

**METROPOLITAN PLANNING ORGANIZATION BOARD
EXECUTIVE COMMITTEE**

2:00p.m. August 10, 2016
Cape Coral Public Works Building
815 Nicholas Pkwy E, Cape Coral, FL
Green Room/A200



AGENDA

Call to Order

Roll Call

New Business

1. Public Comments on New Business Items
2. Update on the 2016 Sales Tax Referendums in other Florida Communities (Don Scott)
3. Review and Provide Input on the FHWA/FTA Notice of Proposed Rulemaking on MPO Coordination and Planning Area Reform (Don Scott)
4. Discuss the Executive Director Employment Agreement that Expires January 30, 2017 (Don Scott)
5. TIGER Project Update (Don Scott)

Other Business

6. Public Comments on Items Not on the Agenda
7. Announcements
8. Information and Distribution Items

Adjournment

* Action Items + May Require Action

All meetings of the Lee County Metropolitan Planning Organization (MPO) are open to the public. In accordance with the Americans with Disabilities Act, any person requiring special accommodations to participate in this meeting should contact Mr. Johnny Limbaugh at the Lee MPO 48 hours prior to the meeting by calling (239) 330-2242; if you are hearing or speech impaired call (800) 955-8770 Voice / (800) 955-8771 TDD. Or, e-mail jlimbaugh@leempo.com.

The MPO's planning process is conducted in accordance with Title VI of the Civil Rights Act of 1964 and related statutes. Any person or beneficiary who believes he has been discriminated against because of race, color, religion, sex, age, national origin, disability, or familial status may file a complaint with the Lee County MPO Title VI Coordinator Johnny Limbaugh at (293) 330-2242 or by writing him at P.O. Box 150045, Cape Coral, Florida 33915-0045.

UPDATE ON THE 2016 SALES TAX REFERENDUMS IN OTHER FLORIDA COMMUNITIES

DISCUSSION ITEM:

Staff will report on the status of the transportation related ballot measures that are currently being discussed/worked on in other communities in Florida. Staff will also provide additional information on these ballot measures at the meeting:

- **Broward County** – There are now two measures that will be on the November ballot, one is for .5 percent sales tax for the County that will be used for transportation projects, enhanced bus service, light rail, traffic signal timing over thirty years. The other is for .5 percent sales tax for the Cities that will be split by population for twenty years that will be used to buy land, City Hall construction, fire trucks, improve drainage and repave roads. The final ten years will be shared with the County receiving forty percent (for a total of 70%) of the revenues with the Cities splitting 20% for the last ten years. This is expected to raise \$12.6 billion over thirty years but both sales tax referendums have to pass or both fail.
- **Duval County** – Extension and repurposing of the current infrastructure sales tax to cover pension costs. The extension proposes .5 percent to pay down a pension deficit of \$2.7 billion which could go through 2060. Current polling indicates that 41% approve of the ballot, 33% oppose the ballot and 26% are currently undecided. There is a current lawsuit against the amendment related to confusing ballot language.
- **Marion County** – Sales tax referendum for public safety equipment and transportation capital and road rehabilitation projects. This ballot measure was approved in March (55% voting for it) and it is projected to raise \$166 million over four years.
- **Hillsborough County** – The County Commission voted 4-3 to reject putting a thirty year .5% sales tax on the ballot for transportation infrastructure this year.
- **Palm Beach** – Working on a ten year 1% sales tax increase to be used on infrastructure split between the School Board, County and the Cities. This is projected to raise \$2.7 billion with 20% of the funding going to the Cities, 30% to the County and 50% to the School Board. The funding will be used for parks, road resurfacing, drainage improvements, bridges, pathways, lighting, buildings and low income housing improvements. The School Board is working on a list of projects and costs after pressure on the media requesting transparency.
- **Highlands County** – A .5 percent sales tax referendum is scheduled for the August 30th election for Schools. The funding will be used for capital projects including school construction and renovations, vehicles, technology etc. The sales tax would be for a twenty year period.
- **Hernando County** – Had planned on a .5 percent sales tax referendum for the November election but now has scheduled a public hearing to consider repealing the ordinance that was approved back in May. The funding would be used for roads, sidewalks and maintenance of environmentally sensitive lands and was projected to raise \$8.5 to \$9.0 million a year over a fifteen year period.

REVIEW AND PROVIDE INPUT ON THE FHWA/FTA NOTICE OF PROPOSED RULEMAKING FOR MPO COORDINATION AND PLANNING AREA REFORM

RECOMMENDED ACTION: Review and provide input on the FHWA/FTA Notice of Proposed rulemaking for MPO coordination and planning area reform.

