds and truck restrictions. Reduced speeds will not be an effective noise mitigation measure since a substantial decrease in speed is necessary to provide a substantial noise reduction. In addition, the reduction would need to be applied to I-264, and part of the purpose and need for this project is to increase roadway capacity and traffic flow in the area. A speed reduction on I-264 would not accomplish that. In addition, restricting truck usage on I-264 would not be practical as it is a major truck route in the area, and part of the purpose and need for the project is to remove truck traffic from local roads. The alteration of the horizontal or vertical alignment beyond what is already planned as part of the project would not be effective or practical. As stated above, elevating the extended portion of Route 58 as it crosses I-264 is predicted to reduce noise levels at a number of sites as compared with the No-Build Alternative. The construction of noise barriers has been considered for each of the residential properties which would be noise impacted in 2032 under Alternative E, Option 4. As described in the REA, some noise barriers appear to be feasible and reasonable, while others do not appear to be feasible and reasonable.

FHWA finds that the noise impacts do not represent a significant impact on the environment.

Water Quality & Aquatic Resources

The project area generally drains northeast into Scott's Creek, a tributary to the Elizabeth River. Indirect impacts to Scott's Creek would be minimized by compliance with the

Virginia Erosion and Sedimentation Control Regulations, the VDOT Design Manual, and the Virginia Stormwater Management Regulations during project construction. No direct impacts to surface waters are expected to result from project construction and operation. In addition, Alternative E, Option 4 does not contain 100-year floodplain or floodway areas. Therefore, no impacts to floodplains should result from project construction and operation. No adverse hydrologic impacts are anticipated either on-site or off-site as a result of the proposed project.

Wetlands and Waters of the U.S.

Waters of the U.S. are defined by US Army Corps of Engineers (COE) and EPA regulations, and are described generically in EPA's 404 (b) (1) Guidelines as rivers, streams, ponds, and special aquatic sites, (*e.g.*, sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes). Three small waters of the U.S. channels are located within the project area. These channels were likely created to drain the surrounding lands for development, and are now low quality straight channels that receive stormwater runoff from surrounding facilities and roadways and probably have standing water during the wet season. Approximately 1,415 linear feet of these channels would be impacted by project construction and operation.

Jurisdictional wetland determinations were made for the project area using the COE Wetlands Delineation Manual, 1987. Classifications follow the U.S. Fish and Wildlife Service's classification system "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979). Field reconnaissance identified a small Palustrine Scrub/Shrub and Forested (PEM/PFO) system located north of Columbus Avenue. The wetland potentially impacted by the proposed project is approximately 2,064 square feet in size.

Groundwater

A groundwater aquifer is located in the project area approximately three to seven feet below the surface grade. Based on topographic features, regional groundwater flow direction and discharge are most likely northeast toward Scott's Creek. The aquifer is not used for drinking water, and the project area is served by municipal water and sewer. Therefore, the project should result in no direct or indirect effects to groundwater resources used for drinking water.

Wildlife

The lack of aquatic habitat and terrestrial habitat (*e.g.*, bottomland forests, special aquatic sites, pools, and streambanks) in the project area renders it a poor environment for supporting wildlife. No state natural area preserves are located in the project vicinity.

Threatened and Endangered Species

There are no documented recent occurrences of threatened or endangered species located within the study area. The Virginia Department of Conservation and Recreation does not anticipate that the proposed project would adversely impact any natural heritage resources. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

All applicable permits would be acquired prior to construction. It appears that a VDEQ Virginia Water Protection (VWP) individual permit may be required.

FHWA finds that the impacts to water quality and aquatic species are not significant.

Construction Impacts

During construction, temporary environmental impacts can occur but can be controlled, minimized or mitigated through careful attention to prudent construction practices and methods. Potential temporary construction impacts and preventive practices are summarized below.

Land Use. Local street configurations and property access may be modified in the short term during construction. The final design process will include consultation with all affected property owners to ensure that access to schools, churches, residences and businesses is not significantly disrupted during construction.

