

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

Meeting Date: November 3, 2008

Subject: Changes to French Broad River Metropolitan Planning Organization (MPO)
Memorandum of Understanding

Attachments: Proposed New Memorandum of Understanding

SUMMARY OF REQUEST:

Attached is an amended Memorandum of Understanding for the French Broad River Metropolitan Planning Organization to be approved by each of the member governments in the MPO.

Background on MOU Revisions

The French Broad River MPO has revised its Memorandum of Understanding to reflect the change in Lead Planning Agency from the City of Asheville to Land-of-Sky Regional Council. NCDOT has requested several other changes to the MOU, in part to bring it into compliance with the Open Meetings Law. Substantive changes include:

1. A quorum of 51% of voting members is required for the transaction of all business. If a quorum is not present at a meeting of the French Broad River MPO, it must be adjourned and no business can be conducted.
2. The membership of a county or municipality member who fails to send the appointee or alternate to two consecutive MPO meetings will be designated as a vacant seat and will not count towards quorum. Attendance at future meetings will reinstate the member.
3. The weighted voting provisions (page 6) have been simplified to make them clearer and easier to use.

Both the Technical Coordinating Committee and the Transportation Advisory Committee of the MPO have approved the MOU.

BOARD ACTION REQUESTED:

Planning Staff requests the Board of Commissioners approve the proposed Memorandum of Understanding and Authorize execution of the agreement.

Suggested Motion:

I move the Board approve the proposed Memorandum of Understanding with the French Broad River Metropolitan Planning Organization and authorize execution.

French Broad River
Metropolitan Planning Organization

In Buncombe County, Haywood County and Henderson County, North Carolina

Memorandum of Understanding

**Adopted by the Transportation Advisory Committee
September 18, 2008**

**MEMORANDUM OF UNDERSTANDING
FOR**

COOPERATIVE, COMPREHENSIVE, AND CONTINUING TRANSPORTATION PLANNING

AMONG

THE GOVERNOR OF THE STATE OF NORTH CAROLINA,
THE CITY OF ASHEVILLE, TOWN OF BILTMORE FOREST, TOWN OF BLACK MOUNTAIN,
BUNCOMBE COUNTY, TOWN OF CANTON, TOWN OF CLYDE, VILLAGE OF FLAT ROCK,
TOWN OF FLETCHER, HAYWOOD COUNTY, HENDERSON COUNTY, CITY OF HENDERSONVILLE,
TOWN OF LAUREL PARK, TOWN OF MILLS RIVER, TOWN OF MAGGIE VALLEY, TOWN OF
MONTREAT, TOWN OF WAYNESVILLE, TOWN OF WEAVERVILLE, TOWN OF WOODFIN
(Hereinafter referred to as the Municipalities, the Counties, and the State)

IN COOPERATION WITH THE UNITED STATES DEPARTMENT OF TRANSPORTATION

WITNESSETH

WHEREAS, Each MPO is required to develop a comprehensive transportation plan in cooperation with NCDOT and in accordance with 23 U.S.C., Section 134, any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina,

WHEREAS, the said Chapter 136, Article 3A, Section 136-66.2(b) provides that:

“After completion and analysis of the plan, the plan shall be adopted by both the governing body of the municipality or MPO and the Department of Transportation as the basis for future transportation improvements in and around the municipality or within the MPO. The governing body of the municipality and the Department of Transportation shall reach agreement as to which of the existing and proposed streets and highways included in the adopted plan will be a part of the State highway system and which streets will be a part of the municipal street system. As used in this Article, the State highway system shall mean both the primary highway system of the State and the secondary road system of the State within municipalities;” and,

WHEREAS, the said Chapter 136, Article 3A, Section 136.66.2(d) provides that:

“For MPOs, either the MPO or the Department of Transportation may propose changes in the plan at any time by giving notice to the other party, but no change shall be effective until it is adopted by both the Department of Transportation and the MPO;” and

