

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

CITY OF WEST PALM BEACH,
a Florida municipal corporation,

Plaintiff

v.

PALM BEACH TRANSPORTATION
PLANNING AGENCY,
an independent government agency,

Defendant.

**CITY'S COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

COMES NOW the Plaintiff, the CITY OF WEST PALM BEACH, a Florida municipal corporation (the "City"), by and through undersigned counsel, files this Complaint for Declaratory Judgment and Injunctive Relief against the Defendant, PALM BEACH TRANSPORTATION PLANNING AGENCY ("PBTPA"), a Florida independent special district, and states:

GENERAL ALLEGATIONS

1. This is an action for declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes.
2. This Court has jurisdiction over this matter pursuant to Sections 86.011 and 86.021, Florida Statutes.
3. Venue is proper in Palm Beach County, Florida, because both parties transact business within Palm Beach County, their principal offices are located within Palm Beach County and the dispute arose from actions occurring in Palm Beach County.

4. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been waived.

5. The City is a Florida municipal corporation, organized and existing under the laws of the State of Florida, and located in Palm Beach County, Florida.

6. The PBTPA is an independent special district of the State of Florida, organized and existing pursuant to Sections 163.01 and 339.175 and Chapter 189, Florida Statutes, which develops, in cooperation with the state and public transit operators, transportation plans and programs for Palm Beach County.

7. The PBTPA also serves as a Metropolitan Planning Organization (“MPO”), which is designated for each urbanized area pursuant to federal and state law.

8. According to Section 339.175(2)(b), Florida Statutes, each MPO, such as the PBTPA, must be designated in a manner prescribed by Title 23 of the United States Code and associated federal regulations and operated under the provisions of Section 339.175, Florida Statutes pursuant to an interlocal agreement entered into pursuant to Section 163.01. The signatories to the interlocal agreement shall be the Florida Department of Transportation (“FDOT”) and the governmental entities designated by the Governor for membership on the MPO. Each MPO shall be considered separate from the state or the governing body of a local government that is represented on the governing board of the MPO or is a signatory to the interlocal agreement creating the MPO and shall have the powers and privileges that are provided in Section 163.01, Florida Statutes.

9. The PBTPA currently exists and operates under an Interlocal Agreement for Creation of the Metropolitan Planning Organization dated October 9, 2015. It is separate from all local governments represented on the Governing Board or signatories to the interlocal agreement, including the City.

10. The PBTPA is led by a Governing Board of Directors comprised of 21 voting elected officials appointed by the agencies they represent, including the Palm Beach County Board of County Commissioners, the county's larger municipalities (including the City), the Port of Palm Beach, and one non-voting advisor, the FDOT.

11. According to Section 339.175(5), Florida Statutes, the authority and responsibility of the PBTPA is to manage a continuing, cooperative and comprehensive transportation planning process based upon the prevailing principles provided in Section 334.046(1), Florida Statutes, results in the development of plans and programs which are consistent to the maximum extent feasible, with the approved local government comprehensive plans of the units of local governments within Palm Beach County.

12. According to Section 339.175(7), Florida Statutes, one of PBTPA's obligations is the development of a Long Range Transportation Plan ("LRTP") that addresses at least a 20-year planning horizon. An LRTP must be reviewed and updated at least every 5-years in attainment areas such as Palm Beach County. *See* 23 C.F.R. §450.324(c). The 2045 LRTP is the PBTPA's latest mandatory 5-year update.

13. The PBTPA is required to develop and approve the LRTP in accordance with federal regulations and state law specifying the process required to make funding available for roadway development. *See* 23 C.F.R. §450.324. Among those requirements is "a discussion of types potential ***environmental mitigation activities***¹ and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan

¹ 23 C.F.R. § 450.104 defines "environmental mitigation activities" to mean "strategies, policies, programs and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.

transportation plan.” (Emphasis added). *See* 23 C.F.R. §450.324(f)(10). Additionally, the PBTPA must provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation, employer-based commuting programs such as carpool program, vanpool program, transit benefit program, parking cashout program, shuttle program or telework program, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties ***with a reasonable opportunity to comment on the transportation plan using the participation plan developed under §450.316(a)***.² *See* 23 C.F.R. §450.324(j) (emphasis added).

