

RESOLUTION NO. 16-16

**A RESOLUTION REQUESTING ADDITIONAL FEDERAL FUNDING FOR CONSTRUCTION OF THE TURNBULL BAY BRIDGE REPLACEMENT; REQUESTING THE RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION (TPO) TO ALLOCATE ITS CURRENT YEAR UNOBLIGATED FEDERAL SU FUNDS TO HELP OFFSET THE FUNDING SHORTFALL OF THE PROJECT AND TO SUPPORT A REQUEST FOR ADDITIONAL FEDERAL FUNDING FROM THE FDOT TO FUND THE REMAINING SHORTFALL; DIRECTING THE CITY CLERK TO PROVIDE THIS RESOLUTION TO THE VOLUSIA COUNTY COUNCIL, RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT); PROVIDING FOR CONFLICTING RESOLUTIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

*WHEREAS*, the Turnbull Bay Bridge built in 1967 over Turnbull Bay in New Smyrna Beach has well exceeded its design lifespan; and

*WHEREAS*, in August 2011 the Turnbull Bay Bridge was deemed unsafe causing Volusia County to immediately close the bridge; and

*WHEREAS*, due to concerns over public safety response times voiced by area residents, Volusia County and the City of New Smyrna Beach shared the additional costs of emergency repairs to reopen the bridge; and

*WHEREAS*, the FDOT has budgeted \$5,426,434 in federal funds to replace the Turnbull Bay Bridge which is still deemed by the FDOT as structurally deficient with a rating of 11 out of a possible 100 based on its most recent inspection report; and

*WHEREAS*, Volusia County recently opened construction bids on July 21, 2016 and received only two bids with the lowest being \$8,359,000 an approximately \$3 million (54%) over the budgeted funding; and

*WHEREAS*, Volusia County staff as well as the Engineer of Record and the County's CEI for this project have performed an analysis of the bids and believe the primary reasons for the bids coming in much higher than the engineer's estimate are due to the ongoing trend of increasing construction prices due to the large amount of current construction workload and the level of complexity and risk in this specific project; and

*WHEREAS*, the current large amount of construction activity (including all of the bridge work on the I-4 Ultimate project) is having a significant impact on construction labor and contractor availability and, therefore, the low interest by bridge contractors and the resultant high bids; and

*WHEREAS*, Volusia County has committed approximately \$780,000 of local gas tax funds to the Turnbull Bay Bridge project for CEI services and has no other funds available for funding the \$3 million shortfall without impacting another locally programmed project; and

**WHEREAS**, the TPO has \$1.6 million in Federal SU funds in the current fiscal year that have not been obligated to any projects and those monies could be allocated to the Turnbull Bay Bridge project to help fund the \$3 million shortfall; and

**WHEREAS**, Volusia County has also made a request to the FDOT for additional federal funding to cover the difference between the low bid amount and the previously approved federal funding.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA:**

**SECTION 1:** The City Commission finds that a critical need for replacing the structurally deficient Turnbull Bay Bridge in the City of New Smyrna Beach for public safety and requests the Florida Department of Transportation allocate additional funds to the replacement.

**SECTION 2:** The City Commission requests that the River to Sea Transportation Planning Organization allocate at its next Board meeting on September 28, 2016, the unobligated \$1.6 million in Federal SU funds in the current fiscal year to the Turnbull Bay Bridge project to help fund the \$3 million construction shortfall.

**SECTION 3:** The City Commission requests that the River to Sea Transportation Planning Organization support this request to the FDOT for additional federal funding to offset the remaining shortfall for construction of the new Turnbull Bay Bridge.

**SECTION 4: *Transmittal.*** That the City Commission hereby directs the City Clerk to provide this resolution to the Volusia County Council and County Manager for the County of Volusia, and to the River to Sea Transportation Planning Organization and Florida Department of Transportation.

**SECTION 5: *Conflicting Resolutions.*** That all resolutions or parts thereof that are in conflict with this resolution are hereby rescinded or repealed.

**SECTION 6: *Effective Date.*** That this resolution shall take effect immediately upon its final adoption.

**APPROVED AS TO FORM AND CORRECTNESS:**



**FRANK B. GUMMEY, III**  
City Attorney

DATE: \_\_\_\_\_

9/20/16

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DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT  
NO. 1000  
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**From:** Lonnie Groot [mailto:lgroot@stenstrom.com]  
**Sent:** Tuesday, September 27, 2016 8:45 AM  
**To:** Lois Bollenback  
**Cc:** Herbert Seely; William Colbert  
**Subject:** Legal Opinion; Obligation To Adhere To Policies Adopted By TPO (Typo corrected).



