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**FINAL REPORT**  
**ALTERNATIVE TRANSPORTATION FUNDING SOURCES AVAILABLE  
TO VIRGINIA LOCALITIES**

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## **ABSTRACT**

In 2003, the Virginia Department of Transportation developed a list of alternative transportation funding sources available to localities in Virginia. Alternative funding sources are defined as those that are not included in the annual interstate, primary, secondary, and urban allocations available through VDOT's Six-Year Improvement Program. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, passed by the U.S. Congress in 2005, eliminated some of these programs and created new opportunities. Accordingly, the list of funding sources was updated based on information available as of December 2005.

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**INTRODUCTION**

The traditional source of funds for transportation improvements in Virginia is the Virginia Six-Year Improvement Program, where projects are allocated by district and roadway system (interstate, primary, secondary, or urban). The *Code of Virginia* (the *Code*) prescribes or implies steps that must be taken by the 16-member Commonwealth Transportation Board (CTB) to ratify the Six-Year Improvement Program when it is submitted to them by the Virginia Department of Transportation (VDOT) (§ 33.1-23.1-3 of the *Code*). These steps include public hearings for projects involving the primary system, coordination with city governments for urban system projects, and approval by county boards of supervisors for secondary system projects. These projects, distributed by district, are generally listed in the first volume of the Six-Year Improvement Program.

Numerous alternative sources of funding are available in Virginia for transportation improvements. These alternatives are usually special programs with a unique emphasis, such as conservation, alternative modes, hazard elimination, and economic development. Generally, these funds are awarded on a competitive basis and have accompanying restrictions on their use.

**PURPOSE AND SCOPE**

The purpose of this report was to provide Virginia's localities with a convenient reference of the potential funding sources that can be used for transportation-related projects. This document describes state and federal programs and provides detailed information about local programs such as transportation districts and community development authorities. VDOT requires that a local/state project administration agreement be executed for any locally administered project partially or fully funded by programs managed by VDOT. More

information on these agreements, including necessary forms, can be found at <http://www.virginiadot.org/business/local-assistance-programs.asp>.

The information provided in this document was originally published in the report by Miller et al. entitled *Options for Improving the Coordination of Transportation and Land Use Planning in Virginia*.<sup>1</sup> The list was updated after the passage of the 2006 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which includes funding programs for local transportation projects. It is expected that some of the programs described herein will change as the Virginia General Assembly makes changes during its 2006 session. However, this document serves as a benchmark for documenting what was known about alternative funding sources as of December 2005.

## METHODS

The federal and state funding programs were generally adequately documented on various government websites, which were found in some cases with an Internet search engine. The researchers examined this information and summarized it. In some cases, additional clarification was obtained through personal communication with the federal and state program administrative staff.

The *Code* is also published on the Internet; however, more information about the Virginia statutes, including case law, is available from commercial legal publishers. The information about a Virginia locality's authority to acquire transportation funds or improvement projects was found using the *Westlaw* online legal research tool.

The various funding alternatives identified were divided into six categories, according to the agency that administers them:

1. alternative use of highway allocations, administered by VDOT
2. programs administered by VDOT
3. programs administered by localities in Virginia
4. programs administered by the Department of Rail and Public Transportation (DRPT)
5. programs administered by the U.S. Department of Transportation
6. programs administered by the Virginia Department of Conservation and Recreation (VDCR).

## RESULTS AND DISCUSSION

Localities seeking to take advantage of one or more of these sources should carefully consult the pertinent statute or program for detailed implementation procedures and restrictions. More information about many of the funding programs can be obtained by consulting the web links provided at the end of each section and the citations in the Reference section. The amount

of funds available for these programs and the details of the programs themselves may change with each new state legislative session or with each federal reauthorization.

### **Alternative Use of Highway Allocations, Administered by VDOT**

A few transportation improvement opportunities under VDOT's purview are outside the interstate/primary/urban and secondary system projects outlined in the Six-Year Improvement Program, but some of the opportunities allow the alternative use of these allocations, rather than providing a net funding increase. These alternative sources include the following.

#### **VDOT Bicycle and Pedestrian Accommodation Policy, for Using Secondary System Funds for Constructing Bicycle Facilities**

In 2004, VDOT adopted a new bicycle policy that dramatically improved the availability for a county to use its secondary roads allocation to plan, design, and construct bicycle facilities. These facilities are no longer restricted to bicycle lanes on roads, and the locality is not required to have an adopted bicycle plan that includes the desired bicycle facility. Bicycle lanes, widened shoulders, or off-road bicycle trails can be constructed, and VDOT will assume some of the maintenance responsibilities. Bicycle and pedestrian facilities are planned, designed, and constructed similarly to roads.<sup>2</sup> Bicycle and pedestrian facilities may also be constructed with primary and urban system funds, in the same manner that primary highways and urban streets are constructed. More information can be found at <http://www.virginiadot.org/infoservice/bk-default.asp>.

#### **Rural Addition Program for Upgrading Roads Not Maintained by the State for the Purposes of Adding Them to the State Secondary System**

Privately maintained streets can be incorporated into the state system provided several eligibility criteria are met, such as being open to the public at all times, serving at least three occupied residences, having been in use prior to 1992, and including sufficient right of way for maintenance and safety purposes. However, in order to upgrade roads with secondary funds, the county subdivision ordinance must be approved by VDOT to ensure that future substandard roads may not be built in that county.<sup>3</sup> A county may use up to 5 percent of their secondary road construction funds (termed *rural addition funds*) to upgrade the substandard private road for the purposes of incorporating it into the state system. (Residents may want relief from the expense of maintaining streets, such as some subdivision streets, privately.) More information can be found at <http://virginiadot.org/infoservice/faq-2ndaryroads.asp>.

