MEMORANDUM

TO: Thurston Regional Planning Council
FROM: Paul Brewster, Senior Planner
DATE: January 26, 2018
SUBJECT: Tumwater Federal STP Funding Reallocation Request

PURPOSE

To review and take action on Tumwater’s request to reallocate $121,100 federal Surface Transportation Program (STP) grant funds from the Capitol Boulevard Pedestrian Crossing Improvements project to the Desoto Street Stabilization and Rehabilitation project.

Summary:

- In December 2017, the Federal Highway Administration issued a notice (enclosed) that terminates the Interim Approval for the optional use of Rectangular Rapid Flashing Beacons (RRFB).
- This change prohibits communities from installing new RRFBs using federal transportation grants, thereby impacting Tumwater’s Capitol Boulevard Pedestrian Crossing Improvements project (awarded funding by TRPC in 2017).
- This project, expected to obligate this year, is no longer feasible and the city submitted a letter (enclosed) requesting TRPC approve the reallocation of $121,100 STP funds to the Desoto Street Stabilization and Rehabilitation project.
- Approving Tumwater’s request will provide additional funding to the Desoto Street project and help the region meet its obligation target.
- Staff will brief the council on this request and the steps necessary to fulfill this grant reallocation.

REQUESTED ACTION

Approve the reallocation of $121,000 federal STP grant funds from the Capitol Boulevard Pedestrian Crossing Improvements project to the Desoto Street Stabilization and Rehabilitation project.
BACKGROUND

In 2016, TRPC awarded a $121,100 Surface Transportation Program (STP) grant to the Tumwater Capitol Boulevard Pedestrian Crossing Improvements Project. This project would upgrade existing pedestrian crossings on Capitol Boulevard near Market Street and at the mid-block location between Dennis Street and Israel Road. The current crossings include marked cross-walks, signage and pedestrian refuge medians. The project would install pedestrian activated Rectangular Rapid Flashing Beacons (RRFB) at each location. The city was expecting to obligate its STP grant this year.

Rectangular Rapid Flashing Beacons (RRFB) with yellow indicators are effective at alerting drivers to pedestrians and, thereby, improving safety at uncontrolled crosswalks. Having the device active only when a pedestrian is present contributes to that effectiveness. (Image courtesy of the Texas Transportation Institute)

The nationwide standards to install and maintain traffic control devices on all public streets, highways, bikeways and private roads open to public travel is published in the Manual on Uniform Traffic Control Devices for Streets and Highways or MUTCD. The MUTCD prohibits patented devices from experimentation, interim approval, or inclusion in the MUTCD. In December 2017, the Federal Highways Administration (FHWA) terminated its interim approval for the use of RRFBs upon learning of the existence of four issued patents, and at least one pending patent application, covering aspects of the RRFB device. This decision prohibits all new installations of RRFB devices (projects already approved for construction may proceed). FHWA's decision does not affect the use of devices already installed. The FHWA prohibits Tumwater from proceeding with its project as planned.

In response, the City of Tumwater sent a letter to TRPC requesting the council reallocate the $121,100 to Tumwater's Desoto Street Stabilization and Rehabilitation Project. Tumwater has already obligated the design and engineering phase for the Capitol Boulevard Pedestrian Crossing Improvements Project, but has not requested federal reimbursement. As such, the deobligation and project close-out process can readily proceed with TRPC's approval.
The Desoto Street Stabilization and Rehabilitation Project will construct structural fill, stabilize the canyon slopes, and replace the failed road and sidewalk and add an uphill bike lane providing for a safe multi-modal facility and preserve existing infrastructure.

To date, TRPC has awarded the Desoto Street project a total of $767,750 in STP grant funding. This project is ready to proceed and reallocating the grant funds to this project will enable Tumwater to fulfill its 2018 grant obligation commitment.

The city stated that it is committed to constructing the Capitol Boulevard Crossing Improvements project with local funds when FHWA reinstates approval of RRFB devices, or with an alternative pedestrian warning beacon, if necessary.

ISSUES

To expedite the deobligation and close-out process and the State Transportation Improvement Program (STIP) amendment process, the council will review and act on this request on its first reading. TRPC staff will brief the Transportation Policy Board on the council’s action on February 14.

STAFF RECOMMENDATION

Approve the City of Tumwater’s request to reallocate $121,000 to the Desoto Street Stabilization and Rehabilitation Project.
January 8, 2018

Marc Daily
Executive Director
Thurston Regional Planning Council
2424 Heritage Court SW, Suite A
Olympia, WA 98502

RE: Request for Project Cancellation and Fund Reallocation
    Capitol Boulevard Pedestrian Crossing Improvements

Dear Mr. Daily:

On December 21, 2017, FHWA rescinded an interim approval through the Manual on Uniform Traffic Control Devices for Streets and Highways permitting the use of Rectangular Rapid Flashing Beacons (RRFB). As such, the City of Tumwater cannot complete the Capitol Boulevard Pedestrian Crossing Improvements project for which we were awarded $121,100 in Surface Transportation Program (STP) funds.

The City requests concurrence from Thurston Regional Planning Council to cancel the Capitol Boulevard Pedestrian Crossing Improvements project and reallocate $121,100 of awarded STP funds to the Desoto Street Stabilization and Rehabilitation project of which we have received a total of $767,750 in STP funding. The City has already obligated the PE phase and completed environmental documentation for the Capitol Boulevard Pedestrian Crossing Improvements. We have not requested federal reimbursement for any costs to date and as such, deobligation can easily be processed through WSDOT.

