

## MEMORANDUM

TO: Susan Churuti

FROM: Suzanne Van Wyk 

DATE: March 10, 2010

RE: Merging Pinellas County MPO with Countywide Planning Council

You have asked whether the Pinellas County Metropolitan Planning Organization (MPO) may be merged with the Countywide Planning Council. The MPO is an entity created pursuant to Interlocal Agreement under section 163.01, the Florida Interlocal Agreement Cooperation Act, under the authority of Title 23, United States Code, Section 134 (as implemented by Section 339.175, Florida Statutes). The Countywide Planning Council (Council) is created by a series of special acts of the Florida Legislature codified as Sections 134-46 through 134-56 of the Pinellas County Code. In addition to other duties, by designation under Article II of the County Code, the Council serves as the County's Local Planning Agency (LPA)<sup>1</sup>, the duties of which are set forth in Section 163.3174, Florida Statutes.

The main purpose of the MPO is to develop the long-range transportation plans and transportation improvement programs for the metropolitan area in which it is located. See 23 USC §134(c) and Section 339.175(1), Florida Statutes. The Council was organized to formulate and execute policy for orderly growth, development and environmental protection of Pinellas County as a whole. See Section 134-47, Pinellas County Code.

Overall, the authority and the duties of the Council are broader than the MPO. MPOs are directed to coordinate their planning processes with those of other planning officials, including local planned growth, economic development and environmental protection. See 23 USC §134(g)(3) and (h)(4). However, the MPO function is limited to transportation issues. The

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<sup>1</sup> Under Article II of the Pinellas County Code, the County Commission may designate a different body to serve as the local planning agency. For purposes of this analysis, we assume that the Council will continue to serve as the LPA.

Council, on the other hand, has the duty to develop the countywide future land use plan and all other elements of the countywide plan, including traffic circulation, to review those elements routinely, to review amendment to the countywide plan to ensure consistency, to coordinate growth management issues, and to serve the statutory functions of the LPA. See Section 134-50, Pinellas County Code.

If the Council were merged with the MPO, the MPO would have to perform the duties of the Council. In our opinion, the MPO is not authorized to perform those responsibilities without statutory amendment. Federal law does not prohibit an MPO from performing duties other than preparation of the cited plans. However, Section 339.175(6) limits the powers, privileges and authority of an MPO to those enumerated in that section or incorporated in an interlocal agreement. The specific duties<sup>2</sup> in Section 339.175(6) are to (1) development the long-range transportation plan; (2) prepare and annually update the transportation improvement program; and (3) prepare and annually update the unified work program. §339.175(6)(a), Fla. Stat. An MPO is also authorized to perform all acts required by federal or state laws or rules. §339.175(6), Fla. Stat.

The Interlocal Agreement establishing the MPO mirrors the statute in assigning the functions and duties thereof. It cross-references the authority provided in Section 339.175 and "as otherwise provided by federal or state law." The Agreement does not broaden the scope of the MPO into any responsibilities within the arena of the Council. Absent some state or federal legislative changes, the MPO is limited to executing the functions listed in the U.S. Code, Section 339.175 and the Interlocal Agreement.

Even if the MPO were authorized to take actions within the purview of the Council, merger would be complicated by membership requirements and political implications. The membership of the Council would need to be more flexible, as the membership of the MPO is fairly rigid and established by the Interlocal Agreement to meet the federal requirements including apportioned membership.

There are few statutory membership requirements of an LPA under section 163.3174, except that the school board must have a non-voting member to attend certain meetings. Also, a Council of Local Governments, established pursuant to section 163.02, may serve as the LPA "as long as it is fairly representative of all the governing bodies in the county or planning area."

The Interlocal Agreement for the Pinellas County MPO excludes representatives of the cities of St. Pete Beach, Treasure Island, Madiera Beach, Indian Rocks Beach, Redington Shores, Redington Beach, Belleair Beach, Indian Shores, North Redington Beach, Belleair Shores, Gulfport, Kenneth City, Belleair, South Pasadena, Belleair Bluffs and Seminole, all of which are

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<sup>2</sup> Of course an MPO also has peripheral duties, such as hiring staff, appointing technical advisory committees, entering into contracts and agreements, etc. §339.175(6)(d)-(g), Fla. Stat.

represented on the Council.<sup>3</sup> Amending the membership of the Planning Council would require a special act, but would appear to be consistent with the Statute, as long as the membership is "fairly representative of the governing bodies in the county." However, political issues would abound.

Further, under the 23 USC §134(d)(2), officials of public agencies that administer major modes of transportation in the metropolitan area must be members of the MPO. This requirement is implemented in the Interlocal Agreement for the Pinellas MPO by appointment of a representative of the Pinellas Suncoast Transit Authority as a voting member. Allowing a Transit Authority official to vote on issues with the Countywide Land Use plan would likely create representation issues. When exercising the authority of the Council, it is entirely possible that the Authority member would be prohibited from voting.

I hope this information is helpful to you in advising the Charter Review Commission. Please let me know if you need additional information.

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<sup>3</sup> Not every city/town is directly represented, but the County Code provides for representation of groups of small municipalities. See Section 134-48(7)-(9), Pinellas County Code.