WHEREAS, a transportation planning process includes the operational procedures and working arrangements by which short and long-range transportation plans are soundly conceived and developed and continuously evaluated in a manner that will:

1. Assist governing bodies and official agencies in determining courses of action and in formulating attainable capital improvement programs in anticipation of community needs; and,

2. Guide private individuals and groups in planning their decisions which can be important factors in the pattern of future development and redevelopment of the area; and,

WHEREAS, it is the desire of these agencies that a previously established continuing, comprehensive, cooperative transportation planning process as set forth in a Memorandum of Understanding dated August 21, 2003 be revised and updated to comply with 23 U.S.C. 134; any subsequent amendments to that statute, and any implementing regulations;

NOW THEREFORE BE IT RESOLVED by the French Broad River Metropolitan Planning Organization that the following Memorandum of Understanding (MOU) is made:

:

SECTION 1. It is hereby agreed that the municipalities of Asheville, Biltmore Forest, Black Mountain, Canton, Clyde, Flat Rock, Fletcher, Laurel Park, Mills River, Maggie Valley, Montreat, Waynesville, Weaverville, Woodfin, and municipalities added to the MPO, the Counties of Buncombe, Haywood, and Henderson, and the North Carolina Department of Transportation, in cooperation with the United States Department of Transportation, will participate in a continuing, coordinated, comprehensive transportation planning process with the responsibilities and undertakings as outlined in the following paragraphs:

- A. The area involved - the French Broad River Metropolitan Planning Organization - will consist of the Asheville Urbanized Area as defined by the United States Department of Commerce, Bureau of the Census, in addition to that area beyond the existing urbanized area boundary that is expected to become urban within a twenty-year planning period. This area is hereinafter referred to as the Metropolitan Area Boundary.
- B. The French Broad River Metropolitan Planning Organization, hereinafter referred to as the French Broad River MPO, shall include the local governments of the Municipalities and the Counties, the North Carolina Department of Transportation, a Transportation Advisory Committee hereinafter defined, a Technical Coordinating Committee hereinafter defined, and the various agencies and units of local and State government participating in the transportation planning for the area.
- C. The continuing transportation planning process will be a cooperative one, and all planning discussions will be reflective of and responsible to the comprehensive plans for growth and development of the Metropolitan Area Boundary.
- D. The continuing transportation planning process will be conducted in accordance with the intent, procedures, and programs of Title VI of the Civil Rights Act of 1964, as amended.
- E. The Urbanized Area Boundary and the Metropolitan Area Boundary shall be periodically reviewed and revised in light of new developments and basic data projections.
- F. Transportation plans, programs and data collection will be coordinated with the Lead Planning Agency for the adjacent Rural Planning Organization and shall be conducted according to applicable interagency agreements.

G. Transportation Advisory Committee Established

A Transportation Advisory Committee is hereby established with the responsibility for cooperative transportation planning decision making for the French Broad River MPO. The

Transportation Advisory Committee shall have the responsibility for keeping the policy boards of the participating local governments informed of the status and requirements of the transportation planning process; for assisting in the dissemination and clarification of the decisions and policies of the policy boards; and for providing opportunities for citizen participation in the transportation planning process.

The Transportation Advisory Committee in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in the U. S. Department of Transportation Program Manuals and shall develop the planning work program, Long Range Transportation Plan, and Transportation Improvement Program as specified in such manuals.

The Transportation Advisory Committee shall be the forum for cooperative decision-making by elected officials of the member General Purpose Local Governments. However, this shall not limit the Transportation Advisory Committee's local responsibility for (1) insuring that the transportation planning process and the plans and improvement projects which emerge from that process are consistent with the policies and desires of local government; nor, (2) serving as a forum for the resolution of conflicts which arise during the course of developing the Long Range Transportation Plan and the Transportation Improvement Program.