Water Quality. During construction, non-point source pollutants could possibly enter groundwater or surface water from stormwater runoff. To minimize these impacts, appropriate stormwater management and erosion and sediment control practices, as outlined in the Virginia Stormwater Management Regulations and the 1992 Virginia Erosion and Sediment Control Handbook, will be used, including the prompt vegetation of disturbed areas. In accordance with the VDOT's Road and Bridge Specifications, Section 107.14(a), land-disturbing activities that occur in the VDOT right of way must be supervised by a certified Erosion and Sediment Control Contractor. In the event the contractor dumps, discharges, or spills any contaminant that may affect water quality, they will immediately notify all appropriate local, state, and federal agencies and will take immediate action to contain and remove the contaminant.

Air quality. Emissions may be produced in the construction of this project from heavy equipment and vehicle travel to and from the site, as well as fugitive sources. Construction emissions are short term or temporary in nature and should not be significant. In order to mitigate these emissions, all construction activities would be performed in accordance with Virginia Department of Transportation (VDOT) Road and Bridge Specifications.

Noise. Construction activity may cause intermittent fluctuations in noise levels. During the construction phase of the project, all reasonable measures will be taken to minimize noise impacts from these activities. VDOT's Road and Bridge Specifications, Section 107.14(b.3), establishes construction noise limits. The contractor will be required to conform to this specification to reduce the impact of construction noise on the surrounding community.

Solid Waste Disposal. Any solid waste impacts created during construction would be temporary. All solid waste material resulting from clearing and grubbing, demolition, or other construction operations would be removed from the project and disposed of in an appropriate manner.

Hazardous Materials. Additional evaluation of identified hazardous materials sites may be required as construction plans are developed. These additional evaluations would be utilized to develop mitigation measures that could be incorporated into design plans and during the construction phase to minimize or eliminate hazardous materials concerns. If contaminated materials are encountered during construction, VDOT will develop and implement appropriate procedures for their proper management and coordinate the removal, disposal, and/or treatment of the materials, as necessary. If contaminated groundwater is encountered during construction, VDOT will implement appropriate specifications for proper management and treatment of the water, as necessary.

FHWA finds that the construction impacts would not be significant.

Indirect Impacts

As discussed previously, Alternative E, Option 4 would be constructed in a heavily urbanized area with a mixture of older residences and retail businesses on the northern and southern ends, and with light and heavy industrial uses located in the central portion of the study area. Only a few vacant parcels exist in the area, and these are located on sites that, at one point in the past, had urban uses.

As shown on the City of Portsmouth's Future Land Use and Community Conditions Maps (*Portsmouth Destination 2025 Comprehensive Plan*), the City anticipates redevelopment of the majority of the project study area. The major local corridors planned for redevelopment activities include London Boulevard, High Street, Airline Boulevard, Portsmouth Boulevard, Effingham Street and Frederick Boulevard. The area south of London Boulevard, north of I-264, covering the east half of the project study area, is also identified for redevelopment.

While the redevelopment and revitalization of this portion of the City of Portsmouth is planned and expected, and could occur with or without the proposed transportation improvement (given existing developmental pressures and city policies), it may be

accelerated with the completion of this project. This would be accomplished through the various and immediate benefits anticipated from Alternative E, Option 4:

- Linkage of ports and other industrial and commercial uses to outside markets;
- Linkage of the community to the region;
- Improved freight movement within and outside of the region;
- Decreased truck traffic and increased capacity on local roadways;
- Improved traffic movement at existing interchanges (decreased volumes on Frederick Boulevard and Effingham Street interchanges); and,
- Removal of a geometrically deficient interchange (i.e., Des Moines Ave./South Street Interchange) that would reduce overall traffic volumes, especially truck traffic, through established residential areas.

However, it cannot be said that the project by itself would be the direct cause of such development because other factors, such as economic conditions, play a larger role in development decisions. The entire area is currently developed and planned for future development. The project would be consistent with local comprehensive planning regarding land use goals in the surrounding area and would be expected to improve overall mobility and connectivity among surrounding land uses and transportation facilities.

FHWA finds that the indirect impacts from the project would not be significant.

Cumulative Impacts

Cumulative impacts are the impact on the environment resulting from the incremental impact of the project when added to other past, present, and reasonably foreseeable future actions. Other past, present, and reasonably foreseeable future actions in the study area underway by the city, state and federal governments that could cumulatively impact the environment include:

Past Actions –

- Extend Route 164 (Western Freeway) from the West Norfolk portion of Portsmouth to the Pinner's Point Interchange; and
- Construct Pinner's Point Interchange, connecting Route 58 (MLK Freeway) to Route 164 (Western Freeway) and to Alternate Route 337 and the Midtown Tunnel.