#### **Rural Rustic Roads Program**

Although not a separate source of funds per se, the Rural Rustic Roads Program may be of interest to counties that want particular projects to go into the secondary portion of the Six-Year Improvement Program. The county has the option of designating a particular low-volume unpaved road with low-density development as a "rural rustic road" where the county agrees to limit growth along the road through zoning and planning.<sup>4</sup> In addition to having between 50 and

500 vehicles per day, the road should be in the VDOT secondary system, be a priority in the Six-Year Improvement Program, and be designated as a Rural Rustic Road by resolution of the local governing body (in coordination with VDOT). In return, VDOT can pave the roadway with minimum additional improvements (thereby requiring only 30 feet of right of way) without adhering to the normal design standards.<sup>5</sup> In short, the idea behind the program is that for certain low-volume, locally traveled roads, costs and impacts to the environment may be significantly reduced; the tradeoff is that some improvements that would be necessary for higher volume roads (or roads with higher density abutting them) are not made. For example, six pilot sites in Augusta County were paved for 10 percent of the cost that would have been incurred if those sites been constructed and engineered according to conventional standards. The pilot projects were also completed in 4 months rather than the typical 2 to 6 years.<sup>6</sup> Cost savings are usually significant but vary based on actual road conditions. More information can be found at <http://www.virginiadot.org/business/local-assistance-programs.asp#Rural%20Rustic>.

### **Public-Private Transportation Act of 1995 (PPTA)**

Although administered by VDOT, the PPTA allows private sector organizations to design, construct, build, and maintain transportation systems. Examples of projects being undertaken through the PPTA are construction of Route 28 HOT lanes in Northern Virginia, design work for one of the segments for Route 58, and the maintenance of portions of I-81. PPTA guidelines indicate that the project must be “one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods.”<sup>7</sup> More information can be found at <http://www.virginiadot.org/business/resources/PPTAGuidelines.pdf>.

## **Funding Source Programs Administered by VDOT**

### **Transportation Enhancement Funds**

This program can provide funds for “sidewalks, bike lanes, and the conversion of abandoned railroad corridors into trails” as well as cultural enhancements, such as renovations of historic buildings or the establishment of “transportation museums and visitor centers.”<sup>8</sup> Although this program has a federal funding source, its administration is the responsibility of VDOT. Grant applications are submitted annually by November 1st and require a 20 percent match from non-federal sources. Projects are initially scored and ranked by a scoring committee composed of staff from VDOT’s districts and central office, the DRPT, and the VDCR. Final selection of projects and funding is the responsibility of the CTB.<sup>8</sup> Examples of successful projects are the boardwalk trails and pedestrian paths at the Jamestown Settlement; river walk and waterfront improvements in York County; restorations to a 100-year-old train station in Bristol; new sidewalks in Gloucester Courthouse Village; a new visitor center in Bedford; and the Blue Ridge Railway Trail, a rail-trail conversion in Amherst and Nelson counties.<sup>9</sup> More information can be found at <http://www.virginiadot.org/projects/pr-enhancegrants.asp>.

## **Recreational Access Program**

This program provides funds for recreational access roads or bikeways that make a “publicly developed recreational area or historic site” accessible, provided such a site is not private or federally maintained. The main purpose of the project is to make these recreational or historic sites accessible as opposed solely to creating a new transportation facility. Therefore, a loop trail in a park would not be eligible, but a bikeway funded under this program might connect an area having heavy bicycle traffic to a park that presently is not accessible to cyclists.<sup>10</sup> This program is authorized under Section 33.1-223 of the *Code*. More information can be found at <http://www.virginiadot.org/business/local-assistance-access-programs.asp#Recreational%20Access>.

## **Industrial, Airport, and Rail Access Fund**

Section 33.1-221 of the *Code* authorizes this program, which provides access to employment centers, publicly accessible airports, and rail facilities.<sup>11</sup> However, rail funding is administered by the DRPT, although these applications are funded from the same fund as industrial and airport grant applications (B. Dandridge, personal communication, December 19, 2005). This access may entail providing improvements to an existing facility or providing a new facility, although in both cases the emphasis is on providing access to a new or an expanding industrial site. Access funds may be used only for engineering and construction, not for right-of-way acquisition, utility relocation, or environmental permitting. For road access projects, each locality is limited to \$300,000 per year unless the town, city, or county provides matching funds; under that scenario, VDOT can provide up to an additional \$150,000 provided the amount is matched by the city, county, or town. Airport access projects are subject to similar financial limits, with a maximum of \$450,000 (\$300,000 unmatched and \$150,000 matched) awarded to an individual airport per year.<sup>12</sup> More information can be found at <http://www.virginiadot.org/business/local-assistance-access-programs.asp#Industrial%20Access>.

## **Route 58 Corridor Development Program**

This program was established by the Virginia General Assembly in 1989, with the express purpose being to “enhance economic development potential” in southern Virginia.<sup>13</sup> The projects all involve Route 58, which stretches from Virginia Beach to Lee County. More information can be found at <http://www.virginiadot.org/projects/Rt58-overview.asp>.

## **Highway Safety Improvement Program (HSIP)**

Formerly referred to as the Hazard Elimination and Safety (HES) program, SAFETEA-LU includes funds for projects that eliminate roadside hazards and reduce risk at highway rail grade crossings. VDOT’s Traffic Engineering Division manages the HSIP and accepts applications from localities, rail companies, and VDOT districts and residencies, which are prioritized on a statewide basis. The federal program stipulates a 10 percent funding match from the applicant, be it a state or locality.<sup>14</sup> In addition, the HSIP includes a set-aside for highway-railroad crossing safety projects and high-risk rural roads. An example project is the installation of a new traffic signal in Halifax County, at the intersection of U.S. 501 and Halifax Shopping

Center, where studies had shown such a signal was needed.<sup>15</sup> More information and project applications can be found at <http://www.virginiadot.org/business/trafficeng-default.asp>.