On June 27, 2016, the United States Department of Transportation (Federal Highway Administration and Federal Transit Administration) proposed a draft rule proposing changes to the transportation planning regulations to “promote more effective regional planning by States and Metropolitan Planning Organizations (MPO)”. Comments on the proposed rule are due by August 26, 2016. A summary of the proposed rule requirements are listed below:

- Changes to the definition of Metropolitan Planning Area would clarify that it must include the entire urbanized area, plus the contiguous area forecast to become urbanized within the 20 year planning horizon.
 - In practice, Metropolitan Planning Area has been synonymous with the MPO boundary.
 - But in statute, the Metropolitan Planning Area is intended to be the entire urbanized area. In complex areas, the statute envisions there could be multiple MPOs within one metropolitan planning area.
- Governors and MPOs would determine whether multiple MPOs are warranted within a single Metropolitan Planning Area, based on the size and complexity of the area.
- Multiple MPOs within a metropolitan planning area would jointly develop planning products including a single metropolitan transportation plan, TIP, and performance targets.
- In order to improve State coordination with MPOs, States and MPOs would be required to maintain a current planning agreement, which would include a dispute resolution process, and would be required for coordination for analyses of areas within the metropolitan planning area.
- Metropolitan planning agreements must include coordination strategies and dispute resolution procedures between the States and the MPOs and, MPO to MPO for those sharing UZA boundaries.
- Planning data must be consistent between States and MPOs.

Of the 409 MPO's across the Country, 142 of them will be impacted by this rule change including 22 in Florida (including the Lee County MPO - see attached list of MPO's that

are impacted and the Urbanized boundary map for Florida). We have provided a few scenarios to give an idea on how this might impact the Lee County MPO, if this moves forward with no changes:

- The Lee MPO area is reduced back to the Cape Coral urbanized area and the Collier MPO area is expanded to the Bonita Springs MPO area with the split falling in the middle of Estero (see attached map).
- The two MPO's are combined to cover both the Cape Coral and Bonita Springs urbanized areas.
- The two MPO's remain separate but are now required to produce a joint Long Range Transportation Plan for the entire Cape Coral and Bonita Springs urbanized areas, a joint Transportation Improvement Program and jointly established performance targets.
- Multiple MPO's in south Florida are combined into one MPO to cover the urbanized areas that have or are projected to grow together over the 20 year planning horizon (not sure that this is the intent but there have been interpretations out there that, for instance, have included an east coast MPO from Miami to Jacksonville due to the existing and projected growth of the urbanized areas).

There is currently a lot of ongoing discussions on this item from the other MPO's in the state and across the nation and staff will provide more information on this at the meeting. The proposed rule is lengthy so a link to it is provided here: <https://www.federalregister.gov/articles/2016/06/27/2016-14854/metropolitan-planning-organization-coordination-and-planning-area-reform>.

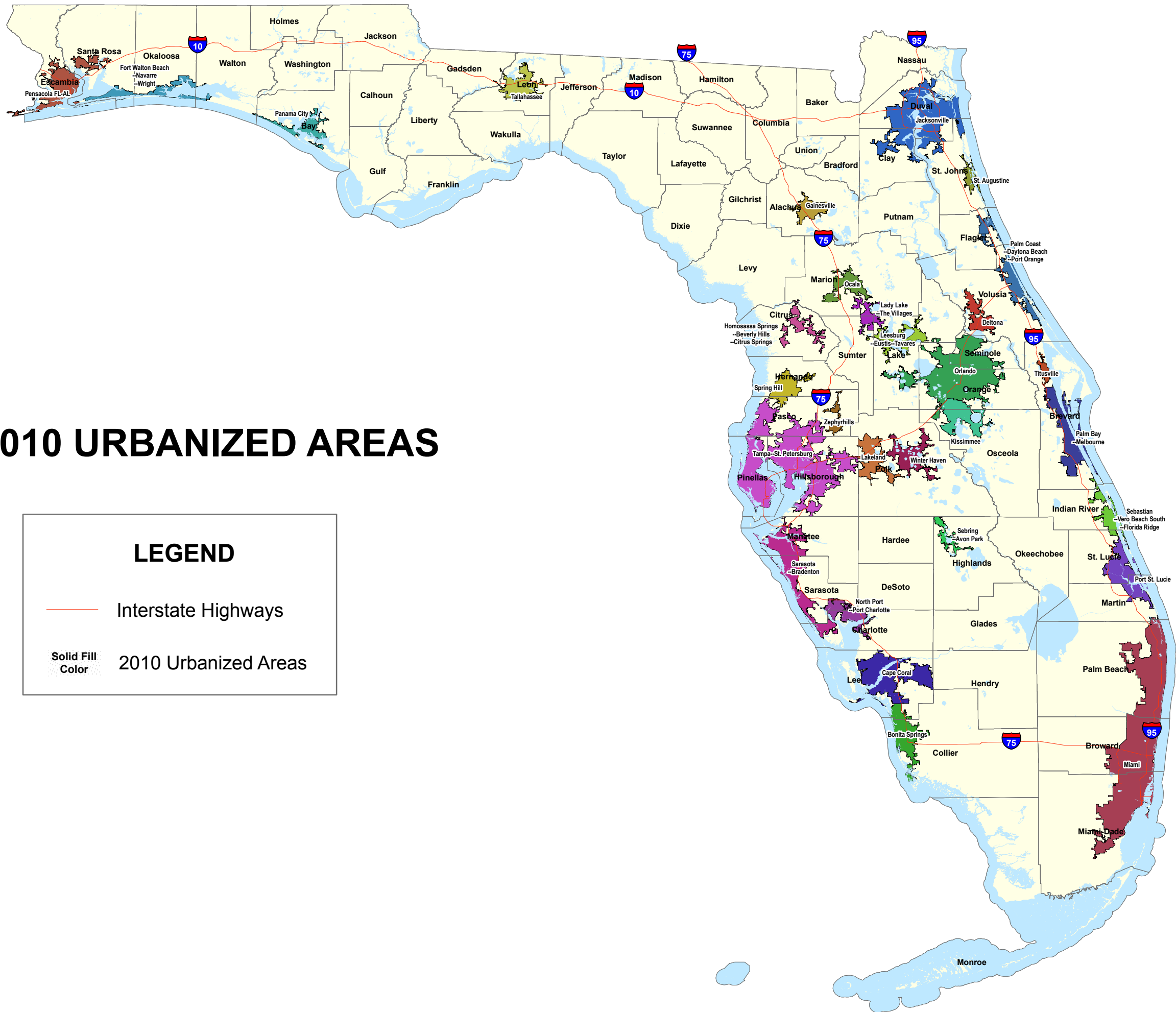
Forecast of Metropolitan Planning Organizations (MPOs) Affected by Joint Planning Provisions in Proposed Rule

