

January 22, 2003

The Honorable Craig Benson, Governor
State of New Hampshire
Office of the Governor
25 Capitol Street - Room 212
Concord, NH 03301

Dear Governor Benson:

An issue has emerged with the Lowell-Nashua Commuter Rail project and the New Hampshire Executive Council. The action places the project's future into question. During the October 23, 2002 meeting of the Council (Item #100), the Executive Council voted 3-2 against approving a \$76,000 contract extension for Parsons-Brinckerhoff (the State's consultant) for a continuation of preliminary engineering work to complete the environmental assessment for the project. Those voting against were Ruth Griffin, Peter Spaulding and Ray Wiczorek. Voting in favor were Councilors David Wheeler and Ray Burton. Councilors have stated that the reason to their opposition to the project is due to the use of state highway funds to match the Federal grants that have been obtained through our delegation in Washington.

To recap, the project is a proposed extension of the MBTA commuter service that currently terminates in Lowell, Massachusetts. The 11-mile project will upgrade an existing track and add a second track on the existing single-track portion of the railroad right of way. This first phase will terminate at a proposed station location at the end of Spit Brook Road in Nashua near Exit 1. The total project cost, including the cost of purchasing the necessary trains and station development, is expected to be about \$63 million. Eight round trips per weekday are proposed, along with weekend service. The service is expected to attract about 950 riders per-day initially (1,900 trips per day), with projected ridership of 3,000 (6,000 round trips) after 20 years. The project is not Amtrak service. These are without question the strongest anticipated ridership numbers for commuter rail in the State.

The project is currently in the "preliminary engineering" phase; this phase of the project is being managed by the NH Bureau of Rail and Transit. The Nashua Regional Planning Commission in 1999 completed conceptual level work, including the "Major Investment Study".

The State's long-term goal is to extend the service northward to downtown Nashua, Merrimack, Bedford (Manchester Airport Access Road), and downtown Manchester. The commuter rail program is an integral part of the region's transportation program. NH Department of Transportation has stated that it is unlikely that the Everett Turnpike will be widened again, and another alternative is necessary to accommodate future population and economic growth.

The Council's action is an interpretation of Article 6-A of the NH Constitution, which was adopted in the 1930s. Article 6-A states that state gas tax funds must be used for highway construction, maintenance, and traffic control. The Nashua Commuter Rail project utilizes federal funding from both New Starts and Congestion Mitigation/Air Quality (CMAQ) that requires a 20% match, provided through the State's highway fund. The NHDOT has interpreted 6-A broadly, and has used the highway fund to provide the match for transportation programs that ultimately benefit the highway user. Park and Ride lots, transit centers, wetland mitigation, the purchase of abandoned rail corridors and even the purchase of buses have all been funded in this manner. Until this action, the Executive Council has endorsed this concept and has approved Ten-Year Plans and contracts for this project. The Council had



also approved the original \$1 million contract that enabled NHDOT to begin the preliminary engineering process; this contract also utilized a 20% match from the State.

In addition, the NH Motor Transport Association filed a lawsuit against the State on December 3, 2002 in Merrimack Superior Court claiming that the State's use of the highway funds to match Federal funds on this project violates Article 6-A of the State Constitution. The case is likely to be heard by the NH Supreme Court. It is anticipated that the case will take at least one year to resolve. NRPC is concerned that the Executive Council action was the result of lobbying by the NH Motor Transport Association, to be used in the event that it loses its lawsuit with the State. The upgrade of the tracks for commuter rail will also enable enhanced freight access.

Up to this point, the following funds have been obtained for the commuter rail project as indicated in the table:

Program	Federal Funding	State Match	Total
CMAQ—Train Set	\$12,002,400	\$3,000,600	\$15,003,000
CMAQ—Train Station/ Park & Ride	\$4,880,000	\$1,220,000	\$6,100,000
CMAQ—3 Years Operating Subsidy	\$4,200,000	\$1,050,000	\$5,250,000
New Starts (in the STIP)	\$4,960,000	\$1,240,000	\$6,200,000
NH Capital Budget to acquire station site (proposed this year)	N/A	\$3,500,000	\$3,500,000
Total	\$26,042,400	\$10,010,600	\$36,053,000

NRPC and the Southern NH Planning Commission have initiated a preliminary alternatives analysis to evaluate the subsequent phases of the project. The Rockingham Planning Commission is currently conducting an alternatives analysis to explore the extension of service from Newburyport to Hampton and Portsmouth. NHDOT and the other regional planning agencies have all acknowledged that the extension of service to Nashua provides the most promise, and are hoping for a success story in this project.

Since this time NRPC has begun preliminary discussions with the City of Nashua on a possible funding alternative utilizing the rules of the Federal Transit Administration's "Joint Development" provisions. Under this scenario, it may be possible to raise revenue by leasing air rights over the proposed train station to a private developer. This would need to include a rezoning by the City. More detailed analysis is needed to determine whether or not significant funds can be raised by this method. However, the City is interested in maximizing opportunities in this part of the City.

I thank you for your interest in this very important project. If you have any questions or require further information, do not hesitate to contact me. Additional materials are available on our web-site at www.nashuarpc.org/commuterrail.

Sincerely,

NASHUA REGIONAL PLANNING COMMISSION

Andrew Singelakis,
 Executive Director

AS/srv

#420-28

cc: Neil Levesque, Congressman Bass' Office