### **Safe Routes to School**

Safe Routes to School is an international movement with the goal of making it safer and easier for children to walk or cycle from home to school, rather than ride in buses or cars.<sup>16</sup> Each state must appoint a safe routes to school coordinator, and 10 to 30 percent of the state's SAFETEA-LU authorization must be spent on the program.<sup>17</sup> Eligible projects include infrastructure improvements such as sidewalks, bike lanes, traffic calming, and public involvement, such as education and outreach. The VDOT safe routes to school coordinator works in the VDOT's Transportation & Mobility Planning Division (TMPD), and the contact information for the district coordinators is posted on <http://www.virginiadot.org/infoservice/bk-directory.asp#VDOT>.

### **Special Transportation Districts Created by State Law**

Virginia allows for the creation of local transportation improvement districts in a single city or county or in two or more contiguous cities or counties (§§ 33.1-409 and 33.1-410 of the *Code*). For example, in 1987, the Virginia General Assembly formed the Route 28 Transportation District 2, in which \$138.5 million was authorized to improve Route 28. Restrictions were that 51 percent of landowners (whose land was zoned commercial or industrial) must support the tax district, with a maximum of \$0.20 per \$100 of assessed value.<sup>18</sup>

### **Revenue Sharing Program**

Section 33.1-75.1 of the *Code* authorizes this program, which establishes a 50/50 cost sharing program with counties for the maintenance, improvement, construction, or reconstruction of the primary or secondary road system. The *Code* establishes this as a \$20 million program (\$10 million state funds/\$10 million local funds); however, the annual appropriations act has provided for a \$30 million program since 1999. If requests exceed the amount of funding available, actual allocations are prorated.

Initially, the program was open only to counties, with a maximum allocation of \$500,000 per county; however, the 2005 Appropriations Act provided an expansion for FY 2006 for the program to include cities and towns in the urban system. The funding limit was also increased to \$50 million in state funds (to be matched with \$50 million in local funds), with a maximum allocation of \$1 million of state funds per eligible locality.<sup>19</sup>

This program enables localities to contribute matching funds for the following purposes:

1. finance a deficit on a completed project
2. supplement funding on a construction project
3. supplement funding for future projects in the six-year improvement program
4. construct or improve a road not in the six-year improvement program
5. improve subdivision streets to attain state street standards

6. Supplement VDOT maintenance (e.g., guardrail replacement).<sup>20</sup>

More information can be found at <http://www.viriniadot.org/business/resources/localassistance-revenuesharingguide.pdf>.

### **Congestion Mitigation and Air Quality (CMAQ) Improvement Program**

This program seeks to improve air quality and is restricted to projects that are expected to reduce transportation-related emissions in areas that do not meet National Ambient Air Quality Standards.<sup>21</sup> As of 2004, these areas formally included Richmond, Northern Virginia, Hampton Roads, Fredericksburg, Roanoke, and Winchester.<sup>22</sup> CMAQ projects are diverse and include, but are not limited to, (1) encouraging motorists to use alternative forms of transportation (e.g., transit improvements such as new express bus service or bicycle/pedestrian improvements), (2) encouraging motorists to share existing vehicles (e.g., carsharing programs or guaranteed ride home programs), (3) improving traffic flow for motorists (e.g., traffic operations centers to disseminate information or the synchronization of traffic signals), and (4) encouraging vehicle emissions reduction measures, such as inspection and maintenance programs. Virginia projects funded under CMAQ have included rehabilitation and expansion of bus shelters, bike lanes, turning lanes, guaranteed ride home programs, bicycle racks, employer-sponsored ridesharing, and access improvements to commuter rail.<sup>23</sup> More information can be obtained by contacting the VDOT district planner for the locality and is posted on <http://www.fhwa.dot.gov/environment/cmaqpgs/>.

### **Transportation Partnership Opportunity Fund**

This fund was created by the 2005 General Assembly, which amended the *Code* by adding Section 33.1-221.1:9. Funds are credited to the Transportation Partnership Opportunity Fund by the general appropriations act and revenue from other sources, both public and private. The fund allows the Governor to use these funds to encourage the use of the design-build provisions of Section 33.1-12(2)(b), to encourage the use of the PPTA, and to make transportation improvements that will support economic development. The Governor may award money from the fund as grants, interest-free loans, or other financial arrangements to cities, counties, and the private sector. The funds may be used for roads, rail, and mass transportation and are administered by the CTB after the award.<sup>24</sup> More information can be found at <http://www.viriniadot.org/projects/tpof.asp>.

### **Rural Transportation Planning Assistance Program**

In 1993, VDOT initiated the state's first rural transportation planning program through the Transportation Planning Division (now the TMPD). The total amount of SPR funds allocated to the PDCs is \$48,000. When matched with \$12,000 in local funds, this provides a total of \$60,000. Through this program, the TMPD provides funding and guidance to rural planning district commissions (PDCs) in accomplishing rural planning tasks requested by the localities. Annually, the TMPD receives reviews, amends them as needed, and approves the scope of work for each fiscal year. The PDCs perform transportation planning work and submit quarterly billings, quarterly reports, and the end products to the TMPD.<sup>25</sup> More information on

these programs can be obtained by contacting the VDOT Regional Planning Manager using the contact information listed at <http://www.virginiadot.org/business/tpd-phone.asp>

### **Rural Transportation Planning Grant Program**

VDOT and the TMPD initiated the Rural Transportation Planning (RTP) Program in 1997 to supplement the RTP Assistance Program. It provides additional funding through a competitive grant program for worthwhile rural transportation planning proposals. VDOT and the TMPD have set aside a minimum of \$200,000 per fiscal year for this competitive program. A minimum of 20 percent of the total grant is to be funded by the PDC through a local match, with administrative charges not exceeding 10 percent of the total cost. Proposals are intended to benefit jurisdictions within a PDC and to develop innovated studies and approaches for use by other jurisdictions in the state.<sup>25</sup> More information on these programs can be obtained by contacting the VDOT Regional Planning Manager using the contact information listed at <http://www.virginiadot.org/business/tpd-phone.asp>.