This list was prepared using MPO boundary information provided to FHWA, and displayed in FHWA's HEPGIS System (<http://hepgis.fhwa.dot.gov/fhwagis/ViewMap.aspx?map=MPO+Boundaries|MPO+Boundary#>), as of April 20, 2016. The list does not reflect MPO boundary changes reported after that date.

STATE	MPO NAME	CITY	2010 Census Population
AR	West Memphis Area Transportation Study	West Memphis	42,214
AZ	Yuma MPO	Yuma	195,807
CA	Association of Monterey Bay Area Governments	Marina	732,667
CA	Merced County Association of Governments	Merced	255,366
CA	Metropolitan Transportation Commission	Oakland	7,150,828
CA	Southern California Association of Governments	Los Angeles	18,051,203
CA	Stanislaus COG	Modesto	514,453
CT	Capital Region COG	Hartford	973,959
CT	Greater Bridgeport / Valley MPO	Bridgeport	406,161
CT	Housatonic Valley MPO	Brookfield	224,621
CT	Lower Connecticut River Valley MPO	Old Saybrook	175,636
CT	Naugatuck Valley Council of Governments	Waterbury	360,488
CT	South Central Regional COG	North Haven	569,816
CT	South Western MPO	Stamford	363,963
CT	Southeastern Connecticut COG	Norwich	286,711
DC	National Capital Region Transportation Planning Board	Washington	5,068,540
DE	Dover / Kent County MPO	Camden	167,364
DE	Wilmington Area Planning Council	Newark	639,457
FL	Bay County Transportation Planning Organization	Pensacola	168,852
FL	Broward MPO	Fort Lauderdale	1,748,066
FL	Charlotte County - Punta Gorda MPO	Port Charlotte	161,230
FL	Collier MPO	Naples	321,518
FL	Florida-Alabama Transportation Planning Organization	Pensacola	434,625
FL	Hernando County MPO	Brooksville	313,992
FL	Hillsborough County MPO	Tampa	1,228,761
FL	Indian River County MPO	Vero Beach	136,368
FL	Lake-Sumter MPO	Leesburg	390,298
FL	Lee County MPO	Fort Myers	616,576
FL	Martin County MPO	Stuart	146,846
FL	METROPLAN Orlando	Orlando	1,837,385
FL	Miami-Dade MPO	Miami	2,569,420
FL	Ocala - Marion County Transportation Planning Organization	Ocala	331,558
FL	Okaloosa-Walton Transportation Planning Organization	Pensacola	214,967
FL	Palm Beach MPO	West Palm Beach	1,320,134
FL	Pasco County MPO	New Port Richey	465,394
FL	Pinellas County MPO	Clearwater	915,810
FL	Polk County Transportation Planning Organization	Bartow	602,278
FL	Sarasota-Manatee MPO	Sarasota	700,837
FL	Space Coast Transportation Planning Organization	Viera	541,274
FL	St. Lucie Transportation Planning Organization	Fort Pierce	277,097
GA	Atlanta Regional Commission	Atlanta	4,818,052
GA	Gainesville-Hall MPO	Gainesville	179,642
GA	Greater Dalton MPO	Dalton	102,451
GA	Macon Area Transportation Study	Macon	167,347
GA	Warner Robins Area Transportation Study	Warner Robins	148,283