H. Transportation Advisory Committee Membership

The Transportation Advisory Committee will consist of the Chief Elected or other elected representative(s) from the following Boards of General Purpose Local Government as well as the appointed member from the North Carolina Board of Transportation and the Division Administrator, or his designee, from the Federal Highway Administration. Each agency will have a single representative except as indicated below:

1. Asheville City Council (two representatives)
2. Biltmore Forest Board of Commissioners
3. Black Mountain Board of Aldermen
4. Buncombe County Board of Commissioners (two representatives)
5. Canton Board of Aldermen
6. Clyde Board of Aldermen
7. Flat Rock Village Council
8. Fletcher Town Council
9. Haywood County Board of Commissioners (two representatives)
10. Henderson County Board of Commissioners (two representatives)
11. Hendersonville City Council
12. Laurel Park Town Council
13. Maggie Valley Board of Aldermen
14. Montreat Board of Commissioners
15. Waynesville Board of Aldermen
16. Weaverville Town Council
17. Woodfin Board of Aldermen
18. Mills River Town Council
19. North Carolina Board of Transportation – Division 13
20. North Carolina Board of Transportation – Division 14
21. Federal Highway Administration (Advisory, non-voting)

Each of the above member agencies may also appoint an alternate, in accordance with the rules contained within the French Broad River MPO Bylaws. If alternates attend meetings where the primary representative is present, only the primary representative(s) shall be counted for voting purposes as specified in the Bylaws.

At the invitation of the Transportation Advisory Committee, other local, regional, State, or Federal agencies impacting transportation within the Planning Area may serve as advisory, non-voting members of the TAC. A member of the staff of the Lead Planning Agency will serve as secretary to the Committee.

I. Transportation Advisory Committee Duties.

The duties and responsibilities of the Transportation Advisory Committee are as follows:

1. Establish **goals and objectives** for the transportation planning process reflective of and responsive to comprehensive plans for growth and development in the Metropolitan Area Boundary adopted by Boards of General Purpose Local Government.
2. Review and approve a **Prospectus** for transportation planning which defines work tasks and responsibilities for the various agencies participating in the transportation planning process.
3. Review and approve changes to the **Urbanized Area Boundary** and the **Metropolitan Area Boundary** as well as review and recommend changes to the **National Highway System** and the Federal Functional Classification System in conformance with Federal regulations.
4. Review and approve the transportation **Unified Planning Work Program**.
5. Review and approve the **Long Range Transportation Plan** and adopt the **Comprehensive Transportation Plan** pursuant to G.S. 136-66.2. The Comprehensive Transportation Plan shall be mutually adopted by the Transportation Advisory Committee and the State of North Carolina.
6. Develop and Approve the **Metropolitan Transportation Improvement Program (MTIP)**. The MTIP shall be developed according to the special provisions outlined in Section K below.
7. Develop a biennial **Priority Needs List** for transportation improvements. The Transportation Advisory Committee will develop the Priority Needs List according to the provisions set forth in section L below.
8. Review and approve related **air quality planning** in conformance with Federal regulations.
9. Distribute funds distributed directly to MPO's under the provisions of TEA 21 and any subsequent re-authorization of TEA-21.
10. Develop, approve, and implement a **Public Involvement Policy**.

11. Develop and approve committee **Bylaws** governing operating policies and procedures. Through the Bylaws, the Transportation Advisory Committee may establish subcommittees and may delegate duties of planning and analysis to these subcommittees as outlined in Section M. below.
12. **Self-Certify** the Long-Range Planning Process.
13. Conduct any other duties identified as necessary to further facilitate the transportation planning process.

J. Transportation Advisory Committee Voting Policy

1. Voting representatives of the Municipalities and the Counties shall be designated by their respective governing boards. A quorum is required for the transaction of all business, including conducting meetings or hearings, participation in deliberations, or voting upon or otherwise transacting the public business. A quorum consists of fifty-one percent (51%) of the voting members of the TAC, plus as many additional members as may be required to ensure that fifty-one percent (51%) of the total optional weighted votes are present.
2. If a TAC member does not attend or does not send his or her designated alternate to two (2) consecutive meetings of the TAC, the member will be considered inactive. Following the designation as inactive, if the member or his or her alternate is not in attendance at a subsequent TAC meeting, he or she will not be counted for quorum purposes. The member will be automatically reinstated and counted for quorum purposes by attending or sending his or her designated alternate to a TAC meeting.
2. A simple majority shall determine all issues, except as provided in Section K below, where optional weighted voting may be invoked during adoption of the Draft MTIP or Final MTIP.