14. Additionally, each LRTP must meet the requirements of Section 339.175(7), Florida Statutes. For example, this section requires that the “long-range transportation plan must be consistent, ***to the maximum extent feasible***, with future land use elements and the goals, objectives and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the MPO.” (Emphasis added). Additionally, Section 339.175(7)(d), Florida Statutes requires that the LRTP must “indicate, as appropriate proposed transportation enhancement activities, including, but not limited to, pedestrian and bicycle facilities, scenic easements, landscaping historic preservation, ***mitigation of water pollution due to highway runoff***, and control of outdoor advertising.” (Emphasis added).

15. Projects not included in the LRTP are ineligible for federal funding pursuant to applicable law. *See* 23 U.S.C. §134(j). 49 U.S.C. §5303 also provides for the adoption

² The PBTPA has complied with 23 C.F.R. §450.316 by adopting a Public Participation Plan (“PPP”). The most current version of the PPP is dated 2017.

of Transportation Improvement Programs (“TIPs”) by MPOs. TIPs are a prioritized listing of transportation projects covering a five-year period developed by the MPO as part of the planning process, and must be consistent with the LRTP. TIPs “must be consistent with the metropolitan transportation plan, and [are] required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. See 23 C.F.R. §450.104. See also §339.175(8)(c), Fla. Stat. Per FDOT’s MPO Handbook, “The Secretary cannot approve a TIP... that does not come from a currently adopted LRTP, or a TIP that includes projects that have not been properly amended into the LRTP and adopted by the MPO.” MPO Handbook Section 5.5. See also 23 C.F.R. §450.326(i) (each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan”). Thus, if a project is not part of the currently adopted LRTP, the FDOT cannot implement this project.

16. Besides the 5-year review and update process, federal regulations allow for amendments to an LRTP. According to 23 C.F.R. §450.104, an “Amendment” is defined as:

...a revision to a long-range statewide or metropolitan transportation plan, TIP or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, ***including the addition or deletion of a project*** or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes or changing the number of stations in the case of fixed guideway transit projects). Changes to project that are included only illustrative purposes do not require an amendment. ***An Amendment is a revision that requires public review and comment and a redemonstration of fiscal constraint.*** If an amendment involves “non-exempt” projects in nonattainment and maintenance areas, a conformity determination is required.

(Emphasis added). In addition, the FDOT has adopted a guidance document that provides additional direction regarding which thresholds trigger an LRTP amendment. Included in that document as changes requiring an Amendment are “**Adding a new project where no phases are currently listed in the [Cost Feasible Plan of the LRTP].**” (Emphasis added.)

FACTUAL ALLEGATIONS

17. On December 12, 2019, the PBTPA considered the draft 2045 LRTP at a regular meeting. At the meeting, the Board voted to approve several amendments to the draft 2045 LRTP, including the removal of the State Road 7 Extension and Widening Project (“SR 7 Project”). Subsequent to the approval of those amendments, the TPA Governing Board approved the 2045 LRTP, as amended.

18. The SR 7 Project consists of a southern and northern segments. The southern segment is located between Okeechobee Blvd and 60th Street and involves the widening a 2-lane highway to 4-lanes. The northern segment is located between 60th Street and Northlake Blvd. and involves the construction of a new 4-lane highway.

19. The northern segment of the SR 7 Project is entirely located within the City’s municipal boundaries and is subject to the City’s Comprehensive Plan. Additionally, the northern segment runs alongside Grassy Waters Preserve (“GWP”), which is a 23-square mile natural remnant of the Everglades that is owned by the City. GWP is managed by the City as a natural preserve and a major source of drinking water for the City.