STATE	MPO NAME	CITY	2010 Census Population
IL	Rockford Metropolitan Agency for Planning	Rockford	308,390
IL	The Chicago Metropolitan Agency for Planning	Chicago	8,453,793
IN	Columbus Area MPO	Columbus	83,571
IN	Indianapolis MPO	Indianapolis	1,518,800
IN	Madison County COG	Anderson	140,839
IN	Michiana Area COG	South Bend	464,490
IN	Northwest Indiana Regional Planning Commission	Portage	771,648
KY	Ashland Area MPO	Grayson	86,444
MA	Boston Region MPO	Boston	3,159,512
MA	Cape Cod MPO	Barnstable	215,881
MA	Central Massachusetts MPO	Worcester	556,910
MA	Merrimack Valley MPO	Haverhill	333,357
MA	Montachusett MPO	Fitchburg	236,482
MA	Northern Middlesex MPO	Lowell	286,951
MA	Old Colony MPO	Brockton	288,628
MA	Pioneer Valley MPO	West Springfield	621,823
MA	Southeastern Massachusetts MPO	Taunton	616,689
MD	Baltimore Regional Transportation Board	Baltimore	2,684,661
ME	Kittery Area Comprehensive Transportation System	Springvale	48,680
MI	Battle Creek Area Transportation Study	Springfield	93,998
MI	Bay City Area Transportation Study	Bay City	85,050
MI	Genesee County Metropolitan Planning Commission	Flint	425,788
MI	Kalamazoo Area Transportation Study	Kalamazoo	277,100
MI	Midland Area Transportation Study	Midland	90,645
MI	Saginaw Metropolitan Area Transportation Study	Saginaw	200,170
MI	Southeast Michigan COG	Detroit	4,703,593
MI	Southwest Michigan Planning Commission	Benton Harbor	127,004
NC	Burlington-Graham MPO	Burlington	162,718
NC	Cabarrus-Rowan MPO	Concord	316,427
NC	Capital Area MPO	Raleigh	1,071,012
NC	Charlotte Regional Transportation Planning Organization	Charlotte	1,098,657
NC	Gaston Cleveland Lincoln MPO	Gastonia	181,096
NC	Greensboro Urban Area MPO	Greensboro	370,025
NC	High Point Urban Area MPO	High Point	200,492
NC	Winston-Salem Urban Area MPO	Winston-Salem	397,772
NH	Nashua Regional Planning Commission	Nashua	204,393
NH	Rockingham Planning Commission	Exeter	191,906
NH	Southern New Hampshire Planning Commission	Manchester	261,258
NH	Strafford Regional Planning Commission	Dover	146,865
NJ	North Jersey Transportation Planning Authority	Newark	6,579,801
NJ	South Jersey Transportation Planning Organization	Vineland	594,419
NY	New York Metropolitan Transportation Council	New York	12,367,508
NY	Orange County Transportation Council	Goshen	372,815
NY	Poughkeepsie-Dutchess County Transportation Council	Poughkeepsie	297,508
NY	Ulster County Transportation Council	Kingston	182,491
OH	Akron Metropolitan Area Transportation Study	Akron	713,314
OH	Brook-Hancock-Jefferson Metropolitan Planning Commission	Steubenville	124,458
OH	Clark County-Springfield Transportation Study	Springfield	138,335
OH	Eastgate Regional COG	Youngstown	448,970
OH	Licking County Area Transportation Study	Newark	138,039
OH	Miami Valley Regional Planning Commission	Dayton	832,161

STATE	MPO NAME	CITY	2010 Census Population
OH	Mid-Ohio Regional Planning Commission	Columbus	1,426,183
OH	Northeast Ohio Areawide Coordinating Agency	Cleveland	2,071,325
OH	Ohio-Kentucky-Indiana Regional Council of Governments	Cincinnati	1,981,230
OH	Policy Committee of the Erie Regional Planning Commission	Sandusky	82,976
OH	Stark County Area Transportation Study	Canton	375,541
OR	Portland Area Comprehensive Transportation System	Portland	1,499,844
PA	Adams County Transportation Planning Organization	Gettysburg	101,407
PA	Delaware Valley Regional Planning Commission	Philadelphia	5,626,318
PA	Harrisburg Area Transportation Study	Harrisburg	571,842
PA	Lackawanna-Luzerne Transportation Study	Scranton	535,334
PA	Lancaster County Transportation Coordinating Committee	Lancaster	519,430
PA	Lebanon County MPO	Lebanon	111,189
PA	Lehigh Valley Transportation Study	Allentown	663,158
PA	Northeastern Pennsylvania Planning Alliance MPO	Pittston	440,670
PA	Reading Area Transportation Study	Reading	411,440
PA	Shenango Valley Area Transportation Study	Hermitage	116,638
PA	Southwestern Pennsylvania Commission	Pittsburgh	2,574,953
PA	Susquehanna Economic Development Association Council of Government	Lewisburg	375,261
PA	York Area MPO	York	434,962
PR	Aguadilla MPO	Santurce	316,151
PR	San Juan MPO	Santurce	2,241,853
PR	UZA's MPO	Santurce	1,156,412
RI	State Planning Council	Providence	1,052,527
SC	Greenville-Pickens Area Transportation Study	Greenville	547,397
SC	Rock Hill-Fort Mill Area Transportation Study	Rock Hill	174,406
SC	Spartanburg Area Transportation Study	Spartanburg	222,968
TN	Bristol MPO	Bristol	93,307
TN	Chattanooga-Hamilton County/North Georgia Transportation Planning C	Chattanooga	436,669
TN	Johnson City Metropolitan Transportation Planning Organization	Johnson City	139,408
TN	Kingsport MTPO	Kingsport	125,260
TN	Memphis Urban Area MPO	Memphis	1,077,697
TX	Alamo Area MPO	Jefferson City	1,976,167
TX	Brownsville MPO	Reading	226,282
TX	Harlingen-San Benito MPO	Lancaster	156,063
UT	Mountainland Association of Governments	Orem	514,972
UT	Wasatch Front Regional Council	Salt Lake City	1,561,348
VA	Fredericksburg Area MPO	Fredericksburg	275,639
VA	Richmond Area MPO	Richmond	934,060
VA	Tri Cities Area MPO	Petersburg	149,029
WA	Southwest Washington Regional Transportation Council	Vancouver	425,363
WI	Janesville Area MPO	Janesville	77,940
WI	Southeastern Wisconsin Regional Planning Commission	Waukesha	2,019,767
WI	State Line Area Transportation Study	Beloit	69,441
WV	BCKP Regional Intergovernmental Council	South Charleston	248,546
WV	Belmont-Ohio-Marshall Transportation Study	Wheeling	147,952
WV	KYOVA Interstate Planning Commission	Huntington	201,199