K. Metropolitan Transportation Improvement Program (MTIP) Development

1. The Metropolitan Transportation Improvement Program (MTIP) shall be adopted in accordance with adoption schedules for the State Transportation Improvement Program (STIP). The MTIP shall include all information typically contained in the STIP, including, but not limited to route number, project I.D. number, project limits, project description, proposed implementation schedule, funding source, and projected cost. The MTIP is intended to represent local priorities for transportation improvements. Once it is adopted, any discrepancies between the MTIP and the STIP will be negotiated through established State and Federal processes.
2. For adoption of the Draft MTIP or Final MTIP, any member of the Transportation Advisory Committee may call for the use of veto power or a weighted vote under the following circumstances:

Veto Power

When any project is on a road that does not carry an Interstate route designation, is not located on a limited-access highway, or is not a designated Strategic Highway Corridor, any member of the Transportation Advisory Committee shall be allowed to call for a veto vote to determine whether a selected project will be excluded from the MTIP. In a veto vote, members from jurisdictions that are “directly impacted” by the project may vote to exclude a project from the MTIP, provided that every TAC member from the “directly impacted” jurisdictions must be

present, and must unanimously vote for the veto. The call for a veto vote can only take place at a duly advertised meeting of the TAC in which a quorum is present.

Weighted Vote

When any project is on an Interstate route, a limited-access highway, or is on a designated Strategic Highway Corridor, any member of the Transportation Advisory Committee may call for a weighted vote regarding project-specific decisions related to the MTIP. The weighted vote must take place at a duly advertised meeting of the TAC in which a quorum is present. In a weighed vote, votes of TAC members from “directly impacted” jurisdictions will be weighted according to the following table:

Votes per Representative – Weighted Vote

<u>Jurisdiction</u>	<u>Not “Directly Impacted”</u>	<u>“Directly Impacted”</u>
Asheville (2 representatives)	1	3
Biltmore Forest	1	3
Black Mountain	1	3
Buncombe County (2 representatives)	1	3
Canton	1	3
Clyde	1	3
Flat Rock	1	3
Fletcher	1	3
Haywood County (2 representatives)	1	3
Henderson County (2 representatives)	1	3
Hendersonville	1	3
Laurel Park	1	3
Maggie Valley	1	3
Mills River	1	3
Montreat	1	3
Waynesville	1	3
Weaverville	1	3
Woodfin	1	3
NCDOT BOT Division 13	1	1
NCDOT BOT Division 14	1	1

“Directly Impacted” Defined. “Directly impacted” jurisdictions shall include Municipalities where any portion of the project is within the Municipality’s corporate limits or sphere of influence, and shall include Counties where any portion of the project is within the County’s unincorporated area and outside the sphere of influence of any municipality. Sphere of influence shall include extraterritorial jurisdiction, pending annexation areas, or areas covered by a Resolution of Intent to annex.

- For the purpose of implementing its transportation priorities, the Transportation Advisory Committee may develop a supplement to the MTIP containing descriptions of project design. Design information for a particular project will be included in the supplement on an as needed basis at the request of member jurisdictions. For roadway projects, the information may include the preferred alignment, the number of lanes, the inclusion of medians, and the extent and location of pedestrian and bicycle

facilities. Other design information will be included in the supplement as needed to establish the general parameters of project design. The supplement shall serve as a planning document to guide MTIP development, and shall be amended as needed. Generally, project design information will not be included in the supplement until a project has completed the NEPA process, design public hearing process, or any other required public involvement process.