### **Programs Administered by Localities**

As pointed out by the Virginia Chapter of the American Planning Association, a county can acquire funds for transportation improvements through six general mechanisms:

1. local transportation districts
2. pro-rata reimbursement provisions in the subdivision ordinance
3. community development authorities
4. impact fees
5. proffers
6. local bonding authority.<sup>26</sup>

None of these practices is a panacea, and all have limitations and possibly adverse consequences, but they are options in some situations.

### **Local Transportation Districts**

#### *Creation of Local Transportation Districts*

Virginia allows for the creation of local transportation improvement districts in a single city or county or in two or more contiguous cities or counties. To create a district, the owners of at least 51 percent of either the land area or the assessed value of land, in each locality, that (1) is within the boundaries of the proposed district and (2) has been zoned for commercial or industrial use or is used for such purposes must petition the local governing body of each locality in which the proposed district is to be located (qualifying individuals taking part in this process are hereinafter referred to as “petitioners”). Once they have done so, the local governing body of each locality in which the proposed district is to be located may consider a resolution creating the district (§ 33.1-410 of the *Code*).

### *The District Advisory Board*

Within 30 days after the establishment of a district, the local governing body from each locality within which any portion of the district is located must appoint six members to a district advisory board. Three of the six members from each locality must be chosen by the local governing body from nominations submitted to the local governing body by the petitioners. All members must own or represent commercially or industrially zoned land within the district. Each member must be appointed for a term of 4 years, except the initial appointment of board members must provide that the terms of three of the members shall be for 2 years. If a vacancy occurs with respect to a member initially appointed by a local governing body, or any successor of such a member, the local governing body must appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district. If a vacancy occurs with respect to an advisory board member initially nominated by the petitioners, or any successor thereof, the remaining advisory board members initially nominated by the petitioners, or their successors, shall nominate a new member for selection by the local governing body (§ 33.1-413 of the *Code*).

The advisory board must present an annual report to the commission on the transportation needs of the district and on the activities of the board and must present special reports on transportation matters as requested by the commission or the local governing body of the locality concerning taxes to be levied pursuant to the provisions of Title 33.1, Chapter 13, of the *Code*.

Although board members serve without pay, the local governing body must provide the board with facilities for the holding of meetings, and the commission must appropriate funds needed to defray the reasonable expenses and fees of the board (not to exceed \$20,000 annually), including without limitation expenses and fees arising out of the preparation of the annual report. Such appropriations must be based on an annual budget submitted by the board, and approved by the Commission, and be sufficient to carry out its responsibilities. The board is required to elect a chair and a secretary and such other officers as it deems necessary (§ 33.1-413 of the *Code*).

The board is required to fix the time for holding regular meetings and must meet at least once every year. Special meetings of the advisory board must be called by the chair or by two members of the advisory board upon written request to the secretary of the advisory board. A majority of the members constitutes a quorum (§ 33.1-413 of the *Code*).

### *The Commission*

A district, once created, is governed by a commission composed of (1) four members of the governing body of each locality in which the district is located, appointed by their respective local governing bodies, and (2) the chair of the CTB or his or her designee (§ 33.1-411 of the *Code*). The commission is required to elect one of its member's as chair and must, with the advice of the district advisory board, elect a secretary and a treasurer (though it may combine the offices into one position)). The majority of the commission members, not counting vacancies, constitutes a quorum, and a majority vote is necessary for any action taken by the commission).

## *Powers and Duties of the Commission*

The powers and duties of the commission encompass the following (§ 33.1-414 of the *Code*):

1. Construct, reconstruct, alter, improve, expand, make loans, or otherwise provide financial assistance to, and operate transportation improvements in, the district for the use and benefit of the public.
2. Acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any transportation improvements in the district and sell, lease as lessor, transfer, or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owner of property within the district shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.
3. Negotiate and contract with any person with regard to any matter necessary and proper to provide any transportation improvements, including, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement, expansion, or maintenance of any transportation improvements in the district.
4. Enter into a continuing service contract for a purpose authorized by Title 33.1, Chapter 13, of the *Code* and make payments of the proceeds received from the special taxes levied pursuant to the *Code* together with any other revenues, for installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by this chapter. However, payments for any such service contract must be conditioned upon the receipt of services pursuant to the contract. Such a contract must not obligate a locality to make payments for services of the district.
5. Accept the allocations, contributions, or funds of, or to reimburse from, any available source, including, but not limited to, any person for either the whole or any part of the costs, expenses, and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.
6. Contract for the extension and use of any public mass transit system or highway into territory outside the district on such terms and conditions as the commission determines.

7. Employ and fix the compensation of personnel which may be deemed necessary for the construction, operation, or maintenance of any transportation improvements in the district.
8. Have prepared an annual audit of the district's financial obligations and revenues, and, upon review of such audit, request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations.

In addition, the district may contract with the CTB for the board to perform any of the purposes of the district, and it may agree by contract to pay all or a portion of the special improvements tax to the CTB (§ 33.1-416 of the *Code*). Prior to executing any such contract, the district must seek the agreement of each local governing body creating the district that the locality's officer charged with the responsibility for preparing the locality's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding all amounts to be paid to the CTB under such contract during such fiscal year (§ 33.1-416 of the *Code*).

#### *Annual Special Improvements Tax*

Upon the request of the commission and consent of the local governing bodies, each local government body may impose an annual special improvements tax on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests in that portion of the improvement district within its jurisdiction (§ 33.1-415 of the *Code*). Absent the unanimous consent of the owners in the affected district, the annual special improvements tax enacted by the district's commission may not exceed \$0.20 per \$100 of the assessed fair market value of the taxable real property). However, in the case of counties with populations exceeding 500,000, the limit is increased to \$0.40 per \$100, (§ 33.1-435 of the *Code*) and in the special case of the City of Charlottesville and County of Albemarle, it is increased to \$0.25 per \$100 (§ 33.1-453 of the *Code*). Such special improvements taxes must be collected at the same time and in the same manner as the locality's taxes are collected, and the proceeds must be kept in a separate account (§ 33.1-415 of the *Code*). In addition, the effective date of the initial assessment must be January 1 of the year following adoption of the resolution creating the district). All revenues received by each locality pursuant to such taxes must be paid to or at the direction of the commission for its use pursuant to the provisions of Title 33.1, Chapter 13, of the *Code* (§ 33.1-415 of the *Code*).