2010 URBANIZED AREAS

LEGEND

— Interstate Highways

Solid Fill Color 2010 Urbanized Areas



EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

RECOMMENDED ACTION: Discuss the extension of the Executive Directors employment agreement.

The employment agreement with the Executive Director expires on January 30, 2017 and based on the terms of the agreement can be extended by mutual written agreement of the MPO and the Employee. The original agreement that was signed in 2012 was revised by the MPO Attorney back in 2014 to match changes to requirements and those changes are reflected in the renewal and modification that was signed in August of 2014.

**RENEWAL AND MODIFICATION OF EMPLOYMENT AGREEMENT
BY AND BETWEEN LEE METROPOLITAN PLANNING ORGANIZATION
AND DONALD L. SCOTT**

WHEREAS, the Lee Metropolitan Planning Organization (hereinafter "MPO") and Donald L. Scott (hereinafter "Employee") entered into an Employment Agreement dated February 1, 2012; and

WHEREAS, the parties desire to renew or extend that Agreement and modify or add certain provisions to said Agreement as provided in Section 2 of the original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

SECTION ONE: Contract Renewal

The Parties agree to renew or extend the employment of Scott for a term of two (2) years, commencing on January 31, 2015 and terminating on January 30, 2017.

SECTION TWO: Additional or Modified Terms

The parties agree to modify or add the following terms to the Employment Agreement (deletions are indicated by strikethrough and additions are indicated by underline):

"Section 2: Term," paragraph "A." is hereby modified as follows:

A. Employee agrees to remain in the exclusive employ of the MPO from the effective date of this Agreement until January 30, ~~2015~~ 2017; and ~~neither to~~ Employee will not accept other employment nor to become employed by another employer until termination of employment pursuant to this Agreement, except as provided in Section 7.

"Section 4: Compensation", paragraph "A." is hereby modified as follows:

A. Employee shall receive the sum of One hundred and ~~one~~ four thousand one hundred ~~fifty six~~ sixty six dollars (~~\$101,150~~) (\$104,166) base pay annually, payable in bi-weekly installments.

"Section 16: Termination" is hereby modified as follows:

...

B. The employee may be removed, on public notice given seven (7) days in advance by a 2/3 majority vote of the members of the members of the MPO. In the event the Employee is terminated under this provision then the MPO shall pay the employee a lump sum cash payment equal to three (3) month's aggregate salary, as Severance Pay, as well as any accrued paid time off up to the limits noted in the MPO's adopted personnel procedure manual. If the Employee is terminated due to violation of the Florida Ethics Code, any state or federal felony, ~~or~~ any federal ethics regulation applicable to federal funds recipients, or if Employee is terminated for "misconduct" as defined in Section

~~443.036(29), Florida Statutes, then, and only in that event, the MPO shall have no obligation to pay the severance sum~~ Employee shall not be entitled to any Severance Pay.

Termination Due to Disability. If Employee is unable to perform his duties for any reason, including, but not limited to sickness, accident, injury, or mental incapacity, for a period of four (4) successive weeks beyond any accrued leave, MPO shall have the option to terminate this Agreement and Employee's employment. Disabled, for purposes of this Agreement, means that Employee, due to illness or injury, is unable to perform the essential functions of his position after reasonable accommodation has been made by the MPO. If Employee is terminated due to disability, he shall not be entitled to severance pay, but would be entitled to payment for any accrued but unpaid annual leave.

"Section 18: Resignation" is hereby modified as follows:

In the event Employee voluntarily resigns his position with the MPO before expiration of his employment, then Employee shall give the MPO forty-five (45) days advance written notice. If the Employee voluntarily resigns, providing MPO with less than forty five (45) days' notice employee shall forfeit any payment for accrued leave otherwise due and owing. If Employee resigns pursuant to this section, Employee shall not be entitled to any Severance Pay, but is entitled to payment for all paid leave that has accrued but not been used through the date of termination.

"Section 19: Indemnification" is hereby modified as follows:

~~The MPO shall, as to Employee's good faith performance of his duties under this agreement, defend, save harmless and indemnify the Employee against any tort, professional liability or other claim, demand, judgment or other legal action, including costs and attorneys' fees thereto whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of Employee's duties as Executive Direct, subject to the limits found in Florida Statutes.~~

Subject to any limitations imposed by Florida Law, the MPO shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim or demand, or other legal action, arising out of any alleged act or omission of Employee while acting within the course and scope of his duties as Director. Employee agrees to promptly notify MPO of any actual or threatened claims arising out of or as a result of his employment with MPO.