20. The northern segment of the SR 7 Project will adversely impact the environmental integrity of GWP and harm the City’s drinking water.³ The stormwater drainage from the road project will flow into GWP causing violations of state water quality standards. Construction of the road will adversely impact wetlands and wetland dependent species in GWP, including endangered and listed species such as the Everglades Snail Kite. The proximity of the road risks contamination of the City’s drinking water supply from chemical spills into GWP and the nearby M-Canal. The road will encroach into the GWP

³ The City provides drinking water to 110,000 persons within the City, the Towns of Palm Beach and South Palm Beach and unincorporated areas.

flood hazard area raising the potential for adverse flooding impacts to the City's residents.

21. The City has a unique substantial interest in the SR 7 Project by virtue of its Comprehensive Plan, adverse impacts to the environmental integrity of GWP and harm to the City's drinking water supply, that is different from that of the public at large.

22. On December 13, 2019, one of the Board members, who voted in favor of the amendment deleting the SR 7 Project, Vice-Mayor Brinkman, sent an email to the TPA Executive Director, Nick Uhren, requesting reconsideration of the vote on the amendment.

23. According to a memorandum dated January 6, 2020, from the PBTPA General Counsel, Paul Gougelman, Mr. Uhren requested a legal opinion as to whether the PBTPA staff could prepare an agenda item for the February 20 PBTPA Governing Board meeting to add back the State Road 7 Project as an amendment to the adopted 2045 LRTP. In his memorandum, Mr. Gougelman concluded that Mr. Uhren may prepare an agenda with such a proposed amendment.

24. The basis for Mr. Gougelman's opinion is that Rule 7.F of the PBTPA Governing Board's Bylaws permits reconsideration of a prior vote and since reconsideration can only be considered at the next Governing Board meeting, there is no option but to place this item on the February 20 agenda.

25. On February 5, PBTPA Technical Advisory Committee and the Citizen Advisory Committee held meetings and recommended adoption of an amendment to the LRTP adding back the SR 7 Project (the "SR 7 Amendment). On February 6, the PBTPA Bicycle Trailways Pedestrian Advisory Committee held a meeting and recommended adoption of the SR 7 Amendment.

26. On February 20, the PBTPA held a meeting and adopted the SR 7 Amendment.

I. Procedural Irregularity

27. Reconsideration of the vote to remove the SR 7 Project from the draft 2045 LRTP is not authorized under Rule 7.F of the TPA Governing Board's Bylaws. Specifically, Section 7.F of the PBTPA Governing Board's By-Laws provides in part as follows:

Any Representative who voted on the prevailing side may make a motion for reconsideration at the meeting during which the vote was taken or at the next regularly scheduled meeting, *unless the action for which the vote was taken has been executed by the next regularly scheduled meeting and cannot be undone*. A Representative desiring to request reconsideration of a matter shall advise the Executive Director no less than ten (10) days prior to the meeting. The Executive Director shall endeavor to provide notice of the request to the TPA Governing Board Members prior to the meeting. Any Representative who was not in attendance at the meeting at which the vote was taken shall be deemed to be on the prevailing side, unless the absence was unexcused. A motion to reconsider cannot be renewed if it has been voted on and defeated, except by unanimous consent of those present at the meeting.

28. In accordance with the aforementioned, the vote to amend the draft 2045 LRTP to delete the SR 7 Project could not have been undone at the February 20 meeting because that vote was immediately followed by a vote approving the amended 2045 LRTP. Consequently, the action in question, deletion of the SR 7 Project, could have only been authorized by the PBTPA Governing Board following a meeting in which they directed the Executive Director to process an amendment to the 2045 LRTP.

II. SR 7 Amendment is improper because there was no redemonstration of "fiscal constraint."

29. According to 23 C.F.R. §450.104, the SR7 Amendment requires a redemonstration of fiscal constraint. "Fiscal constraint" is defined in 23 C.F.R. §450.104 in relevant part as:

...sufficient financial information for demonstrating that projects in the metropolitan transportation plan [LRTP], TIP, and STIP can be

implemented using committed, available or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.