L. Priority Needs List Development

It is the intent of this provision to provide for cooperative decision-making regarding regional priorities, and maximum local influence regarding local priorities. The Transportation Advisory Committee shall develop a Priority Needs List for transportation improvements on a biennial basis, or more often as needed. Through the Prospectus and the Bylaws, the Transportation Advisory Committee shall establish a process for developing the Priority Needs List. This process will be based on the following guiding principles:

1. Regionally significant priorities will be developed by the Transportation Advisory Committee. Regional priorities include, but are not limited to Interstate projects, new major roadways, and regionally significant widening projects, regional transit systems.
2. Local priorities will be determined through local input. These local priorities should be developed by county-level subcommittees or advisory groups as determined by the Transportation Advisory Committee. Local priorities include, but are not limited to roadway upgrades, intersection improvements, congestion management improvements, safety improvements, bicycle and pedestrian improvements, and transit improvements.

M. Transportation Advisory Committee Subcommittees

The Transportation Advisory Committee may establish subcommittees and advisory groups through its bylaws or through a vote at a regularly scheduled meeting. The subcommittees may consist of existing members of the Transportation Advisory Committee, the Technical Coordinating Committee, and other officials and citizens as appropriate to achieve the objectives of the subcommittee. Subcommittees may include, but are not limited to the following groups: Henderson County Transportation Committee, Haywood County Committee, Buncombe County Transportation Committee, Bicycle and Pedestrian Transportation Committee, Transit Committee, Citizen Transportation Committee. Further, the French Broad River Transportation Advisory Committee shall allow these groups to establish their own bylaws, meeting schedule, and elected officers. The purpose of the subcommittees will be to provide analysis and recommendations to the Transportation Advisory Committee.

N. Transit Planning and Programming

The French Broad River MPO will coordinate transit planning and programming within the Metropolitan Area Boundary. The duties and responsibilities of the Transportation Advisory Committee with regard to transit planning and programming are as follows:

1. Establish policies for distribution of federal mass transit funds that are provided directly to the Metropolitan Planning Organization. These policies will be reviewed and approved annually by the Transportation Advisory Committee
2. Develop and approve a Priority Needs List for transit improvements.

3. Program transit improvements in the Metropolitan Transportation Improvement Program (MTIP).

In developing transit plans, programs, and funding formulas, the Transportation Advisory Committee shall consider the following factors: federal mass transit funding formulas, State Maintenance Assistance Program formulas, population served by the transit system, ridership, and present and future demand for transit service.

O. Technical Coordinating Committee Established

A Technical Coordinating Committee, hereinafter referred to as the TCC, shall be established with the responsibility of general review, guidance, and coordination of the transportation planning process for the Metropolitan Area Boundary and with the responsibility for making recommendations to the respective local and State governmental agencies and the Transportation Advisory Committee regarding any necessary actions relating to the continuing transportation planning process. The TCC shall be responsible for development, review, and recommendation for approval of goals and objectives, the Prospectus, Unified Planning Work Program (UPWP), Urbanized Area Boundary, Metropolitan Area Boundary, National Highway System, Long Range Transportation Plan, Comprehensive Transportation Plan, Metropolitan Transportation Improvement Program (MTIP), Priority Needs List (PNL), air quality planning, distribution of directly allocated funds, public involvement, and any other duties identified as necessary to facilitate the transportation planning process.

Membership of the TCC shall include technical representation from all local and State governmental agencies directly related to and concerned with the transportation planning process for the planning area. Membership to the TCC may be altered on the basis of a majority vote of its membership, provided that any party may appeal decisions regarding TCC membership changes to the Transportation Advisory Committee. The initial TCC voting membership shall include, but not be limited to the following:

1. City of Asheville
2. Town of Biltmore Forest
3. Town of Black Mountain
4. Buncombe County
5. Town of Canton
6. Town of Clyde
7. Village of Flat Rock
8. Town of Fletcher
9. Haywood County
10. Henderson County
11. City of Hendersonville
12. Town of Laurel Park
13. Town of Maggie Valley
14. Town of Mills River
15. Town of Montreat
16. Town of Waynesville
17. Town of Weaverville
18. Town of Woodfin
19. NCDOT, Division 13