Present Actions –

- Construct MLK Freeway Extension between Route 58 and I-264;
- Construct second Midtown Tunnel; and
- Improve the Downtown Tunnel.

Future Actions –

- Improve Turnpike Road from County Road to Alexander's Corner (Harbor Drive);
- Construct Third Crossing of the James River north from the Western Freeway and across Craney Island;

- Extend freight rail lines within the median of the Western Freeway to serve the Craney Island Terminal; and
- Construct the Craney Island Terminal as a major port for freight.

All of these actions have had or will have an impact on the environment. For purposes of cumulative impact analysis for this EA, the primary issue is whether or not the proposed project would significantly impact the same resources as the actions listed above, resulting in an accumulation of impacts to the resource in question. Given that the impacts from the project on individual environmental resources are relatively minor, the effects of Alternative E, Option 4 would not significantly contribute to adverse cumulative impacts.

FHWA finds that the cumulative impacts would not be significant.

Council on Environmental Quality's Regulations

The Council on Environmental Quality's regulations require consideration of a project's context and intensity in determining whether the project will have a significant impact (40 C.F.R. 1508.27). Regarding context, the regulations state, "Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant." Since this project is a site-specific action, significance depends upon the effects of the project on the project area.

Regarding intensity, the regulations identify issues that should be considered in determining if the intensity of a project's impacts is substantial enough to warrant the preparation of an environmental impact statement (40 C.F.R. 1508.27(b)(1-10)). These issues are considered in the determination of whether there is a significant impact. The issues are addressed as follows:

1. Impacts that may be both beneficial and adverse – The project would result in a few beneficial impacts on the environment. The existing through traffic, including truck traffic, would be removed from local streets. Additional beneficial impacts include conducting a reconnaissance-level survey of the Cottage Place Neighborhood Historic District and preparing text for a state highway historic marker recognizing the history and significance of the Mount Cavalry Cemetery Complex.

We find that these beneficial impacts, when taken in conjunction with the adverse impacts, do not reach the level of significance requiring the preparation of an environmental impact statement.

2. The degree to which the project affects public health or safety – It is not anticipated that the project will adversely affect public health and safety. On the contrary, since the project will remove through traffic, including truck traffic, from local

roads, safety on the local roads should improve. Also, the project will not cause or contribute to an exceedance of the National Ambient Air Quality Standards.

3. Unique characteristics of the geographical area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical area – No park lands, prime farmlands, wild and scenic rivers, or ecologically critical areas will be impacted by the project. As discussed earlier, the impacts to wetlands are minimal. The project's effects on cultural resources (i.e., historic properties), as well as the reasons that those effects do not represent a significant impact, are explained above.

4. The degree to which the effects on the environment are expected to be highly controversial – Based on case law, it is our position that the term “controversial” refers to cases where substantial dispute exists as to the size, nature, or effect of the action rather than to the existence of opposition to a use, the effect of which is relatively undisputed. On this project, there has been no documented dispute regarding the size, nature, or effect of the project from the state or federal environmental resource agencies or any other entity. Further, no environmental resource agency has opposed the project.

Based on the above, we find that the degree to which the effects on the environment are expected to be highly controversial does not require an environmental impact statement for this project.

5. The degree to which the effects on the quality of human environment are highly uncertain or involve unique or unknown risks – There are no known impacts on the quality of the human environment that can be considered highly uncertain or involve unique or unknown risks. Twenty-one residential relocations are anticipated and the project will not cause or contribute to an exceedance of the National Ambient Air Quality Standards.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration – This action will not set a precedent for future actions with significant effects or represent a decision in principle about a future consideration. The project has logical termini and independent utility and represents a reasonable expenditure; it does not force additional improvements to be made to the transportation system. This decision will not establish a precedent regarding the requirements of NEPA as they will be applied to future projects.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts - This action has logical termini and independent utility and does not force additional transportation improvements to be made to the transportation system. Cumulative impacts were addressed in the revised EA and in this document, and we find that they are not significant.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic

Places or may cause loss of significant scientific, cultural, or historic resources – No highways or objects listed in or eligible for listing in the National Register of Historic Places will be adversely affected by the project. Pursuant to the regulations implementing Section 106 of the National Historic Preservation Act, the project will adversely affect three historic properties. However, the Virginia State Historic Preservation Officer agrees that the project incorporates minimization and mitigation measures that will resolve the adverse effects on historic properties. The earlier discussion on historic properties explains the reasons that the impacts on historic properties are not significant.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act – No endangered or threatened species or its critical habitat will be affected by the project.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment – The proposed action does not knowingly threaten a violation of any Federal, State, or local law for the protection of the environment. All applicable permits will be acquired prior to construction.