#### **Pro-Rata Reimbursement Provisions in Subdivision Ordinances**

Every locality (through its governing body) is empowered and required to adopt an ordinance governing the subdivision and development of its land (§ 15.2-2240 of the *Code*). In addition, particular localities are empowered to enact provisions in their subdivision ordinances for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements, located outside the property limits of the land owned or controlled by him or her but serving an area having related traffic needs to which his or her subdivision or

development will contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed such road improvements (§ 15.2-2242 of the *Code*).

The following localities are empowered to enact subdivision ordinances with a pro-rata reimbursement provision: a county having the urban county executive form of government, any city located within or adjacent thereto, or any county adjacent thereto or a town located within such county, any county with a population between 57,000 and 57,450, any county with a population between 60,000 and 63,000, and any city with a population between 140,000 and 160,000 (§ 15.2-2242 of the *Code*).

#### *Mandatory Components of Pro-Rata Reimbursement Provisions*

Any such provision must provide for the adoption of a pro-rata reimbursement plan to include reasonable standards to identify the area having related traffic needs, to determine the total estimated or actual cost of road improvements required to serve the area adequately when fully developed in accordance with the comprehensive plan or as required by proffered conditions, and to determine the proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within the area, with interest at the legal rate or at an inflation rate prescribed by a generally accepted index of road construction costs, whichever is less (§ 15.2-2242 of the *Code*).

In addition, any such provision must specify that such costs are to be collected at the time of the issuance of a temporary or final certificate of occupancy or functional use and occupancy within the development, whichever comes first (§ 15.2-2242 of the *Code*). .

#### *Optional Components of Pro-Rata Reimbursement Provisions*

The subdivision ordinance may provide that no certificate of occupancy may be issued to a subsequent developer or subdivider until (1) the initial developer certifies to the locality that the subsequent developer has made the required reimbursement directly to him as provided above or (2) the subsequent developer has deposited the reimbursement amount with the locality for transfer forthwith to the initial developer (§ 15.2-2242 of the *Code*).

The ordinance may provide that the required reimbursement may be paid (1) in lump sum; (2) by agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is less, for a fixed number of years; or (3) on such terms as otherwise agreed to by the initial and subsequent subdividers and developers (§ 15.2-2242 of the *Code*).

### **Community Development Authorities**

Community development authorities (CDAs), formed under Article 6 of the Virginia Water and Waste Authority Act (§ 15.2-5100 of the *Code*), constitute an additional source of transportation funding mechanism available to localities.

#### *Creation of CDAs*

Localities such as cities, towns, and counties may consider petitions for the creation of CDAs, defined as “a public body politic and corporate and political subdivision of the Commonwealth.” (§ 15.2-5152 of the *Code*) Cities have this power automatically under the *Code*, as do counties with a population of at least 75,000 and/or through which an interstate highway passes. Towns (as well as counties that do not meet the criteria just listed) may elect to assume this power by ordinance adopted following a public hearing (§ 15.2-5152 of the *Code*).

Petitions for the creation of a CDA may be submitted to a locality by the owners of at least 51 percent of the land area or assessed value of a given tract. (The criteria under which a given tract of land qualifies are different for cities, towns, and counties and are governed by code (§ 15.2-5153 of the *Code*.) Such petitions must, among other things: (1) set forth the name and describe the boundaries of the proposed district; (2) describe the services and facilities proposed to be undertaken by the CDA within the district; (3) describe a proposed plan for providing and financing such services and facilities within the district; and (4) describe the benefits that can be expected from the provision of such services and facilities by the CDA (§ 15.2-5154 of the *Code*). A resolution creating a CDA cannot be approved until a public hearing (with proper notice) has been held by the local governing body (§ 15.2-5156 of the *Code*).

If the district for which a CDA is proposed overlaps with two or more localities, the CDA may be formed by concurrent ordinances of each locality, and such localities may contract with each other for the administration of the CDA (§ 15.2-5155 of the *Code*).

#### *Powers of CDAs*

CDAs have numerous powers (§ 15.2-5110 of the *Code*). Most relevant here are their powers to “finance, fund, plan, establish, acquire, construct or reconstruct, enlarge, extend, equip, operate, and maintain” the infrastructure improvements described in the resolution which established the district, as necessary to meet the increased demands placed upon the locality as a result of development within the district (§ 15.2-5158 of the *Code*). Such infrastructures may include “roads, bridges, parking facilities, curbs, gutters, sidewalks, traffic signals, storm water management and retention systems, gas and electric lines and street lights.”

#### *Funding Available to CDAs*

The *Code* outlines three mechanisms available to community development authorities for raising funds to finance its activities (including the infrastructure improvements described above): revenue bonds, special taxes, and special assessments on abutting properties.

1. *Revenue bonds.* A CDA has the power to issue revenue bonds. They are payable solely from the revenues received by the CDA and do not constitute a debt, liability, or obligation of any political subdivision other than the CDA. Consent of the locality is typically not required for the bonds issued by a CDA (unless such consent is specifically required by the authorizing resolution) (§§ 15.2-5158 and 15.2-5125 of the *Code*).