20. NCDOT, Division 14
21. NCDOT, Transportation Planning Branch
22. NCDOT, Public Transportation Division
23. City of Asheville Transit
24. Henderson County Apple Country Transportation
25. Buncombe County Mountain Mobility
26. Haywood County Transportation
27. State Bicycle Committee Representative, Division 13 and 14
28. FHWA, MPO Contact
29. Land of Sky Regional Council (as advisory, non-voting)
30. Land of Sky Rural Planning Organization (as advisory, non-voting)
31. Asheville Regional Airport (as advisory, non-voting)
32. WNC Regional Air Quality Agency (as advisory, non-voting)
33. NCDOT Regional Traffic Engineer (as advisory, non-voting)

Representatives of the municipalities and counties shall be the chief administrative officers (town manager or county manager) or their designees. Other entities may be represented by their chief administrative officer or their designee. Each TCC member shall have one vote. Through its bylaws, the TCC may designate other local agencies, organizations, or individuals as voting and non-voting members of the TCC.

A quorum is required for the transaction of all business, including conducting meetings, participation in deliberations, or voting upon or otherwise transacting the public business. A quorum consists of fifty-one percent (51%) of the voting members of the TCC.

If a TCC member does not attend or does not send his or her designated alternate to two (2) consecutive meetings of the TCC, the member will be considered inactive. Following the designation as inactive, if the member or his or her alternate is not in attendance at a subsequent TCC meeting, he or she will not be counted for quorum purposes. The member will be automatically reinstated and counted for quorum purposes by attending or sending his or her designated alternate to a TCC meeting.

The TCC shall operate as determined by its adopted bylaws. Any agency not listed above which wishes representation on the TCC may request such representation for consideration under the TCC adopted bylaws.

SECTION II. It is further agreed that the subscribing agencies will have the following responsibilities:

The Municipalities , Counties, and Council of Governments

The Municipalities and the Counties will assist in the transportation planning process by providing assistance, data and inventories in accordance with the Prospectus. The Municipalities and the Counties shall be responsible for any zoning and subdivision approvals that are impacted by the adopted Transportation Plan. The Land of Sky Regional Council will serve as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization.

North Carolina Department of Transportation

The Department will assist in the transportation planning process by providing planning assistance, data and inventories in accordance with the Prospectus.

SECTION III. Subscribing agencies to this Memorandum of Understanding may terminate their participation in the French Broad River MPO by giving 30 days written notice to the Transportation Advisory Committee Chair prior to the date of termination. When annexation occurs and member municipality boundaries extend beyond the adopted urbanized area boundary, the new boundaries will automatically become part of the urbanized area. If any party should terminate participation, this memorandum of understanding shall remain in force and the French Broad MPO shall continue to operate as long as 75% or more of population within the Metropolitan Area Boundary is represented by the remaining members.

SECTION IV. In witness whereof, the parties of this Memorandum of Understanding have been authorized by appropriate officials to sign the same, the City of Asheville by its Mayor, the Town of Biltmore Forest by its Mayor, the Town of Black Mountain by its Mayor, Buncombe County by the Chair of its Board of Commissioners, the Town of Canton by its Mayor, the Town of Clyde by its Mayor, the Village of Flat Rock by its Mayor, the Town of Fletcher by its Mayor, Haywood County by the Chair of its Board of Commissioners, Henderson County by the Chair of its Board of Commissioners, the City of Hendersonville by its Mayor, the Town of Laurel Park by its Mayor, the Town of Maggie Valley by its Mayor, the Town of Mills River by its Mayor, the Town of Montreat by its Mayor, the Town of Waynesville by its Mayor, the Town of Weaverville by its Mayor, and the Town of Woodfin by its Mayor, and by the Secretary of Transportation on behalf of the Governor of the State of North Carolina and North Carolina Department of Transportation as of the _____