According to the “Fiscal Constraint” section of the 2018 Federal Highway Administration FHWA/FTA LRTP Expectations Letter sent to the PBTPA, any project added to the LRTP must be described in enough detail so that cost estimates may be developed showing how the project will be implemented to enable the FHWA and the FDOT to determine fiscal constraint. The description, at a minimum, must include roadway identification, termini, implementation timeframe and full project costs. Additionally, revenue and cost estimates that support the project must use an inflation rate(s) to reflect “year of expenditure dollars, based on reasonable financial principles and information developed cooperatively by the PBTPA, the State of Florida and any public transportation operator. *See* 23 C.F.R. §450.324(g)(11)(iv). Inflation factors and guidance for converting project costs estimates to year of expenditure dollars are provided in Financial Guidelines for MPO 2040 Long Range Plans.

30. The PBTPA completely failed to “re-demonstrate” the “Fiscal Constraint” of the SR 7 Project. It made no attempt to estimate current full project costs or apply inflation factors as required by federal law. Instead, during the advisory committee and Governing Board meetings, PBTPA staff recommended using the same cost estimates that were used, when the SR 7 Project was part of the LRTP prior to the deletion of this project by the PBTPA Governing Board. However, PBTPA’s recommendation was not accurately implemented in the SR 7 Amendment. The project cost estimates for the SR 7 Project contained in the prior LRTP was \$20,357,000 for the southern segment of the SR 7 Project and \$54,790,000 for the northern segment of the SR 7 Project. With regard to the SR 7 Amendment, while the project cost estimate for the southern segment of the SR 7 Project

remained \$20,357,000, the project cost estimate for the northern segment changed to \$53,135,000. No explanation was given for the difference.

31. Even if the SR 7 Amendment had used the exact pre-December 12 project cost estimates, this would have still have fallen far short of re-demonstrating “Fiscal Constraint,” as required by federal law. The pre-December 12 project cost estimates were developed over 15 years ago, when the SR 7 Project was first added to the LRTP. Clearly, significant changes have occurred such as inflation that would have required a re-examination of these costs.

32. Additionally, PBTPA’s failure to re-demonstrate the Fiscal Constraint of the SR 7 Project is exemplified by what occurred at the advisory committee meetings on February 5 and 6 and the Governing Board’s meeting on February 20. During these meetings, the FDOT presented two separate cost estimates that differed from the cost estimates contained in the pre-December 12 LRTP and the cost estimates contained in the SR 7 Amendment. At these meetings, the FDOT representative indicated that their cost estimates represented the most up to date project costs. However, the PBTPA disregarded this information and elected to go with cost estimates that FDOT admitted were no longer accurate.

33. Further, at these meetings, FDOT admitted that it was in the process of re-designing the SR 7 Project because the current version was not permissible by the regulatory agencies.⁴ Additionally, FDOT admitted that the redesign would result in costs different from the cost estimates eventually approved by the PBTPA as part of the SR 7 Amendment, but FDOT was unable to offer any opinion as to the new cost estimates.

⁴ FDOT withdrew the State Environmental Resource Permit for this project on July 19, 2019 in order to address these regulatory issues.

However, the City presented an engineering analysis prepared by its own transportation engineers stating that to comply with the applicable permitting requirements the costs for the northern segment of the SR 7 Project would be \$117,837,908 rather than the \$53,135,000 contained in the SR 7 Amendment. Despite evidence that current costs for the northern segment of the SR 7 Project had more than doubled, the PBTPA still refused to make any effort to re-demonstrate the Fiscal Constraint for the Project.

III. SR 7 Amendment is improper because there was no meaningful public review and comment.

34. According to 23 C.F.R. §450.104, the SR7 Amendment requires public review and comment. “Public review and comment” for an LRTP is governed by 23 C.F.R. §450.324(k), which provides as follows:

The MPO(s) shall provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled and other interested persons *with a reasonable opportunity to comment on the transportation plan using the participation plan developed under §450.316(a)*.