2. *Special taxes.* A CDA can request annually that the locality levy and collect a special tax on taxable real property within the CDA's jurisdiction. Unless requested by every property owner within the proposed district, the rate of the special tax can not exceed \$0.25 per \$100 of the properties' assessed fair market value. The special taxes are collected at the same time and in same manner as are the locality's taxes but are held in a special account and paid over to the CDA subject to annual appropriation. Taxes collected under this provision can be used only for purposes within the enumerated powers of the CDA (§ 15.2-5158 of the *Code*).
3. *Special assessments on abutting properties.* If the CDA provides services and/or facilities to abutting properties, it can finance these by a special assessment on these properties. Such assessments are imposed by the locality at the request of the CDA. All revenues received by the locality pursuant to such special assessments will be paid over to the CDA subject to annual appropriation. Assessments collected under this provision may be used for no other purpose other than to finance the services and/or facilities to abutting properties; moreover, the assessments shall not exceed the full cost of the improvements (which can include the legal, financial, and other directly attributable costs of creating the district, as well as the planning, designing, operating, and financing of the improvements). Such special assessments may be made effective as a lien upon a specified date and can be made subject to installment payments and other provisions allowed for local assessments generally (§§ 15.2-5158 and 15.2-2404 of the *Code*).

## **Road Impact Fees for New Development**

Road impact fees for new development are an option for counties with a population of 500,000 or more and adjacent localities, which in Virginia restricts such practices to Fairfax County and the Northern Virginia jurisdictions. These localities, however, are not using impact fees but instead are using proffers because proffers are easier to administer. (All counties, regardless of population, however, may use connection fees for water and sewer systems.) Impact fees cannot be accepted, however, unless the county has a capital improvement program as specified in Section 15.2-2321 of the *Code*.

## **Proffers**

Proffers are monetary payments from developers to localities and can be delineated into two categories: fees for improvement (or cash proffers) and conditional zoning (or non-cash proffers).<sup>26</sup> With the first category, if a county has a population growth of at least 10 percent according to the 2000 census, it can accept fees for road improvements or other public facilities when the developer submits a rezoning request. For example, in 1990, Botetourt County had a population of 24,492 and by 2000 had grown to 30,496; since this figure exceeds 10 percent, the county had a high rate of growth and thus can accept cash proffers.<sup>27,28</sup> The situation in Caroline County was similar: it grew from 19,217 in 1990 to 22,121 in 2000. Additional restrictions are placed on the cash proffer; e.g., a locality cannot accept such a proffer unless it has a conditional improvement program in place (§ 15.2-2404 of the *Code*). Conditional zoning is appropriate for improvements such as turn lanes, reconstruction or widening turn lanes, etc. (§ 15.2-2297 of the

*Code*). Localities should consult with VDOT to determine what road improvements will be required as a condition of the entrance permit (e.g., turn lanes, traffic signals, and widening) process. Since these improvements will be required by VDOT, the locality may be able to obtain different or additional improvements with conditional zoning proffers.

## **General Funds**

Sections 33.1-75.1, 75.2, and 75.3 of the *Code* indicate that counties have the ability to use their own general funds to contribute to transportation improvements. Section 75.2 specifically points out that counties may make contributions to facilitate primary and secondary road construction, whereas Section 75.3 notes that counties may use these general funds for other activities related to the primary and secondary system, such as “curbs, gutters, drainage ways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience” (§ 15.2-2404 of the *Code*).

## **Tax Increment Financing**

Tax increment financing is an option for blighted areas. Under this plan, a jurisdiction sells bonds or receives loans and uses the revenue to make public improvements to an area, where such improvements may include “roads, water, sewer, safety services, parks, and schools.”<sup>26</sup> To the extent that the improvements increase property values and encourage development in the designated area, the increase in real estate taxes is used to pay back the interest and principal on the loan.<sup>26</sup>

## **Local Bonding Authority**

Section 33.1-75.3 of the *Code* also provides explicit bonding authority for counties to make such improvements; however, such bonds must be approved by voters (T. Blazer, personal communication, August 20, 2003). The Transportation Coordinating Council points out that the Prince William County Parkway was funded partly from local bond sales.<sup>29</sup>

## **Coal and Gas Severance Tax**

Section 58.1-3713 of the *Code* authorizes local governments to tax businesses that extract coal or gas from the ground and to use a portion of the revenue from this tax to improve roads. The distribution of this money is controlled by a local Coal and Gas Road Improvement Advisory Committee. This committee is made up of four members: a member from the local governing body (board of supervisors), the VDOT residency administrator, and two citizens of the locality connected with the coal or gas industry. Each locality’s committee prepares an annual plan for use of the fund, a copy of which should be sent to VDOT.

## **Local Gas Tax**

It is highly probable that counties do not have the authority to impose a local gasoline tax without enabling legislation. The phrase “highly probable” is used because Section 15.2-1104 of the *Code* does, in fact, permit municipal corporations to raise funds in manners not prohibited by

law. However, the *Code* also has special legislation pertaining to the Northern Virginia and the Potomac Rappahannock District in Section 58.1-1720. This legislation states that a 2 percent sales tax on fuels for transportation improvements is permissible for areas that meet one of two criteria: (1) an area where “a rapid heavy rail and bus commuter mass transportation system is owned, operated, and or controlled by an agency or commission” where such an entity is a transportation district, or (2) the area is “contiguous to the Northern Virginia Transportation District” (including that district, as denoted in § 15.2-4515) (§ 15.2-2404 of the *Code*).<sup>30</sup> The fact that this legislation exists in the *Code* suggests that despite Section 15.2-1104, localities do not have this power to exercise a local gasoline tax unless such a power is explicitly granted by the Virginia General Assembly, as it has been for the Northern Virginia area.

## **Programs Administered by the Department of Rail and Public Transportation**

### **Industrial Access Railroad Tracks Program**

The DRPT administers the Industrial Access Railroad Tracks Program, which “fosters rail development for new or expanding industries.”<sup>31,32</sup> As is the case with the roadway portion of the Industrial, Airport, and Rail Access Program, the program is authorized by Section 33.1-221 of the *Code*.<sup>32</sup> Eligible work under the program includes track construction, reconstruction, improvement, engineering, environmental mitigation, and grading or drainage at the site.<sup>32</sup> (Funding limitations are the same as with the Industrial, Airport, and Rail Access Program: each project is limited to \$300,000 unless the town, city, or county provides matching funds; under that scenario, VDOT can provide up to an additional \$150,000 provided the amount is matched by the city, county, or town.<sup>32</sup>) Grant application and other additional information can be found at <http://www.drpt.state.va.us/downloads/default.aspx>.