"Section 21: General Provisions" is hereby modified as follows:

...
B. If any provision of the agreement, or any part thereof, is held to be unconstitutional, invalid or unenforceable, the remainder shall be deemed severable, shall not be affected and shall remain in full force and effect. If any provision(s) of this Agreement is declared invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect and shall be construed in a fashion which gives meaning to all of the other terms of this Agreement to permit enforcement to the maximum extent allowed by law.

...
E. This Agreement expressly supersedes all practices, understandings, and agreements, whether written or oral, not specifically set forth in this Agreement. This Agreement constitutes the entire agreement between MPO and Employee.

F. The rights and obligations herein granted are personal in nature and cannot be transferred by Employee except as provided in any of the benefits Employee is entitled to under this Agreement.

SECTION THREE: REMAINDER UNCHANGED

The remaining provisions of the Employment Agreement between Employee and the MPO dated February 1, 2012 shall remain unchanged.

IN WITNESS WHEREOF, the parties below have caused this Renewal and Modification of Employment Agreement to be duly executed on August 22, 2014.

LEE METROPOLITAN PLANNING ORGANIZATION

EMPLOYEE

By: 

Stephen McIntosh, Chair



Donald L. Scott

EMPLOYMENT AGREEMENT BY AND BETWEEN

LEE METROPOLITAN PLANNING ORGANIZATION AND DONALD L. SCOTT

WHEREAS, the Lee Metropolitan Planning Organization (hereinafter "MPO") is a regional planning agency created by interlocal agreement and empowered by law to employ staff by contract; and

WHEREAS, it is the desire of the MPO to provide certain benefits to; establish certain conditions of employment for and set working conditions of the Employee; and

WHEREAS, it is the desire of the MPO to (1) to secure and retain the services of the Employee and to provide inducement for him to remain in such employment; (2) make possible full work productivity by securing the Employee's morale and peace of mind with respect to future security; and (3) provide a just means for terminating the Employee's services; and

WHEREAS, the Employee desires to accept employment as the Executive Director of said MPO.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1: Duties

The MPO agrees to employ Employee as its Executive Director, and Employee agrees to perform the functions and duties thereof, as may now and in the future be required in Interlocal Agreement, Personnel Policy, Section 339.175, Florida Statutes, and any other applicable laws of Florida, and to perform such other legally permissible and proper duties and functions as the MPO shall from time to time assign. Until so amended, the role and duties of the Executive Director shall include but not be limited to the following:

- A. The Employee shall act as the Chief Administrative Officer of the MPO, directly reporting and responsible to the MPO Board and responsible for the day to day implementation of MPO programs and activities including MPO staff selection and supervision. The Employee shall devote full time efforts to the MPO and its mission. The Employee shall also direct and supervise professional service providers engaged by the MPO.
- B. Formulate and prepare recommendations regarding policies, rules and regulations, directives, programs, agreements, and all other documents which require consideration, action or approval of the MPO.
- C. Prepare annual budgets and the annual reports for approval of the MPO.
- D. The Employee agrees to perform all such functions and duties, faithfully, competently, professionally and promptly to the best of the Employee's ability.
- E. The Employee shall be authorized to secure Florida Department of Transportation approval for amendment of Unified Planning Work Program (UPWP) tasks which change the dollar value by an amount less than or equal to \$25,000, and which do not change the scope of the total approved funds for the UPWP. Any amendment of the UPWP greater than \$25,000 will require the approval of the MPO Board.

Section 2: Term

A. Employee agrees to remain in the exclusive employ of the MPO from the effective date of this Agreement until January 30, 2015; and neither to accept other employment nor to become employed by any other employer until termination of employment pursuant to this Agreement, except as provided in Section 7.

B. Neither party, on their own, has any right to renew or extend this Agreement. However, on or before July 1st of the year immediately preceding the then ending year of this Agreement, including any applicable extensions, the term of this Agreement may be extended for a period of two (2) years by the mutual written agreement of the MPO and the Employee. Although both parties retain the right not to extend this Agreement with or without reason or cause, it is contemplated that the MPO will base its decision on the question of whether or not to grant the extension of the term of this Agreement on (1) the Employee's performance and (2) the Employee's ability to successfully achieve goals mutually developed and agreed to by the Employee and the MPO.

C. Elements of this Agreement may be changed at any time when mutually agreed upon in writing by the MPO and the Employee.

Section 3: Expiration, Extension and Modification

The Parties agree that this Agreement shall expire of its own accord at the end of the initial term set forth in Section 2. However, the Parties may extend same for additional terms upon negotiations and agreement of levels of compensations. Such extension(s) shall be reflected by from action of the MPO, reflecting in its record the compensation awarded. Notwithstanding the foregoing, the Parties may negotiate revisions or amendments to this Agreement at any time.