Given the effectiveness of RRFB’s for crossing safety along with our appreciation of the Council awarding the project, the City will commit to self-funding or seeking $121,100 in funding not administered by TRPC for installation of future crossing safety improvements at the associated crossings. We intend to install the proposed RRFB’s provided they receive some form of FHWA/MUTCD approval or alternate crossing safety improvements if RRFB use is not permitted in a reasonable time period. If the City seeks federal funding administered by TRPC for a larger pedestrian crossing improvement project that happens to include the crossings in the cancelled project, we will lower the federal share request and raise our local match by $121,100 in kind.

Please contact Brandon Hicks, Transportation Manager at 360-754-4140 or bhicks@ci.tumwater.wa.us if you have any questions.

Sincerely,

Jay Eaton
Public Works Director

www.ci.tumwater.wa.us
Roger Millar  
Acting Secretary of Transportation  
Department of Transportation  
Olympia, Washington  

Attention: John Nisbet  
Kathleen Davis  
Jeff Carpenter  

MUTCD - Interim Approval for  
Optional Use of Rectangular Rapid  
Flashing Beacons (IA-11) -  
TERMINATION

Dear Mr. Millar:

This letter is to inform you that the Federal Highway Administration Office of Operations issued a notice that the Interim Approval (IA issued July 16, 2008) for the optional use of Rectangular Rapid Flashing Beacons has been terminated.

Federal regulation, through the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), prohibits the use of patented devices under an IA, or official experimentation with patented devices. The MUTCD is incorporated by reference at 23 CFR, Part 655, Subpart F, and is recognized as the national standard for all traffic control devices in accordance with 23 U.S.C. 109(d) and 402(a).

The MUTCD prohibits patented devices from experimentation, IA, or inclusion in the MUTCD. The FHWA has learned of the existence of four issued U.S. patents, and at least one pending patent application, covering aspects of the Rectangular Rapid Flashing Beacons (RRFB) device originally approved under IA-11 of July 16, 2008.

For the aforementioned reasons, FHWA hereby rescinds IA-11 for all new installations of RRFB devices. Installed RRFBs may remain in service until the end of useful life of those devices and need not be removed.
Nothing in this notice should be interpreted as expressing an opinion as to the applicability, scope, or validity of any patent or pending patent application with regard to the installation or use of RRFBs, generally, or for those currently in use. The FHWA, the U.S. Department of Transportation, and the U.S. express no opinion on the merits, and take no position on the outcome, of any litigation relating to the RRFB.

Please share this information with appropriate staff and other jurisdictions.

Please contact Don Petersen if you have any questions at Don.Petersen@dot.gov or (36) 534-9323.

Sincerely,

DANIEL M. MATHIS, P.E.
Division Administrator
Digitally signed by DONALD A PETERSEN
DN: c=US, o=U.S. Government, ou=FHWA FHWAOlympiaWA,
ou=DOT FHWAOlympiaWA, cn=DONALD A PETERSEN
Date: 2017.12.22 08:42:52 -08'00'

By: Donald A. Petersen
Division Safety/Design Engineer

Enclosure

cc: Rick Mowlds, MS 47344, Mike Dornfeld, MS 47344, Scott Zeller, MS 47329, Ricky Bhalla, MS 47329, Jim Mahugh, MS 47329, Dean Moon, MS 47329, Kyle McKeon, MS 47390, Matthew Enders, MS 47390, Susan Bowe, MS 47390, Melinda Roberson, Susan Wimberly, Dean Moberg, Lindsey Handel, Jeff Horton, Liana Liu, Rick Judd, Tonya Price, Katie Hulbert
Memorandum

Subject: INFORMATION: MUTCD – Interim Approval for Optional Use of Rectangular Rapid Flashing Beacons (IA-11) — TERMINATION

From: Martin C. Knopp, Associate Administrator for Operations

To: Federal Lands Highway Division Directors Division Administrators

Date: DEC 21 2017

In Reply Refer To: HOP-1

Purpose: Through this memorandum, the Federal Highway Administration (FHWA) officially rescinds the subject Interim Approval (IA) issued on July 16, 2008.

Background: Federal regulation, through the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), prohibits the use of patented devices under an IA, or official experimentation with patented devices. The MUTCD is incorporated by reference at 23 CFR, Part 655, Subpart F, and is recognized as the national standard for all traffic control devices in accordance with 23 U.S.C. 109(d) and 402(a).

Action: The MUTCD prohibits patented devices from experimentation, IA, or inclusion in the MUTCD. The FHWA has learned of the existence of four issued U.S. patents, and at least one pending patent application, covering aspects of the Rectangular Rapid Flashing Beacons (RRFB) device originally approved under IA-11 of July 16, 2008.

For the aforementioned reasons, FHWA hereby rescinds IA-11 for all new installations of RRFB devices. Installed RRFBs may remain in service until the end of useful life of those devices and need not be removed.

Nothing in this memorandum should be interpreted as expressing an opinion as to the applicability, scope, or validity of any patent or pending patent application with regard to

---

1 MUTCD 2009 Ed., Intro. ¶ 4 at I-1
2 Id.; § 1A.10.
3 Id.
4 See id. at ¶ 02 at I-1.
5 Id. at ¶ 04.
the installation or use of RRFBs, generally, or for those currently in use. The FHWA, the
U.S. Department of Transportation, and the U.S. express no opinion on the merits, and
take no position on the outcome, of any litigation relating to the RRFB.

cc:
Associate Administrators
Chief Counsel
Chief Financial Officer
Directors of Field Services
Director of Technical Services