### **Rail Enhancement Fund**

This program is authorized by Section 33.1-221.1:1.1 of the *Code* and can be used by the director of the DRPT for “acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes.” The CTB must determine that improvements will result in a public good of higher value than the investment. This program also requires a 30 percent cash or in-kind match from a private source or local government (§ 33.1-221.1:1.1 of the *Code*). More information is available at <http://www.drpt.virginia.gov/news/details.aspx?id=22>.

## **Programs Administered by the U.S. Department of Transportation**

The Federal Highway Administration (FHWA) has several programs available for transportation improvements under federal surface transportation legislation. These programs illustrate some of the different funding mechanisms for transportation improvements eligible for federal funds.<sup>33</sup> The programs differ in eligibility, scope, and funding availability: e.g., for 2003, the scenic byways program was limited to \$25 million for all projects nationally, whereas the

enhancement program had \$18.5 million available for Virginia projects alone<sup>8</sup> (B. Terrell, personal communication, July 2, 2003). Complete documentation for each program is available from websites maintained by VDOT and/or FHWA.

### **Transportation and Community System Preservation Program (TCSP)**

The TCSP is a “comprehensive program to assist in planning, developing, and implementing strategies to integrate transportation, community, and system preservation plans and practices” available under Section 1117 of SAFETEA-LU. The grants require a 20 percent non-federal match. Planning studies and projects that improve transportation efficiency, environmental impacts, and accessibility are eligible.<sup>34</sup> The 2002 Virginia awards show that most projects have a strong environmental component; recipients included implementing a park and ride facility, developing a master plan for Route 17 that included “environmental conservation,” extending a trail system, and purchasing easements for the purposes of watershed preservation.<sup>35</sup> Eligibility under this program is not restricted to states; metropolitan planning organizations (MPOs) and local governments are also able to compete for these grants. More information can be found at <http://www.fhwa.dot.gov/tcsp/>.

### **Scenic Byways Program**

This program provides funds for “eligible scenic byway projects along All-American Roads or designated scenic byways and for the planning, design, and development of State scenic byway programs,” where such programs might include scenic roads or bicycle or pedestrian trails.<sup>36</sup> SAFETEA-LU authorizes \$175 million, significantly more than the \$25 million in the Transportation Equity Act of the 21st Century (TEA-21). In order for a project to be eligible, it must be an existing byway or scenic road, although passing lanes are no longer acceptable uses.<sup>37</sup> Successful Virginia projects have included a scenic overlook in Bath County, constructing the Virginia Capital Trail bikeway between Williamsburg and Richmond, revising current VDOT scenic byways maps, and improvements to the bridge entrance at Montpelier. This program will also fund development of Corridor Management Plans which assist in preserving the scenic, cultural and historical qualities of the byway. More information can be found at <http://www.fhwa.dot.gov/safetealu/factsheets/scenic.htm>.

### **Public Lands Highways Program**

This program consists of two types of funds: (1) public lands discretionary funds and (2) forest highway funds (S. Eagle, personal communication, September 5, 2003). The purpose of the public lands discretionary funds is to “improve access to and within the Federal lands of the nation.”<sup>38</sup> Examples of improved access are planning for recreational travel, acquiring easements, and providing physical amenities such as visitor centers, rest areas, vehicle parking, and “interpretative signage.”<sup>38</sup> Successful Virginia projects have included intersection improvements at Route 29 and State Route 234 providing safer vehicular and pedestrian access to and within the Manassas National Battlefield Park in Prince William County; the construction of buildings, parking lots, pedestrian and bicycle trails, and access roads to support access to an educational center at the Chincoteague National Wildlife Refuge; and improvements to Route 600 in Smyth County to support the Jefferson National Forest.<sup>39</sup>

The purpose of the forest highway program is to enhance access to and within national forests by improving forest highways.<sup>40</sup> Forest highways are public roads owned by state or local agencies that serve the national forest system and are designated as such by FHWA's Federal Lands Highway Division. Successful Virginia projects have included improvements to Route 600 in Smyth County and improvements to Route 614 in Highland County, both to support the Jefferson National Forest (S. Eagle, personal communication, September 5, 2003). More information is available at <http://www.fhwa.dot.gov/flh/>.

### **Value Pricing**

FHWA defines value pricing as "congestion pricing or peak-period pricing [that] entails fees or tolls for road use which vary by level of congestion."<sup>41</sup> SAFETEA-LU authorizes approximately \$12 million per year until 2009 for peak period pricing and high-occupancy toll (HOT) pilot projects. Up to 15 states may establish pilot programs; and Virginia is currently using the PPTA to implement a 2003 TEA-21 grant. Value pricing projects from other states include feasibility studies and implementation of HOT lanes, variable pricing of heavy vehicles, and parking cash-out practices.<sup>41</sup> More information can be found at <http://www.fhwa.dot.gov/policy/otps/valuepricing.htm>.

### **Appalachian Regional Commission**

The Appalachian Regional Commission (ARC) is a federal and state partnership devoted to economic development, community infrastructure, and a reduction in the region's isolation from the rest of the United States and world. Since 1965, the ARC has been working on the Appalachian Development Highway System, which is intended to provide safe and efficient transportation infrastructure for a region that generally lacks interstate highway corridors. At the time of this writing, approximately 85 percent of the planned highway system had been completed or was under construction.<sup>42</sup> The following Virginia localities are in the Appalachian region: Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Highland, Lee, Montgomery, Pulaski, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise/Norton, Wythe Bristol, Buena Vista, Covington, Galax, Lexington, Norton, and Radford. More information can be found at <http://www.arc.gov/index.do>.