Section 4: Compensation

The MPO shall compensate the Employee for his services as follows:

A. Employee shall receive the sum of One hundred and one thousand one hundred fifty dollars (\$101,150) base pay annually, payable in bi-weekly installments.

B. The MPO and Employee shall negotiate in good faith to establish, within one hundred and twenty (120) days after execution of this Agreement, a performance-based merit plan through which the Employee may be eligible for a merit adjustment upon the successful completion of measurable goals and objectives to be completed or attained by the Employee during each fiscal year of this Agreement. The percentage of any annual performance-based merit adjustment to the Employee's base pay or such one-time lump sum amount shall be set by the MPO Board Executive Committee.

C. On the date that general wage adjustments (i.e., cost of living adjustments) are granted generally to MPO employees, the Employee's base salary shall likewise be modified to reflect such general wage adjustments.

Section 5: Performance Evaluation

The MPO shall review and evaluate the performance of the Employee in accordance with the performance based merit plan as provided in Section 4. Written evaluations based on said performance plan will be provided by each voting MPO Board member to Employee prior to September 1st, 2012, and prior to each September 1st thereafter for the term of this Agreement. A summary of all evaluations will be prepared by the MPO Board Chair and Employee including any recommended merit wage adjustment consistent with the procedure stated in Section 4 and presented to the MPO Board Executive Committee. If the MPO Board Executive Committee approves a merit wage adjustment, it will become effective upon the date the MPO Board approves the merit wage adjustment and will be processed with the Employee's next regular scheduled paycheck. An updated performance merit plan for Employee will be developed in good faith between the MPO and Employee and adopted by the MPO prior to December 1st of each year of the Agreement, following the first year of the Agreement

Section 6: Hours of Work

It is recognized that the Employee must devote a great deal of time outside normal office hours (Monday through Friday from 8:00am to 5:00pm) to the business of the MPO an

d, in recognition of that fact, the Employee's hours will be flexible within reasonable bounds. Except as otherwise directed by the MPO, the manner and means of performance of the duties herein shall be determined by the Employee. All acts performed by the Employee, explicitly or implicitly, on behalf of the MPO, within the scope of this employment, shall be deemed authorized by the MPO as its agent, except that any act which constitutes willful misconduct or which may be unlawful shall be deemed to be an individual act of the Employee without authority of the MPO.

Section 7: Outside Activities

The employee agrees to remain in exclusive employ of the MPO while in its employ, unless the MPO authorizes limited outside employment not in conflict with the Employee's duty with the MPO.

Section 8: Automobile

In lieu of mileage reimbursement for use of Employee's personal vehicle for MPO business with Charlotte, Collier, Hendry & Lee counties, the MPO shall provide to the Employee a motor vehicle allowance of \$250.00 per month. Employee will also be entitled to reimbursement at the approved State of Florida mileage rate for travel outside Charlotte, Collier, Hendry & Lee counties. Employee shall be responsible for any employee payroll taxes imposed upon this vehicle allowance benefit in accordance with applicable law.

Section 9: Travel and Travel Expenses

All overnight travel by the Employee shall be approved by the MPO Chair or Vice-Chair. Travel expenses will be paid or reimbursed in accordance with applicable Florida Statutes and the policies of the MPO. All travel reimbursement requests will utilize the approved FDOT travel form.

Section 10: Communication Equipment

It is recognized by the Parties that the Employee will frequently travel during the execution of his duties and that the ability to maintain communications with staff and other officials at all times is important to the operation of the MPO, but that carrying two cellular phones can be burdensome. Therefore, the MPO agrees to provide Employee a monthly stipend of \$45.00 toward the use of his personal cellular telephone for MPO business. The Employee shall select a phone with modern capabilities such as text messaging and internet access capability, to effectively engage in remote communications.

Section 11: Dues and Subscriptions

To the extent permitted by Florida and Federal laws and policies, the MPO agrees to pay the dues and subscriptions of the Executive Director necessary for full participation in national, regional, state and local government and professional associations and organizations necessary and desirable for the good of the MPO, subject to its approved annual budget.

Section 12: Professional Development

A. The MPO agrees to pay the registration, travel and subsistence expenses of the Executive Director, to the extent permitted by Florida and Federal laws and policies, for professional and official travel, meetings and occasions, adequate to continue the professional development of the Executive Director, and to adequately pursue necessary official and other functions, subject to its approved annual budget.

B. The MPO agrees to pay for the registration, travel and related expenses of the Executive Director, to the extent permitted by Florida and Federal laws and policies, for short courses, institutes and seminars that are necessary for his professional development and for the good of the MPO.

Section 13: Comprehensive Benefit Package

A. Employee is a salaried full time employee qualified under the laws relating to the Florida Retirement System and, except as modified herein, shall be entitled to all benefits and prerogatives of other MPO employees, as set forth in the MPO Personnel Policy, except as may be supplemented or modified in this agreement.

B. The Employee shall be eligible for participation in the Senior Management Service Class for the purpose of retirement benefits in the Florida Retirement System

C. The MPO shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of the Employee, provided such terms and condition are not inconsistent with or in conflict with the provisions of this agreement or Florida and Federal laws.

