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May 28, 2020

Mr. Kevin J. Thibault
Secretary of the Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

Via email to kevin.thibault@dot.state.fl.us

RE: M-CORES Task Force Webinars

Dear Secretary Thibault:

I write on behalf of the First Amendment Foundation to bring your attention to the unfortunate exclusion of persons wishing to participate in M-CORES Task Force meetings, now being held by webinar. The webinars are a poor substitute for the kind of government that is required by Florida's Sunshine Law, which does apply to the M-CORES Task Force meetings. I appreciate that in adopting this process, your agency was attempting to keep citizens safe during a pandemic. Now, however, as Florida begins to fully re-open, the First Amendment Foundation requests that all M-CORES Task Force meeting webinars immediately be postponed (and preferably canceled) until "all interested persons" can be accommodated pursuant to law.

As you know, Executive Order 20-69 (as extended by Executive Order 20-114) applies only to local governments and does not apply to agencies or any decision-making and/or advisory board or committee created by a state agency.

FDOT is subject to the provisions of §120.54(5), Fla. Stat., and the rules authorized by that section. In addition, §338.2278, Fla. Stat., sets forth the law on Multiuse Corridors of Regional Economic Significance (M-CORES) and specifically states: "Each corridor task force shall hold a public meeting *in accordance with chapter 286* in each local government jurisdiction in which a project within an identified corridor is being considered." Fla. Stat., §338.2278(3)(c)5 (emphasis added). And, as you know Chapter 286 provides the parameters and application of Florida's Government-in-the-Sunshine Law.

Further, Florida Administrative Code Rule 28-109.004 specifically applies the Sunshine Law to all proceedings conducted by state agencies, including the Florida Department of Transportation (FDOT). Specifically, Rule 28-109.004 provides:

(1) Nothing in this chapter shall be construed to permit the agency to conduct any proceeding otherwise subject to the provisions of Section 286.011, F.S., exclusively by means of CMT without making provision for the attendance of any member of the public who desires to attend.

and

(2) No proceeding otherwise subject to Section 286.011, F.S., shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested persons to attend.

Fla. Admin. Code Rule 28-109.004.

The rule goes on to state that “[i]f during the course of a CMT proceeding technical problems develop with the communications network that prevent interested persons from attending, *the agency shall terminate the proceeding* until the problems have been corrected.” *Id.* (emphasis added). However, FDOT has already completed at least six M-CORES virtual Task Force meetings on April 28, 29, and 30 and on May 12, 13, and 14 (see <https://floridamcores.com/calendar-of-events/>), during which obvious and undeniable webinar technical and access failures occurred. At none of these meetings did FDOT terminate the proceedings as required by law. Rather, FDOT proceeded with its virtual-only approach, despite technical failures during each of those six webinars.

In short, all of these six meeting have been conducted in violation of the law applying to and establishing M-CORES, and by so doing FDOT is also in violation of Florida's Sunshine Law. Until FDOT can provide access to “all interested persons” it cannot proceed without further violating Florida law.

The M-CORES task force is required by statute to deliver their evaluation in a final report to the Governor, the President of the Senate and the Speaker of the House. See Fla. Stat. § 338.2278(3)(c)9 (2019). As a result, there is no question that the M-CORES task force exercises the “type of advisory capacity that would be subject to the provisions of the government in the sunshine law.” *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 476 (Fla. 1974).

If FDOT continues to hold M-CORES task force meetings by virtual “webinar meeting” and members of the public are unable to get online or call in to participate, the meeting must be terminated pursuant to Fla. Admin. Code Rule 28-109.004(2) and the law cited in this letter. Otherwise, FDOT is in violation of Florida law.

All portions of the Sunshine Law continue to apply even during this horrible pandemic. No part of the Law has been suspended or modified as applied to state agencies. As a result, I respectfully request that FDOT exercise patience, cancel any and all M-CORES Task Force meetings, and reschedule the meetings only when members of the Task Force and Florida citizens can fully participate in-person and by all feasible means.

With best regards,



Pamela C. Marsh
President

cc: William N. Watts Jr., will.watts@dot.state.fl.us
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