(Emphasis added). The PPP adopted by the PBTPA contains specific requirements with regard to public participation and comment concerning LRTP Amendments. Per the PPP, LRTP Amendments require recommendations by the PBTPA Technical Advisory Committee, Citizens Advisory Committee and Bicycle-Trailways-Pedestrian Advisory Committee and adoption by the Governing Board on a roll call vote, and a public and review comment period of 14 days. Further, the PPP requires that the PBTPA provide notice and opportunities for public understanding by making available the proposed Amendment and all required supporting documents.

35. In this case, while the PBTPA did make the proposed SR 7 Amendment available to the public for comment and review by the advisory committees, it failed to provide a vital piece of information necessary for public understanding of the Amendment. The missing piece of information was the redemonstration of fiscal constraint. As previously mentioned, the PBTPA did not prepare a redemonstration of fiscal constraint in connection with SR 7 Amendment. Thus, neither the public nor the advisory committees had a complete understanding of the implications of PBTPA's proposed action. Without this vital piece of information, public understanding of this project was inadequate and thus the public review and comment was insufficient.

IV. SR 7 Amendment is improper because it is not consistent to the "maximum extent feasible" with the City's Comprehensive Plan.

36. The SR 7 Amendment is improper because it is not consistent to the "maximum extent feasible" with the City's Comprehensive Plan, a requirement of state law.

37. Section 339.175(5), Florida Statutes *requires*, that "an *M.P.O. is to manage a continuing, cooperative, and comprehensive transportation planning process* that, based upon the prevailing principles provided in s. 334.046(1), results in the development of plans and programs *which are consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government* the boundaries of which are within the metropolitan area of the M.P.O." (Emphasis added).

38. Section 339.175(7), Florida Statutes further provides: "*The long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans* of the units of local government located within the jurisdiction of the M.P.O." (Emphasis added).

39. As indicated above, the City supplies water to 110,000 of its citizens, the Town of Palm Beach, the Town of South Palm Beach, and many unincorporated areas. The “living breathing heart” of the City’s water supply system is GWP, an area that will be adversely affected by the SR 7 Project approved by the SR 7 Amendment.

40. To preserve the City’s water supply, the City has provisions pertaining to GWP in the Future Land Use Element of its Comprehensive Plan. One of these is Policy 1.7.5 of the Future Land Use Element. This Policy creates a special impact zone around GWP known as the “Water Catchment Area Special Impact Zone” and prohibits land use and environmental incompatibilities within the City’s municipal boundaries within 450 feet of this special impact zone. The northern segment of the SR 7 Project is located within the City’s municipal boundaries and the proposed roadway will be within 450 feet of the boundary of Water Catchment Area Special Impact Area. Based on information provided by City at the Governing Board’s February 20 meeting, it is clear that this portion of the SR 7 Project is incompatible with GWP and would thus be prohibited.

41. However, in adopting the SR 7 Amendment, the PBTPA did not credit this provision of the City’s Comprehensive Plan. Nor did the PBTPA otherwise demonstrate that the SR 7 Amendment is consistent to the maximum extent feasible with the City’s long-range Comprehensive Plan (or its Comprehensive Plan in any capacity). On the contrary, the information presented to the Governing Board proves that the SR 7 Amendment is in fact inconsistent with the City’s Comprehensive Plan.

V. SR 7 Amendment was improper because the PBTPA failed to consider “environmental mitigation activities,” “natural resources, environmental protection conservation,” and “mitigation of water pollution due to highway runoff.”

42. The SR 7 Amendment is improper because it failed to comply with federal regulations and state law that require consideration of “environmental mitigation

activities,” “natural resources, environmental protection, conservation,” and “mitigation of water pollution due to highway runoff.”

43. “Environmental mitigation activities” means “strategies, policies, programs, and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.” 23 C.F.R. §450.104.