Conclusion

Based on the foregoing information and other supporting information, we find that the proposed project will not have a significant impact on the environment. Therefore, an environmental impact statement is not warranted, and the Finding of No Significant Impact is being issued accordingly. The Finding of No Significant Impact will be reevaluated as appropriate pursuant to 23 C.F.R. 771.129(c) as major approvals are requested from FHWA.

REVISED RECORD OF DECISION

Federal Highway Administration

Virginia Division

Route 58/Midtown Tunnel (including Pinners Point Interchange)

Cities of Norfolk and Portsmouth, Virginia

A. Introduction

This revised Record of Decision (ROD) is being prepared in accordance with 23 CFR §771.127(b). This regulation states, "If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or *proposes to make substantial changes* to the mitigation measures or *findings* discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under §771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to §771.125(g)." With this revised ROD, FHWA is proposing to make substantial changes to the findings discussed in the ROD for the Route 58/Midtown Tunnel project, which was issued in 1997. When that ROD was issued, location approval was given for only a portion of the project (Route 58) because the remaining portion (Midtown Tunnel) was not included in a fiscally constrained Long Range Transportation Plan (CLRP) found to conform by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). Since then, the remaining portion of the project has been included in a CLRP found to conform by FHWA and FTA on August 22, 2006, which represents a "substantial change to the...findings presented in the [original] ROD."

B. Project History

The Route 58/Midtown Tunnel (including Pinners Point Interchange) final Environmental Impact Statement (EIS) was approved for public availability on November 8, 1996. The proposed project was developed to provide improved traffic flow between the cities of Portsmouth and Norfolk, from Route 58 and the east end of the West Norfolk Bridge (Route 164) in Portsmouth to Brambleton Avenue in Norfolk. The project would be accomplished with limited access highway facilities at the Pinners Point Interchange and Connector in Portsmouth, improvements to the Hampton Boulevard/Brambleton Avenue interchange in Norfolk, and a second Midtown Tunnel tube parallel and just downstream of the existing tube.

A Record of Decision (ROD) was issued for the project on March 17, 1997. The ROD was signed by Mr. Dave Lawton, Director of the Office of Planning and Environment for the Region 3 Office of FHWA. The ROD identified Alternative A4-B4(modified)-C1-D1 as the selected alternative. However, location approval for the parallel tube of the Midtown Tunnel and its eastern approach (which is represented by segments C and D of the selected alternative: A4-B4(modified)-C1-D1; these two segments will hereafter be referred to as the 'Midtown Tunnel improvements') was not granted with the 1997 ROD because the Midtown Tunnel improvements were not included in a conforming CLRP; instead, the Midtown Tunnel improvements were outside the horizon year of the CLRP, which was 2015 at the time. The transportation air quality

conformity issue aside, all other environmental issues for the Midtown Tunnel improvements were evaluated and impacts disclosed in accordance with the National Environmental Policy Act when the final EIS was issued. Since issuance of the ROD, fiscal constraint issues in the Hampton Roads area have prevented the Midtown Tunnel improvements from being added to updated versions of the CLRP until recently. Last year, the Hampton Roads Metropolitan Planning Organization (MPO) amended the 2026 CLRP to include the Midtown Tunnel improvements. Transportation air quality conformity was run on the amended CLRP, and FHWA and FTA issued a conformity finding on August 22, 2006. The Midtown Tunnel is also included in the 2030 CLRP update currently being completed by the MPO.

On May 9, 2007, FHWA completed a re-evaluation of the Route 58/Midtown Tunnel final EIS in accordance with 23 CFR §771.129(b). As a result of that effort, FHWA concluded that a supplemental EIS was not required.

Except for the Midtown Tunnel improvements, the rest of the project has been constructed (which is represented by segments A and B of the selected alternative: A4-B4(modified)-C1-D1) and open to traffic.