### **Other Federal Programs**

A variety of additional federal programs are available (not described here because of the highly detailed nature of these programs). For example, the Transportation Infrastructure Finance and Innovation Act allows loans or credit lines for major surface transportation projects (e.g., on the order of \$100 million or greater).<sup>43</sup>

### **Program Administered by the Virginia Department of Conservation and Recreation (the Recreational Trails Program)**

The Recreational Trails Program provides funds for developing and maintaining trails, which may serve "hiking, bicycling, in-line skating, equestrian use, cross-country skiing,

snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving [or] other off-road motorized vehicles . . . .”<sup>44</sup> A wide variety of uses is permitted under the program, such as purchasing easements, constructing new trails, restoring existing trails, and improving signage. FHWA also lists three prohibited uses: property condemnation, the construction of new trails for motorized use on national forest or Bureau of Land Management lands (unless consistent with management plans), and projects that entail permitting motorized use of trails that are currently off limits to motorized vehicles.<sup>44</sup> Virginia’s contact person for this program notes that successful projects have often involved trails within park systems, such as the W&OD trail in Northern Virginia, the “Creeper” Abingdon-Damascus trail, and the New River State Park Trail in Pulaski and Grayson counties (J. Cassidy, personal communication, July 2, 2003). More information is available at <http://www.dcr.virginia.gov/prr/trailfnd.htm>.

## SUMMARY OF PROGRAMS

Table 1 summarizes the funding programs found in this study that are available to Virginia localities, in addition to the VDOT Six-Year Improvement Program and Secondary Six-Year program. Most of the sources are awarded on a competitive basis, and an award may be used for a single project. The table does not provide a complete list of potential funding sources but rather presents a number of sources and program types. Planning, local economic development, recreation, bicycle/pedestrian, and mega-projects all have various alternative funding methods available.

## RECOMMENDATIONS

1. *Localities that wish to secure funding through the programs identified in this document should consider the links and reference list for additional information.* While this document may be helpful with brainstorming for both project type and funding source, it does not present all details, restrictions, and administrative difficulties for each funding source or program.
2. *Localities that wish to secure additional funding through these programs should explore opportunities for partnerships with public and private organizations.* Participation in several of the programs identified herein is strengthened by multi-entity involvement. For example, the establishment of a CDA requires coordination between the local government and affected commercial/industrial landowners.
3. *If localities view this document as helpful, then VTRC or VDOT should take steps to update the information it contains periodically.* The funds available for each program or the details of the programs themselves may change with each new state legislative session or each new federal reauthorization.

**Table 1. Summary of Funding Sources and Programs**

<b>Alternative Use of Highway Allocations, Administered by VDOT</b>	
Bicycle and Pedestrian Accommodation Policy	Allows bike lanes to be built with funds otherwise used for road construction (not additional fund source)
Rural Addition Program	Used to upgrade substandard subdivision streets to state standards (not additional fund source)
Rural Rustic Roads Program	Flexible cost-effective alternative for paving unpaved roads (not additional fund source)
PPTA of 1995	Allows private sector to design, construct, and operate transportation systems, including toll facilities (other than TPOF funds, not additional fund source except what private sector offers)
<b>Funding Source or Program Administered by VDOT</b>	
Transportation Enhancement Funds	Used for bicycle/pedestrian facilities, historic preservation, and aesthetic improvements
Access Programs	Includes recreational, industrial, and airport access road funds to provide access to qualifying facilities
Route 58 Corridor Development Program	Used for enhancing economic development potential of corridor
Highway Safety Improvement Program (HSIP)	Used for improving highway safety
Safe Routes to School	Eligible projects include infrastructure improvements such as sidewalks, bike lanes, and traffic calming, and public involvement, such as education and outreach.
Special Transportation Districts	Regional entities created by state law
Revenue Sharing	Matching funds available to localities
Congestion Mitigation and Air Quality (CMAQ) Program	Used to reduce emissions and promote clean air, available only in MPO areas that do not meet EPA's National Ambient Air Quality Standards
Transportation Partnership Opportunity Fund	Grants that Governor can award to facilitate economic development and use of PPTA (see above)
Rural Transportation Planning Assistance Program	Provides funding and guidance to rural PDCs in accomplishing rural planning tasks requested by localities
Rural Transportation Planning Grants.	Provides funding through competitive grant program for worthwhile rural transportation planning proposals.
<b>Programs Administered by Localities in Virginia</b>	
Local transportation districts	Used for special taxing of land and funding transportation improvements.
Pro-Rata Reimbursement Provisions in Subdivision Ordinance	Provides for reimbursement of road improvement costs between initial and subsequent developer
Community Development Authorities	Additional transportation funding mechanism
Road Impact Fees	Fee that particular localities can charge developers
Proffers	Cash and improvements offered by developers to persuade acceptance of rezoning application
General Funds	Can be used for transportation, including contributions to VDOT for project or improvement
Tax Increment Financing	Used to enhance economic potential of blighted areas
Local Bonding Authority	Bonds have been used by some localities to construct roads
Coal and Gas Severance Tax	Local government taxes on extraction of gas and coal, used for road improvements
Local Gas Tax	Authorized for levy by some localities
<b>Programs Administered by Department of Rail and Public Transportation</b>	
Industrial Access Railroad Tracks	Similar to access programs administered by VDOT
Rail Enhancement Fund	Used for retention, maintenance, improvement, and development of railways
<b>Programs administered by U.S. Department of Transportation</b>	
Transportation and Community System Preservation Program	Used to assist with planning and implementation of transportation improvements with environmental and community benefits
Scenic Byways Program	Used to fund recognition, preservation, and improvement of designated scenic byways
Public Lands Highway Program	Used to provide and improve access to and within federal lands.
Appalachian Regional Commission	Federally funded local and state partnership for economic development and transportation network improvements in Appalachian regions
<b>Programs administered by Virginia Department of Conservation and Recreation</b>	
Recreational Trails Program	Used to develop and maintain trails for motorized and non-motorized recreation

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