

# **CORRESPONDENCE**

**08/29/16**

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8-29-16

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**#1**

# SOUTH COAST RAIL

## Public Meeting Schedule



The Massachusetts Department of Transportation (MassDOT) and the MBTA are proposing to restore passenger rail transportation

between the South Coast and Boston. MassDOT and MBTA are designing a new rail connection making use of the existing MBTA Stoughton Commuter Rail Line. Design for this route is currently 15% complete. In addition, MassDOT and MBTA are currently considering an alternative rail route between Boston and the South Coast that could potentially be designed and constructed more quickly than can the Stoughton route.

This autumn, MassDOT will hold a series of meetings to update the public on the status of all elements of the South Coast Rail project, and to discuss the next steps. MassDOT and MBTA invite all members of the public with an interest in this project to join us as we seek public comments and answer your questions.

**Your participation and input are critical to the project's success!**

If you are unable to attend a meeting, a copy of the presentation will be available at [www.massdot.state.ma.us/southcoastrail](http://www.massdot.state.ma.us/southcoastrail)

Public comments and questions may also be submitted by email to [SouthCoastRail@dot.state.ma.us](mailto:SouthCoastRail@dot.state.ma.us)

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### Public meetings all begin at 6:30pm and are scheduled as follows:

- **Wednesday, September 7th, New Bedford**  
Greater New Bedford Vocational High School Auditorium  
1121 Ashley Boulevard
- **Monday, September 12th, Taunton**  
Bristol Community College  
2 Galleria Mall Drive
- **Wednesday, September 14th, Fall River**  
Bristol Community College  
777 Elsbree Street  
Building G, Commonwealth College Center,  
Faculty Lounge
- **Thursday, September 15th, Easton**  
Middle School Auditorium  
98 Columbus Avenue
- **Monday, September 19th, Canton**  
Canton High School Auditorium  
900 Washington Street
- **Thursday, September 22nd, Middleborough**  
High School Auditorium  
71 East Grove Street

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Locations are accessible to people with disabilities. MassDOT provides reasonable accommodations and/or language assistance free of charge upon request (including but not limited to interpreters in American Sign Language and languages other than English, open or closed captioning for videos, assistive listening devices and alternate material formats, such as audio tapes, Braille and large print) as available. For accommodation or language assistance, please contact Katy Zazzera by phone (857) 368-8986 or by email (Kathryn.Zazzera@dot.state.ma.us). Requests should be made as soon as possible prior to the meeting. For more difficult to arrange services including sign language, CART or language translation or interpretation, requests should be made at least ten (10) business days before the meeting.

#2



**Southeastern Massachusetts Metropolitan  
Planning Organization  
Southeastern Regional Planning & Economic  
Development District  
88 Broadway Taunton, MA 02780-2557**



Acushnet  
Attleboro  
Berkley  
Carver  
Dartmouth  
Dighton  
Fairhaven  
Fall River  
Freetown  
Lakeville  
Mansfield  
Marion  
Mattapoisett  
Middleborough  
New Bedford  
N. Attleborough  
Norton  
Plainville  
Raynham  
Rehoboth  
Rochester  
Seekonk  
Somerset  
Swansea  
Taunton  
Wareham  
Westport

August 17, 2016

Gregory G. Nadeau  
Administrator,  
Federal Highway Administration  
United States Department of  
Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590

Carolyn Flowers,  
Acting Administrator  
Federal Transit Administration  
United States Department of  
Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590

Docket No. FHWA-2016-0016; FHWA RIN 2125-AF68; FTA RIN 2132-AB28

To Administrator Nadeau and Acting Administrator Flowers:

The Notice of Proposed Rulemaking published in the Federal Register on June 27, 2016 under Docket No. FHWA-2016-0016; FHWA RIN 2125-AF68; FTA RIN 2132-AAB28 will significantly affect the Southeastern Massachusetts Metropolitan Planning Organization and fundamentally alter the manner in which transportation planning takes place in southeastern Massachusetts. Should this rule be made official, planning for transportation improvements will be made more complex, more confusing, and less efficient which is contrary to the objectives of FHWA and FTA in making this rule. We respectfully request that this rule be reconsidered to address the concerns identified herein.

The Southeastern Massachusetts Metropolitan Planning Organization (SMMPO) is comprised of twenty-seven communities located in four Metropolitan Planning Areas (MPA) representing a population of 616,670 (2010). The SMMPO board is comprised of thirteen members which include:

- The Secretary of Transportation of MassDOT serving as the MPO chairperson,
- The Administrator of the Massachusetts Department of Transportation Highway Division,
- The chair of the Southeastern Regional Planning and Economic Development District,
- The Administrator of the Greater Attleboro Taunton Regional Transit Authority,
- The Administrator of the Southeastern Regional Transit Authority,
- The Mayor of the Cities of:

- Attleboro,
- Fall River,
- New Bedford,
- Taunton, and
- Four at-large members each holding an elected position to their respective town select board.