44. For a metropolitan long range transportation plan, such as the LRTP, 23 C.F.R. §450.324(f)(10) *requires*: “***A discussion of types of potential environmental mitigation activities*** and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level.” (Emphasis added).

45. Also, in adopting a LRTP, an MPO, like the PBTPA, “***shall consult***, as appropriate, with State and ***local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan.***” See 23 C.F.R. §450.324(g) (Emphasis added).

46. Further, Section 339.175(7)(d) *requires* the following: “***The long-range transportation plan must, at a minimum***:... (d) ***Indicate***, as appropriate, proposed transportation enhancement activities, including, but not limited to, pedestrian and bicycle facilities, scenic easements, landscaping, historic preservation, ***mitigation of water pollution due to highway runoff***, and control of outdoor advertising.” (Emphasis added).

47. In adopting the SR 7 Amendment, the PBTPA failed to follow these

aforementioned requirements, ignoring the City's analysis demonstrating that the SR 7 Project would increase nutrient load to GWP causing water quality violations, and that there is a potential for spills of hazardous materials into the City's water system that could reach the City's water system in approximately sixteen hours.

48. The PBTPA also ignored that the SR 7 Project would cause damage and direct impact to 58 acres of wetlands and secondary impacts of 119 acres of wetlands and to GWP. In addition, there are endangered species in GWP whose sanctity the PBTPA did not consider and who could be placed into jeopardy by the SR 7 Project.

VI. SR 7 Amendment was improper because the PBTPA failed to demonstrate the need for the SR 7 Project.

49. The PBTPA improperly passed the SR 7 Amendment because the PBTPA failed to demonstrate the need for the proposed SR 7 Project in accordance with federal and state law.

50. 23 C.F.R. §450.324(f),(g) and Section 339.175(7)(c), Florida Statutes, require that a MPO, like the PBTPA, consider the need for a roadway project before approving it.

51. For the SR 7 Amendment, the SR 7 Project does not change the projected traffic density in the area of significance, alleviating any need for the SR 7 Project. Indeed, the area of significance has a volume-to-capacity ratio less than 0.8, which is below Palm Beach County's threshold for requiring improvements. Simply, when traffic density is modeled with or without the SR 7 Project, the modeling results do not justify nor establish the need for the SR 7 Project.

COUNT I – DECLARATORY JUDGMENT

52. The City reincorporates the allegations in Paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Federal regulations and state law have mandated that the PBTPA, as a MPO, when adding a project to a LRTP by way of an amendment, adhere to certain requisites.

54. One such requisite is adherence to its own by-laws when reconsidering a matter. The PBTPA failed to do so when it reconsidered the SR 7 Project after rejecting it; adding it to the LRTP by way of the SR 7 Amendment in violation of its own by-laws.

55. Further, 23 C.F.R. §450.104 requires a redemonstration of Fiscal Constraint for any LRTP amendment. In adopting the SR 7 Amendment, the PBTPA made no attempt to redemonstrate the Fiscal Constraint of the SR 7 Project. It made no attempt to estimate current full project costs or apply inflation factors as required by federal law. Instead, PBTPA attempted, though inaccurately, to simply re-use the cost estimates previously associated with this project prior to its deletion from the LRTP on December 12, 2019. This cost estimate was over 15-years out-of-date and inconsistent with the current design of the project.

56. Further, 23 C.F.R. §450.104 requires a reasonable opportunity for public comment with regard to any LRTP amendment. The PPP adopted by the PBTPA requires that it provides notice and opportunities for public understanding by making available the proposed Amendment and all required supporting documents. Although the PBTPA made the SR 7 Amendment available to the public, it failed to provide the redemonstration of Fiscal Constraint required by federal law. Thus, the public did not have a complete understanding of the implications of PBTPA's proposed action. Without this vital piece of information, public understanding of this project was inadequate and thus the public review

and comment was inappropriate.