C. Purpose and Need

The purpose and need for the project identified in the EIS involves several components including the need to improve system linkage, the need to increase capacity of the transportation network, and the need to address transportation demand in the project area as well as the greater regional area. With the purpose and need in mind, four primary goals were identified to be accomplished by the project: 1) provide additional capacity at the existing Midtown Tunnel; 2) provide a direct connection between the eastern terminus of the Western Freeway, Midtown Tunnel, and Martin Luther King Freeway via an interchange at Pinners Point; 3) remove Western Freeway-related traffic from residential streets in the historic Port Norfolk District of Portsmouth; and 4) alleviate traffic on the other river crossings, particularly the downtown tunnel.

D. Selected Alternative Decision

The alternative selected by FHWA for the Route 58/Midtown Tunnel (including Pinners Point Interchange) project is Alternative A4-B4(modified)-C1-D1 (see Figure 15 in the final Environmental Impact Statement). However, as stated above, the ROD that was issued in 1997 did not grant location approval for the Midtown Tunnel improvements. With this revised ROD, location approval is being granted for the remaining segments of Alternative A4-B4(modified)-C1-D1, also known as the Midtown Tunnel improvements or segments C and D.

E. Alternatives Considered

A variety of alternatives were considered during the development of the EIS for the Route 58/Midtown Tunnel project. These alternatives included the No-build Alternative, Transportation System Management (TSM) Alternative, Mass Transit Alternative, and several Build Alternatives. The No-Build, TSM, and Mass Transit Alternatives were not carried forward

for detailed analysis in the EIS because they either failed to address the purpose and need of the project or because they did not address the purpose and need as effectively as the build alternatives and failed to accomplish the goals of the project.

For purposes of developing build alternatives, the project was divided into four segments represented by the letters A, B, C, and D. For each segment, a number of alternatives were developed. These segment alternatives were then subjected to a multi-disciplinary evaluation by the project study team. This resulted in some of the segments alternatives being dropped from consideration while others were modified and retained. The segment alternatives were then combined to form end-to-end alternatives that were carried forward for consideration in the EIS.

F. Section 4(f) and Section 106

The only Section 4(f) and Section 106 issues identified for the project were associated with segments A and B of the selected alternative, which have already been constructed. In summary, a Section 4(f) Evaluation was prepared at the time that the EIS was developed for the Route 58/Midtown Tunnel project. That Section 4(f) Evaluation covered the Bayview Boulevard Beach Area and looked at avoidance alternatives and measures to minimize harm. The selected alternative avoided any use of the Bayview Boulevard Beach Area. In addition, Section 4(f) constructive use of the Port Norfolk Historic District was also considered as it relates to proximity and noise impacts at the time the EIS was developed. However, it was determined that the selected alternative would have no constructive use of this resource.

In the course of re-evaluating the final EIS, two new Section 4(f) resources were identified in the study area in the vicinity of segments C and D: Plum Point Park and the Elizabeth River Trail. Plum Point Park has an extensive wetland restoration area with walking trails and is located to the east of the Midtown Tunnel portal entrance. No property from the park will be used for the Midtown Tunnel improvements since the park lies outside the anticipated construction limits of the project. Noise levels at the park will increase slightly, but this increase is not considered a constructive use since serenity and a quiet setting are not characteristics of the park given that it is located in an urban setting adjacent to the portal entrance of the existing tunnel. The Elizabeth River Trail is a publicly owned trail located on the Norfolk side of the Midtown Tunnel and crosses over the existing portal entrance. The trail is located on right-of-way owned by the City of Norfolk, which was granted to them from the Norfolk Southern Corporation as part of a local match for a Transportation Enhancement project implemented by VDOT. The new portal entrance will lengthen the span over which the trail passes, but the Midtown Tunnel improvements will not use any land from the trail since construction in this location will tunnel underneath the trail; VDOT will not acquire any interest in property upon which the trail is located. There will be a temporary disruption to the trail during construction but the disruption should not last the duration of the project. Every effort will be made to maintain trail connectivity and the safety of the trail users during construction to the degree practicable. When this is not possible, the trail will be temporarily closed. As with Plum Point Park, noise levels on the trail will increase slightly because of the project, but this increase is not considered a constructive use since serenity and a quiet setting are not characteristics of the trail given that it located in an urban setting over the portal entrance of the existing tunnel.