The four MPAs designated in southeastern Massachusetts are: Barnstable, Boston, New Bedford, and Providence; the Providence MPA spans the states of Massachusetts and Rhode Island and includes twelve communities in Massachusetts. Developing a Long Range Transportation Plan, Transportation Improvement Plan, and Performance Measures for those twelve communities will require a cooperative planning agreement between the Commonwealth of Massachusetts and the State of Rhode Island. There is no such agreement between the states, and planning that occurs between the states is conducted informally and without any implications for project selection and funding.

Rhode Island Statewide Planning is in the process of adopting a nine-year Transportation Improvement Plan (TIP) for the fiscal years 2017-2025, a new initiative for the state. Massachusetts, conversely, is in the process of adopting a five-year Transportation Improvement Plan for fiscal years 2017-2021. The proposed revision to 23 USC Section 450.326(a) to require that MPAs with multiple MPOs must jointly develop a single TIP for the MPA is made unnecessarily complex by the fact that each state employs different planning horizons for the Transportation Improvement Program. A unified TIP may only show projects in Massachusetts in the initial five years of the document, whereas Rhode Island projects would be shown for the full nine years of the document. The concern is that listing projects located in Massachusetts on the Rhode Island STIP will be a challenge due to the different planning horizons; Rhode Island projects will be provided a four-year advantage for public support and ensuring commitments for matching funds.

A single TIP for the Providence MPA would require consistent project eligibility and scoring criteria to ensure that the distribution of federal funds is equitable. Agreement may be reached on eligibility for federal funds, however it is unlikely that agreement on the requirements to receive state matching funds will be reached, since the criteria are established by the legislative bodies of each state and not under the authority of the Governors. For Massachusetts to approve the use of state funds as a match for federal funds, a project must comply with the Global Warming Solutions Act of 2008 and demonstrate a reduction in greenhouse gases; a comparable requirement does not exist in Rhode Island. The discrepancy in matching funds eligibility combined with the different planning horizons for each state TIP makes compliance with the rule a complex challenge and will result with one TIP with two sets of criteria and essentially be organized as two separate TIPs.

The proposed revision to 23 USC Section 450.310(e) by clarifying that more than one MPO can be designated for an MPA only when the Governor and MPO(s) determine it is warranted is disconcerting for southeastern Massachusetts. The SMMPO incorporates the periphery of the Boston MPA; should the Governor determine multiple MPOs are not warranted, these communities would no longer be served by the SMMPO, but by the Boston Region MPO. The

concern expressed by these SMMPO member communities is that they do not feel that the Boston Region MPO will be responsive to their needs and that project funding will be made more challenging as they will be forced to compete against a much larger pool of applicants for funds that are only marginally greater than those available under the current MPO structure in Massachusetts. This concern is most pronounced in communities that are home to environmental justice populations.

The SMMPO has been successful in the distribution of TIP funds to ensure that environmental justice communities are equitable beneficiaries of the funds. This has been possible through analysis of project benefits, through public outreach to environmental justice communities, and a cooperative understanding of SMMPO members on the importance of equity in project development. Expanding the size of the Boston Region MPO to include current members of the SMMPO may result in the disproportionate distribution of funds based on the fact that environmental justice populations are not present in the same magnitude as they are in parts of the Boston Region MPO. Justification for equitable distribution of funds will be made more complex because of lower population densities and lower project costs in the SMMPO, and well established advocacy on behalf of environmental justice member communities of the Boston Region MPO.

The SMMPO member communities along the periphery of the Boston MPA do not have a history of coordination for transportation improvement projects with the Boston Region MPO. To date, coordination between the Boston Region MPO and the SMMPO has been limited to projects of statewide significance. The regional distinctions within the state that do not respect the U.S. Census Urbanized Area boundaries will put SMMPO member communities at competitive disadvantage if they are merged with the Boston Region MPO. Membership of these communities in the SMMPO has demonstrated that local control and regional cooperation within the MPO process has led to an equitable distribution of funds that benefit all members, including those in environmental justice communities. Through decades of cooperative planning, members of the SMMPO understand the complex and unique needs of each community and work collaboratively to ensure those needs are met to the extent possible with the funds available.

Conversely, if under the revision to 23 USC Section 450.310(e) the Governor determines that due to the size and complexity of the MPAs in the SMMPO region warrants retention of the SMMPO, the region comprised of four MPAs will require four Long Range Plans, four TIPs, and four sets of Performance Measures. Only one MPA (New Bedford) would be independent of surrounding MPAs. Planning in this manner is drastically different than how the SMMPO has planned for the region over the past fifty years. The complexity of preparing four Long Range Transportation Plans, developing four TIPs, and monitoring four sets of Performance Measures is contrary to the intent of the FHWA and FTA to improve efficiency in planning; this rule would make planning far less efficient, and more complex.