57. Further, Section 339.175(5),(7), Florida Statutes requires that amendments to the LRTP must be “consistent to the maximum extent feasible” with the City’s Comprehensive Plan. In adopting the SR 7 Amendment, the PBTPA presented no proof or otherwise made any showing that the SR 7 Project complied with the City’s Water Catchment Area Special Impact zone requirements or was otherwise consistent to the maximum extent feasible with the City’s Comprehensive Plan.

58. In addition, in adopting an amendment changing a LRTP, the PBTPA is required by both federal and state law to address the “environmental mitigation activities,” “natural resources, environmental protection, conservation,” and “mitigation of water pollution due to highway runoff.” *See* 23 C.F.R. §450.324; §339.175, Fla. Stat. However, in adopting the SR 7 Amendment, the PBTPA failed to follow these aforementioned requirements, ignoring the City’s analysis demonstrating that the SR 7 Project would increase nutrient load to GWP causing water quality violations, and that there is a potential for spills of hazardous materials into the City’s water system that could reach the City’s water system in approximately sixteen hours. The PBTPA also ignored that the SR 7 Project would cause damage and direct impact to 58 acres of wetlands and secondary impacts of 119 acres of wetlands and GWP, and further endanger endangered species in GWP.

59. Moreover, the PBTPA improperly passed the SR 7 Amendment because the PBTPA failed to demonstrate the need for the proposed SR 7 Project in accordance with federal and state law. Specifically, 23 C.F.R. §450.324(f),(g) and Section 339.175(7)(c), Florida Statutes, requires that an MPO, like the PBTPA, consider the need for a roadway project before approving it. However, the SR 7 Project does not change the projected

traffic density in the area of significance. Indeed, the area of significance has a volume-to-capacity ratio less than 0.8, which is below Palm Beach County's threshold for requiring improvements. Simply, when traffic density is modeled with or without the SR 7 Project, the modeling results do not justify nor establish the need for the SR 7 Project.

60. Based on the aforementioned, there is a bona fide, actual, present and practical need for this Court to declare that the SR 7 Amendment failed to comply with applicable federal regulations and state law, is improper as a matter of law, and should not be enforced or the SR 7 Project otherwise carried out.

61. The issuance of a declaratory judgment declaring the impropriety of the SR 7 Amendment is in the public interest because its passage offends both federal and state law and will result in the SR 7 Project, which is inconsistent with the City's Comprehensive Plan and will adversely affect the City's water supply and environmental interests.

WHEREFORE, the City respectfully requests that this Court:

- a) Take jurisdiction over this action for purposes of rendering a declaratory judgment;
- b) Having taken jurisdiction, enter judgment in favor of the City.
- c) Enter an Order declaring that the PBTPA's passage of the SR 7 Amendment failed to comply with applicable federal regulations and state law, as well as the PBTPA's own by-laws, and declaring that the SR 7 Amendment is null and void *ab initio* as a matter of law.
- d) Award City any and all other relief this Court deems necessary, including, without limitation, all costs incurred in obtaining a declaratory judgment in its favor.

COUNT II – INJUNCTIVE RELIEF

62. The City reincorporates the allegations in Paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. “Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.” §86.011, Fla. Stat.

64. A party may bring an action for a declaratory judgment and, either in conjunction with that action or in a separate action, request further injunctive relief based on the rights determined by that judgment.

65. Based on the allegations in Count I and throughout this Complaint, the City is entitled to a declaratory judgment declaring that the SR 7 Amendment is improper and unenforceable as a matter of law, as it offends federal regulations, state law, and the PBTPA’s own by-laws.

66. Pursuant thereto, the City respectfully requests supplemental relief in the form of an injunction explicitly prohibiting the PBTPA from adopting, implementing or executing the SR 7 Amendment and requiring the striking of the SR 7 Project from the 2045 LRTP.

WHEREFORE, the City respectfully requests that this Court enter an Order enjoining the PBTPA from adopting, implementing or executing the SR 7 Amendment and requiring the PBTPA to strike the SR 7 Project from the 2045 LRTP; and grant such other and further relief as this Court deems proper.

Respectfully submitted,

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