A Section 106 Memorandum of Agreement (MOA) was developed to minimize adverse visual effects from the project on the Port Norfolk Historic District. After the final EIS was circulated for comment, the MOA was amended to clarify the language regarding the height of the bridge structure and to account for a noise barrier that had been proposed for placement on the bridge. The amended MOA was executed by the Advisory Council on Historic Preservation on February 10, 1997, and its stipulations implemented. There are no Section 106 issues associated with the Midtown Tunnel improvements (segments C and D)

G. Miscellaneous Issues

There is only one miscellaneous issue that warrants discussion in the ROD:

Air Toxics: A qualitative mobile source air toxic analysis was prepared when the project was re-evaluated earlier this year. That analysis was attached to the re-evaluation and concluded that the mobile source air toxic issue is a continuing area of research and a developing issue which at present, is not fully understood to the point that it would allow one to quantify the health effects that the Midtown Tunnel improvements would have on the surrounding environment. The technical capability of quantifying such effects with any degree of confidence are years away. Consequently, the mobile source air toxic issue does not inform the decision makers for this project as it relates to the significance of the issue and its environmental impacts. Despite the inability to assess the health effects of mobile source air toxics let alone the health effects directly attributed to a specific project, substantial reductions in air toxics are expected over the life of the project due to EPA's vehicle and fuel regulations coupled with fleet turnover; therefore, any potential for the project to increase mobile source air toxic emissions is not considered significant given this context.

H. Mitigation and Minimization Measures

The selected alternative included all practicable measures to minimize environmental harm. When the ROD was issued in 1997, it identified mitigation and minimization measures that would be implemented during final design and construction. Of those mitigation and minimization measures, the following are applicable to the Midtown Tunnel improvements:

- Temporary disruptions to water traffic will be minimized through prior coordination of construction phases with major maritime interests, provision of a schedule of anticipated temporary waterway closures, and contingency measures to allow immediate channel openings during time of local, state or national emergency.
- Time of year restrictions of dredging and utilization of best available practices will be employed to minimize unavoidable dredging impacts.
- A stormwater management plan and an erosion and sediment control plan will be prepared in accordance with Virginia's Stormwater Management and Erosion and Sediment Control Regulations. During construction, all non-point source controls and Best Management Practices will comply with the requirements of these regulations. A post-construction plan will address volume and water quality also in accordance with these regulations.
- Mitigation for unavoidable wetland impacts will be in accordance with current U. S. Army Corps of Engineers sequencing guidance. Temporary wetland impacts will be ameliorated by

grading areas to original contours and re-seeding the areas that do not re-vegetate on their own.

I. Other Federal Actions Required

Federal and state laws and regulations require that various environmental permits or approvals be acquired prior to the start of project-related construction activities. The following permits or compliances are anticipated for the Midtown Tunnel improvements:

- Permit from the U. S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act;
- Discharge authorization from the U. S. Army Corps of Engineers under Section 404 of the Clean Water Act;
- Section 401 Water Quality Certification (issued on behalf of the U. S. Environmental Protection Agency by the Virginia Department of Environmental Quality under the Virginia Water Protection Permit Program);
- Approval from the U. S. Army Corps of Engineers to dispose of dredged material at the Craney Island Facility generated by tunnel trench excavation;

J. Monitoring or Enforcement Program

A formal monitoring program is not proposed. Permit conditions and coordination with permitting agencies during design development, right-of-way acquisition, and construction will ensure consistency with applicable environmental laws and regulations.

K. Document Availability

A draft EIS was approved for public availability on December 22, 1989. A written re-evaluation of the draft EIS was completed in February of 1996, and FHWA concluded that a supplemental EIS was not required. A final EIS was approved for public availability in September of 1996 and copies sent to the Environmental Protection Agency for publication in the *Federal Register*. The Environmental Protection Agency published a Notice of Availability of the final EIS in December of 1996. Another re-evaluation of the EIS was completed in May of 2007. With this re-evaluation, FHWA again concluded that a supplemental EIS was not required.

L. Comments on the Final EIS

No substantive comments were received or new information submitted when the final EIS was made available to the public.

M. Decision

Based on the foregoing information, the Federal Highway Administration has selected the A4-B4(modified)-C1-D1 Alternative to address the identified purpose and need for the subject

project. This revised ROD adds segments C and D to the alternative identified as the selected alternative in FHWA's 1997 ROD.

7/9/07
Date

Signature on file with VDOT

Roberto Fonseca-Martinez
Division Administrator