The SMMPO has demonstrated that through a diverse and multi-jurisdictional membership, employing a continued collaborative and cooperative approach to planning for transportation improvements, the MPO process can be effective, responsive, and transparent. The members of the SMMPO understand the responsibilities associated with their position on the MPO, and value the relatively small size of the SMMPO. The region benefits by this approach, and the SMMPO represents the spirit of what the metropolitan planning process was intended to achieve. The process is working in southeastern Massachusetts and is producing positive

benefits as a result.

This rulemaking will have far reaching negative impacts on the member communities of the SMMPO. The SMMPO does not share the optimism of U.S. DOT that this rule will make metropolitan planning more efficient, more comprehensible to stakeholders and public officials, and more focused on projects that address critical regional needs. The SMMPO believes that the proposed change will have the opposite effect and result in a region that will struggle to fund projects of regional significance, result in a process that is confusing and complex for stakeholders, and will hold decision makers less accountable for their actions. It is for these reasons that the SMMPO respectfully requests that the FHWA and FTA reconsider the implementation of this rule.

Sincerely,



Kevin J. Dumas  
SMMPO Vice Chair  
Mayor of the City of Attleboro

Cc:

Stephanie Pollack, MassDOT Secretary  
Jasiel F. Correia II, Mayor City of Fall River  
Jon Mitchell, Mayor City of New Bedford  
Thomas Hoyer, Mayor City of Taunton  
Thomas Tinlin, MassDOT Highway Administrator  
Charles Murphy Jr., Selectman Town of Fairhaven  
Alan Slavin, Selectman Town of Wareham  
Stephen McKinnon, Selectman Town of Middleborough  
Jonathan Henry, SRPEDD Chair  
Erik Rousseau, SRTA Administrator  
Francis J. Gay, GATRA Administrator

#3



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

TEL: (617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

August 17, 2016

Allin Frawley  
35 Forest Street  
Middleborough, MA 02346

**RE: Open Meeting Law Complaints**

Dear Mr. Frawley:

This office received your three complaints on April 4 and April 6, respectively, alleging that the Middleborough Tourism Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.<sup>1</sup> The complaints were originally filed with the Committee on March 11, March 12, and March 16, and the Committee responded by letter dated April 15.<sup>2</sup> In your March 11 and March 12 complaints, you allege that the Committee submitted a petition to place an article on the Town Meeting warrant without first voting to approve the petition during a meeting. In your March 16 complaint, you allege that the minutes of the Committee's November 4, 2015 meeting are not accurate.

On April 19, the Middleborough Board of Selectmen voted to dissolve the Committee. Because the allegations in your complaints concern a body that no longer exists, we decline to review the March 11 and March 12 complaints. See OML Declination 9-22-14 (South Shore Tri-Town Development Corporation Board of Directors).<sup>3</sup> With respect to the March 16 complaint concerning minutes, because the Committee approved the November 4, 2015 meeting minutes on November 18, 2015, the contents of the final meeting minutes were discoverable as of that date. See OML 2016-17 (although a public body has disbanded, the obligation to create and approve minutes continues beyond its existence). Complaints alleging violations of the Open Meeting Law must be filed with the public body within 30 days of the alleged violation. G.L. c. 30A, § 23(b). When an alleged violation occurs in open session, the alleged violation can reasonably be discovered at the time it occurs. See OML 2014-85; OML 2012-52. In order to be timely, this complaint must have been filed with the Committee no later than December 18,

<sup>1</sup> All dates in this letter refer to the year 2016, unless otherwise specified.

<sup>2</sup> The Committee sent their response to the Town Clerk, who forwarded it to our office and the complainant by email that same day. We note that the Open Meeting Law requires that within 14 business days after receiving a complaint the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). A response must also be sent to the complainant. Id.

<sup>3</sup> Open Meeting Law determinations and declinations may be found at the Attorney General's website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).



2015. Because your complaint was not filed with the Committee until March 16, we find that it is untimely and decline to review it.

We now consider this matter closed. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

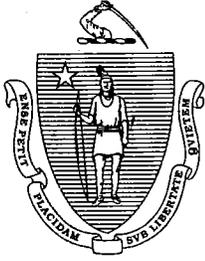
Sincerely,

A handwritten signature in black ink, appearing to read 'Hanne Rush', written in a cursive style.