D. All provisions of law and regulations and rules of the MPO's Personnel Policy relating to personal time off, holidays and other fringe benefits as they now exist or as they may hereafter be amended, also shall apply to the Employee as they would to other employees of the MPO, in addition to said benefits enumerated herein specifically for the benefit of the Employee.

E. Employee shall not use more than one week at a time of paid time off without prior approval of the MPO Chair or Vice-Chair.

F. This agreement shall be administered so that the Employee shall not experience any gap in salary payments or other benefits.

Section 14: Rule of Conduct

The Employee shall be governed by the rules of conduct, policies and directives from time to time adopted by the MPO on the same basis as other MPO employees.

Section 15: Suspension

The MPO Board may suspend the Employee with full pay and benefits at any time during the term of this Agreement, but only if:

A. A majority of the MPO and Employee agree, or

B. After a public hearing, a majority of the MPO votes to suspend Employee for just cause; provided, however, that Employee shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing by the MPO's members bringing such charges. Just cause shall include only willful misconduct or willful failure or disregard of employee's duties under this Employment Agreement.

Section 16: Termination

Employee shall serve at the will and pleasure of the MPO governing board and may be terminated at any time for any or no reason, subject to the termination procedure and pay provisions outlined herein. This Agreement may be terminated as follows:

A. At any time by mutual agreement of the Parties thereafter.

B. The Employee may be removed, on public notice given seven (7) days in advance by a 2/3 majority vote of the members of the MPO. In the event the Employee is terminated under this provision then the MPO shall pay the Employee a lump sum cash payment equal to three (3) month's aggregate salary as well as any accrued paid time off up to the limits noted in the MPO's adopted personnel procedure manual. If the Employee is terminated due to violation of the Florida Ethics Code, any state or federal felony, or any federal ethics regulation applicable to federal funds recipients, then, and only in that event, the MPO shall have no obligation to pay the severance sum.

C. In the event that Employee's employment with the MPO terminates as a result of the expiration of the term of the Agreement, Employee shall not be entitled to receive Severance Pay; however, Employee shall be entitled to payment for accrued Paid Time Off "PTO" in accordance with MPO policies which are applicable to non-bargaining unit employees at that time.

D. Severance Pay and/or pay for accrued PTO shall be paid within 30 working days of termination.

Section 17: Disability

If the Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued leave, the MPO shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 16, together with payment of all other accrued benefits he may be entitled to under the Florida Retirement System and Personnel Policy as adopted by the MPO.

Section 18: Resignation

In the event Employee voluntarily resigns his position with the MPO before expiration of his employment, then Employee shall give the MPO forty-five (45) days advance written notice. If Employee voluntarily resigns, providing MPO with less than forty-five (45) days notice, Employee shall forfeit any payment for accrued leave otherwise due and owing. If the MPO Board opts to relieve the Employee of duties following the Employee written notice, the provisions of Section 16B shall apply.

Section 19: Indemnification

The MPO shall, as to Employee's good faith performance of his duties under this agreement, defend, save harmless and indemnify the Employee against any tort, professional liability or other claim, demand, judgment or other legal action, including costs and attorneys' fees thereto whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of Employee's duties as Executive Direct, subject to the limits found in Florida Statutes.

Section 20: Notices

Notices pursuant to this Agreement shall be in writing, transmitted by personal service or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) AUTHORITY: Lee MPO
815 Nicholas Parkway
Cape Coral, Florida 33991

(2) EMPLOYEE: Donald L. Scott
2201 41st Terrace SW
Naples, Florida 34116

Notices shall be deemed effective upon delivery or receipt.

Section 21: General Provisions

A. This agreement is made to the benefit of the Parties thereto and is not and shall not be construed to have been entered into for the benefit of any other third party.

B. If any provision of this agreement, or any part thereof, is held to be unconstitutional, invalid or unenforceable, the remainder shall be deemed severable, shall not be affected and shall remain in full force and effect.

C. This Agreement shall be deemed to have been made in Lee County, and shall be governed by and construed under the laws of the State of Florida. The parties shall attempt in good faith to resolve any dispute concerning this Agreement through negotiation between authorized representatives. If these efforts are not successful, either party may then file an action in the Circuit Court of Lee County, which shall be the exclusive venue with respect to any disputes arising out of this Agreement.

D. Employee understands and agrees that as a Florida government agency without taxing authority and funded instead by certain tax dollars appropriated to it by the state and federal government, the MPO does not have the authority to expend funds not available to it, and that its obligation to pay the compensation and benefits contained in this Agreement shall be limited to the availability of such funds. The MPO understands and agrees that should it cease to have funds available to it which could be used to pay Employee the compensation and benefits contained in this Agreement, Employee shall be excused from any required performance under this Agreement until such funds become available and Employee resumes being compensated. If funds do not become available within a 45 day time period, either party may terminate this agreement.


**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties below have caused this Agreement to be duly executed on February 1, 2012.

LEE MPO

EMPLOYEE

BY: 
Bob Raymond, Chair


Donald L. Scott

TIGER PROJECT UPDATE

DISCUSSION ITEM:

The MPO staff will give an update on the TIGER project that will include:

- Current Status and Schedule of Construction
- Planning, Design and Implementation of Wayfinding Signage