Article II, Section 8, Constitution of the State of Florida: “***ETHICS IN GOVERNMENT.—A PUBLIC OFFICE IS A PUBLIC TRUST. THE PEOPLE SHALL HAVE THE RIGHT TO SECURE AND SUSTAIN THAT TRUST AGAINST ABUSE.***”

**THIS TRANSMISSION MAY BE ATTORNEY CLIENT PRIVILEGED**

Lois:

I have reviewed the matter about which we have communicated over the past several days relative to the request by Volusia County for the allocation of \$1.6 Million of Urban Attributable (SU) Traffic Operations/Safety set aside funding to the Turnbull Bay Bridge replacement project.

It is our understanding that each year the River to Sea TPO allocates Urban Attributable (SU) set-aside funding (the funding received by TPOs that are designated as Transportation Management Areas) to projects in three categories:

- (1) Traffic Operations;
- (2) Bicycle and Pedestrian Facilities; and
- (3) Public Transit.

The allocations are implemented under and pursuant to the provisions of the most recent TPO Resolution (Number 2016-03).

It is our further understanding that Urban Attributable (SU) funding is typically used to program transportation system improvements ranked during the annual “Call for Projects” and project priority process. Resolution Number 2016-03 affirms the commitment of the governmental entities which form the TPO to that process. The Urban Attributable (SU) allocation methodology is detailed in Resolution Number 2016-03, as is the fact that the “policies” (the word directly used in the Resolution) are

committed to by the members of the TPO - subject to a direct repeal of the policies. Indicative of the interaction with and obligation to comply with controlling law is the provision in the Resolution which prescribes that the Resolution shall be provided to the Florida Department of Transportation, the Federal Transit Administration and the Federal Highway Administration. Although not a rule under the Administrative Procedures Act (as the TPO is not an agency under that Act); Resolution Number 2016-03 can clearly be deemed to be a rule of the TPO under which it operates and makes decisions (the TPO's "policies").

As to the TPO generally, the Interlocal Agreement creating the TPO as a metropolitan planning organization (MPO) provides for its creation under the provisions of Section 339.175, *Florida Statutes*, and in that Interlocal Agreement the members of the TPO agreed to plan together and implement the plans that result from that effort in a collective and cooperative manner. Subsection 339.175(9), *Florida Statutes*, indeed, described a unified planning work program process and states that:

Each M.P.O. shall develop, in cooperation with the department and public transportation providers, a unified planning work program that lists all planning tasks to be undertaken during the program year. The unified planning work program must provide a complete description of each planning task and an estimated budget therefor and must comply with applicable state and federal law.

MPOs are, of course, government organizations mandated by the *Federal Highway Act of 1973* to provide a cooperative, comprehensive and continuing transportation planning and decision-making process. As is easily gleaned from the word "planning" in the name of MPOs; the planning process consists the development of a vision and the creation of policies and strategies to support the vision with long-term and short-term horizons. Programming includes the prioritizing of proposed initiatives and matching initiatives with available funds. The programs and priorities of MPOs result from a public involvement process that is mandated by controlling law.

It is my opinion, based upon the laws under which the TPO is created, the Interlocal Agreement which formulates the TPO and the provisions of Resolution Number 2016-03 which established TPO policies under which the TPO makes decisions that the proposed funding of the non-programmed and non-prioritized project is not consistent with the controlling law which guides and directs the goals and functions of the TPO.

The above being said, if there is a determination that TPO funding will be awarded to the bridge project that is now proposed; two recommendations must be given:

- (1). That the all use of funds be rigidly pre-audited for compliance with controlling Federal laws; and
- (2). That the design of the bridge project be rigidly pre-audited to ensure compliance with controlling Federal and State design requirements.

It is recognized that unusual circumstances may occur on occasion when funds become available to the TPO that must be expended within a time certain and deviations from prioritized project lists may be necessary to avoid the loss of funding or that emergency circumstances may arise when emergency funding is needed for projects (such as damages resulting from hurricanes or like disasters) when the transportation facilities funded are not prioritized projects. Those most unusual and unique circumstances would seem to be rare and those principles could not be applied to every local project, however meritorious, that may need additional funding to be brought to fruition.

I hope that all is well with you.

Thank you for your attention to this matter.

Please call me **ANYTIME** at the office (407-322-2171) or at my cell phone (386-748-3685). I answer my cell phone 24 hours a day. If long distance, the office's toll free number is 800-247-5225. My e-mail address is [lgroot@stenstrom.com](mailto:lgroot@stenstrom.com)

I look forward to seeing you.

Lonnie Groot



**City, County and Local Government Law**

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Go Noles!