Hanne Rush  
Assistant Attorney General  
Division of Open Government

cc: Middleborough Board of Selectmen

#4



The Commonwealth of Massachusetts  
Office of the Inspector General

JOHN W. McCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
ROOM 1311  
BOSTON, MA 02108  
TEL: (617) 727-9140  
FAX: (617) 723-2334

GLENN A. CUNHA  
INSPECTOR GENERAL

August 22, 2016

Robert G. Nunes, Town Manager  
Town Hall Building  
10 Nickerson Avenue  
Middleborough, MA 02346

Re: Documents Request No: EE-08-16

Dear Mr. Nunes:

I am writing to request your cooperation, pursuant to M.G.L. c. 12A, § 9, in providing the Office of the Inspector General with certain documents in the possession, custody or control of the Town of Middleborough ("Town").

In connection with the documents we are requesting today, the following definitions shall apply:

"Document" includes any writing, drawing, correspondence, graph, chart, photograph, video, or other data compilation, in any form, including electronic forms, all non-identical copies, any copies with hand-written or other notes, drafts as well as final copies, however maintained.

"Communication" includes all letters, notices, messages, electronic mail, computer bulletin board information or logs, and other written communications, computerized communications, or memoranda. The term also includes any records of conversations, meetings, conferences, or other oral communications, including but not limited to audio and visual recordings.

Specifically, I request the documents identified below that are related to the Eastwood Estates housing development initiated under provisions of M.G.L. c. 40B by the developer, Greystone Realty, Inc. of 3 Chester Avenue, Berkley, MA.

1. All "As- Built Plans" for the development showing all pavement, buildings, drainage structures and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations, as referenced and required in the Comprehensive Permit;

2. The final "As Built Utilities Plan" showing actual in-ground installation of all utilities, also as referenced and required in the Comprehensive Permit;
3. All documents and communications related to the change in use of classified land (including but not limited to Agricultural, Forest and Recreational) of any of the parcels (while owned by either Greystone Realty, Inc. or Rocky Meadow Development Corporation) comprising Eastwood Estates, this should include but not be limited to all notices of intent, all meeting minutes and all decisions rendered by the Board of Selectmen;
4. All Earth Removal Permits issued to either Greystone Realty, Inc. or Rocky Meadow Development Corporation for work to be done on any of the parcels comprising Eastwood Estates. Include associated permit applications, project plans public hearing minutes, Conservation Commission reviews, civil engineering plans, notices of intent, orders of conditions, surety bonds, all inspection reports/checklists and all certificates of compliance;
5. Town's assessment as to the total volume of earth (cubic feet), by soil type, removed from the Eastwood Estates development site by Greystone Realty, Inc. and/or Rocky Meadow Development Corporation. The assessment should address the volumes removed under each of the following categories: (a) approved Earth Removal Permit(s), (b) in compliance with the requirements of a Town approved subdivision plan, and (c) unapproved/unauthorized removal;
6. A detailed narrative describing the status of the development with respect to compliance with all approved development plans and specifications including but not limited to the construction of the roadway/pavement, the drainage infrastructure and acceptance of the roadway by the Town. This should include, but not be limited to, the status of issues identified by the Planning Board in a letter dated December 7, 2013 from Chairman, Michael Labonte to Chairman Bruce Atwood of the Zoning Board of Appeal; and,
7. A full and accurate inventory of the above-listed items.

**If possible, produce documents in digital format, either as PDF files or in native format.** Make sure all copies or scans are legible, organized as the originals are organized, and copied on both sides when the originals contain print or other marks on both sides. Please take all necessary and appropriate steps to insure that all relevant original documents are preserved and protected in the event that they are required as part of an official investigation.

If your response only partially fulfills this request, then please so state.

If any documents are withheld from production, provide a privilege log stating the nature of the document withheld and the applicable legal privilege.

Robert G. Nunes, Middleborough Town Manager  
August 22, 2016  
Page 3 of 3

If any document sought has been destroyed, and no copy exists, identify the subject, author of the document, the date of destruction, the person responsible for ordering said destruction, and the purpose for said destruction.

Also, please complete and include the attached certification averring that you have carried out a careful search for all of the documents requested and that to the best of your knowledge, no other responsive documents are in the possession, custody or control of your jurisdiction. Please be advised that concealment, alteration, destruction or mutilation of any responsive document may constitute a criminal violation of M.G.L. c. 268, § 13E.

Please provide the requested information and documents currently in the possession, custody or control of your jurisdiction before 5:00 p.m. on Tuesday September 6, 2016 to the Office of the Inspector General. If you have any questions about this request, please feel free to contact me at 617-722-8853.

Sincerely,



George Xenakis  
Deputy Director of Investigations  
Office of the Inspector General

CC: Diane C. Stewart, Chairman, BOS  
Darrin DeGrazia, Chairman, ZBA

Enclosure

**Certification of Compliance**

I hereby certify that I am a person responsible for the custody of the originals of the attached records for the Town of Middleborough and that the attached copies are a true and complete set of the records in the possession, custody and control of the Town of Middleborough that are responsive to the Inspector General's Attached Summons. I further certify that these records were made in the ordinary course of business.

Signed under the pains and penalties of perjury,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_