## Traffic Operations/Safety Projects –Candidate Projects for Programming/Advancement in Fiscal Year (FY) 2016/17

Project Name	Project Limits	Project Type	Sponsor	Phase	SU/ACSU	LF	Total Project Cost	Notes
Dunlawton (SR 421) Walk Light Construction	US 1 to Summer Trees Rd	Safety (lighting)	Port Orange	CST/CEI	\$619,858	\$68,517	\$688,375	Advance from FY 2017/18
Mast Arm Installation on SR A1A at Cardinal Dr & Harvard Dr	at Cardinal Dr & Harvard Dr	Traffic Signal Support System Upgrade	FDOT/Ormond Beach	PE	\$150,000	\$0	Approx. \$900,000	Submitted as 2 projects; FDOT to do as single project; FDOT is developing cost estimate
Seminole Woods/SR 100 Intersection Improvement	Seminole Woods Pkwy at SR 100	Intersection Improvement	Palm Coast	CST/CEI	\$47,617	\$0	\$47,617	PE & CST cost estimates are very low; I've asked city to reconsider; Carl Cote says PE will be funded by city and will be completed in a few months; he wants to program CST this FY
Catalina Blvd at Howland Blvd Intersection Improvement	Catalina Blvd at Howland Blvd	Intersection Improvement	Deltona	CST/CEI	\$234,500	\$62,500	\$350,000	Required LF match = 33% including \$53,000 for PE; PE currently at 60% plans
ITS Master Plan – Phase 2	NA	Planning Study	R2CTPO	PLN	\$240,000	\$0	\$240,000	Transfer SU funds to UPWP
<b>Project Total</b>					<b>\$1,291,975</b>			
<b>SU Available in Current Year</b>					<b>\$1,646,611</b>			
<b>SU Balance</b>					<b>\$354,636</b>			
<b>ACSU Target</b>					<b>\$1,500,000</b>			

SU – Funding Set-Aside for the Transportation Management Area

ACSU – Advanced Construction funding – available for use, but has to be reimbursed or replaced with another fund source

TALU – Transportation Alternative Funding

LF – Local Funds provided by the project sponsor

CST – Construction; CEI – Construction Engineering Inspection; PE – Design; PLN – Planning

UPWP – Unified Planning Work Program (the TPO's 2-year work program)



### Bicycle and Pedestrian Projects –Candidate Projects for Programming/Advancement in FY 2016/17

Project Name	Project Limits	Project Type	Sponsor	Phase	SU/TALU	LF	Total Project Cost	Notes
Nova Road Trail	Bellevue Av to South Street	Trail	Daytona Beach	CST	\$97,200	\$10,800	\$108,000	
Flagler Avenue Sidewalk (FM #435487-1)	12 <sup>th</sup> Street to Park Avenue	Sidewalk	Edgewater	CST	\$354,439	\$39,382	\$393,821	
Victoria Gardens Sidewalk (FM #435536-1)	Clyde Morris Bv. to Appleview Way	Sidewalk	Port Orange	CST	\$317,803	\$35,312	\$353,115	
Fremont Avenue Sidewalk	Niles Street to US 1	Sidewalk	Daytona Beach	CST	\$137,767	\$15,308	\$153,075	Project cost estimate does not include railroad crossing.
North Street Sidewalk	Clyde Morris Bv to Nova Rd	Sidewalk	Daytona Beach	CST	\$254,306	\$28,256	\$282,562	
Deltona Lakes/Spirit Elem. Sidewalks	[multiple limits]	Sidewalk	Deltona	PE	\$134,109	\$14,901	\$149,010	Ten (10) separate segments of 5' wide sidewalks.
Tomoka Elem. Connector	Old Tomoka Road from Main Trail to SR 40	Sidewalk, Crosswalk	Ormond Beach	PE	\$14,580	\$1,620	\$16,200	
Williamson Bv/Hand Av Ped. Improvements	Hand Av to Regal Theater Driveway	Sidewalk, Crosswalk, Pedestrian Signal	Ormond Beach	PE	\$23,760	\$2,640	\$26,400	
Leigh Trailhead	Palm Coast Tennis Center	Trail head	Palm Coast	PE	\$90,000	\$10,000	\$100,000	
Bunnell Elem. School Sidewalks	[multiple limits]	Sidewalk	Flagler County	PE	\$75,093	\$8,344	\$83,437	Eight (8) separate segments of 5' wide sidewalks.
Lakeview Bv Trail	Matanzas Pkwy to London Drive	Trail	Palm Coast	CST	\$509,324	\$56,592	\$565,916	

Project Name	Project Limits	Project Type	Sponsor	Phase	SU/TALU	LF	Total Project Cost	Notes
Project Totals					\$2,008,381			
SU Available in Current Year					\$1,872,664			
TA Available in Current Year					\$437,287			
SU Balance					\$301,570			
ACSU Target					\$1,500,000			

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**honoring our Heritage Award recipient Mark Lane, historian and journalist  
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Saturday, November 12, 2016

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7:00pm: Drinks, appetizers, oyster bar

7:45pm: Welcome, Award Presentations

8:00pm: Four- course gourmet dinner followed by live band, dancing, entertainment  
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All proceeds for renovations of 1905 Hotchkiss Cultural Site/1884 Lilian Place

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