Moving Ahead for Progress in the 21st Century (MAP-21) Program Consolidation

Testimony before the US House Oversight Committee

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Chairman Mica, Ranking Member Duckworth, members of the subcommittee, my name is Carlos Swonke. I am the Director of the Environmental Affairs Division at the Texas Department of Transportation. Thank you for inviting me to testify on aspects of Moving Ahead for Progress in the 21st Century (MAP-21).

The Moving Ahead for Progress in the 21st Century federal surface transportation authorization bill was passed by the United States Congress on June 29, 2012 and became Public Law 112-141 on July 6, 2012 with President Obama's signature.

For the Texas Department of Transportation (TxDOT), the passage of MAP-21 represented new opportunities to improve and expedite the delivery of projects and services for the public we serve.

MAP-21 included several reforms and changes that greatly enhanced TxDOT's ability to fulfill its mission:

- Expedited project delivery
  Required greater coordination among federal agencies reviewing projects and established firm time limits for federal review of projects. The bill reduced the time limits for filing lawsuits on environmental documents and provided expedited procedures for approval of projects with minimal environmental impact. The bill significantly expanded the number and types of projects that can be categorically excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement, including projects in the operational right of way. Most importantly, MAP-21 made permanent the authority of states seeking to assume responsibility for federal environmental approvals through the Surface Transportation Project Delivery Program.

- Consolidated programs and provided funding flexibility
  Consolidated nearly 60 programs, directing funds to core highway programs. Greater funding flexibility was provided and the Surface Transportation Program (STP) was expanded to include some of the activities of the consolidated programs.

- Strengthened partnerships
  Reserved toll project development decision authority for states/local governments and expanded the ability of states to use federal funds for toll roads for new Interstate capacity. Further, the bill reserved Public-Private Partnership decision authority for states/local governments. The bill also mandated that states determine the toll interoperability protocols, ensuring that drivers can travel from state to state using toll roads with a single universal transponder.

Implementing MAP-21

With the passage of MAP-21, the real work began for TxDOT. We started by identifying opportunities within the legislation to improve project delivery and conserve transportation dollars.

Expedited Project Delivery and Environmental Streamlining

MAP-21's environmental streamlining provisions impacted virtually every project for the department. From major construction projects to minor reconstruction, maintenance and repairs, the legislation created a number of streamlining provisions and expanded opportunities for categorical exclusion that are projected to significantly expedite the environmental review process—saving both time and resources.

My division, the Environmental Affairs Division (ENV) oversees application of the new environmental regulations and policies to the department's projects and programs. To implement the new regulations, we started by coordinating with staff throughout the department to conduct a statewide assessment of environmental review status for current projects to identify those projects that would benefit from the MAP-21 provisions. TxDOT has participated in federal public comment processes related to the promulgation of regulations associated with these provisions, and processes related to federal agencies' reports to Congress. Additionally, TxDOT worked with the Texas Legislature to develop and implement statutory changes required to fully implement various provisions of MAP-21.

TxDOT environmentally approved over 1,800 projects in 2014. The department delivers over $9 billion per year in projects and is highly dependent on an environmental review process that is efficient and predictable. Provisions in MAP-21 helped TxDOT improve efficiency and the predictability of the environmental process. Although we continue to realize significant time savings, compliance and environmental stewardship have not been sacrificed. Our internal approval processes have become more rigorous, meaning analysis and regulatory compliance are as strong as ever.

National Environmental Policy Act Assignment

Section 1313 of MAP-21 made permanent the Surface Transportation Project Delivery Program, which allows states to assume environmental approval authority under the National Environmental Policy Act (NEPA) typically reserved for the Federal Highway Administration (FHWA). In September 2014 FHWA finalized the rule establishing the program. On December 16, 2014, TxDOT and FHWA executed the Memorandum of Understanding allowing TxDOT to participate in the program. The general benefits of the NEPA assignment program come from the removal of a layer of review in the environmental process and the increase in independent decision-making of the State DOT.

Even though we have been in the program for a year, it is difficult at this time to fully quantify the time savings TxDOT has realized. The reason is because larger projects may have an environmental review time that can take several years. As such, we have not had the opportunity to both begin and finish a large project with the NEPA assignment authority. However, we have seen a trend of projects approved with an Environmental Assessment classification taking closer to two years rather than the average of three previous to NEPA assignment.

TxDOT's transition to, and implementation of, NEPA assignment has been successful. We are seeing time savings, our internal program is more organized, and our process more predictable. The success is owed to both TxDOT and FHWA Texas Division leadership who have been tremendously supportive, and TxDOT staff who are committed to making the program work.

Interest continues to grow in the Surface Transportation Project Delivery Program. California has been working under the full NEPA assignment program since it was authorized as a pilot program eight years ago. TxDOT was the first to pursue full NEPA assignment under the MAP- 21 changes. At least four other states, Ohio, Utah, Florida, and Alaska, are pursuing NEPA assignment. TxDOT regularly communicates with those states so they might benefit from our experience.

Categorical Exclusions

In addition to adding categorical exclusions for limited financial assistance and emergency rebuilding, MAP-21 created in section 1316 a new categorical exclusion for work done in the operational right of way. FHWA finalized the rule for the new categorical exclusion on January 13, 2014. TxDOT has used this categorical exclusion 343 times over the past year, sometimes using it for routine work where another type of categorical exclusion may apply. But, more importantly, we have also used it for larger projects, when appropriate, where a more time-consuming Environmental Assessment would have been necessary without the availability of this categorical exclusion. In these instances, it's been a terrific time saver.

Program Consolidation

The bill's consolidation of funding programs eliminated nearly 60 transportation programs, many of which were only applicable to a limited number of states and a tiny fraction of the nation's infrastructure projects. With funds targeted toward core funding programs, TxDOT can now focus our federal dollars on our priority projects. In addition, the legislation's funding flexibility provides our state with the ability to shift resources to accommodate our changing needs and growing population. TxDOT applied MAP-21 revisions to our portfolio of pending and developing projects. The process involved the identification of projects and priorities, the coordination of project readiness and funding availability, the tracking of time limits and restrictions applicable to available sources of funding, and processes related to SAFETEA-LU set-aside programs that were collapsed into larger programs under MAP-21.

Overall, the collapsing and consolidation of many small pots of funds into larger, core pots has been hugely beneficial to TxDOT. By breaking down funding silos, TxDOT and Metropolitan Planning Organizations (MPOs) across Texas can use maximum flexibility in prioritizing projects and shifting funds to where they are needed most.

Under MAP-21, most funding is dedicated to certain core programs, which are outlined below.

The **National Highway Performance Program** (NHPP) encompasses the functions previously included in the Interstate Maintenance, National Highway System, and Highway Bridge programs. MAP-21 expanded this program to include not only the existing National Highway System, but also all principal arterials, the Strategic Highway Network, international border crossings and intermodal connectors. MAP-21 established a performance basis for maintaining and improving the National Highway System. States are required to develop a risk- and performance-based asset management plan for the National Highway System to improve or preserve asset condition and system performance. The Secretary of Transportation is to establish performance measures and states will establish targets for these measures. MAP-21 also requires minimum standards for conditions of Interstate pavements and National Highway System bridges.

The **Surface Transportation Program** (STP) includes previous STP functions plus the Off-System Bridge Program. MAP-21 continues the STP and provides flexible funding that may be used to preserve or improve conditions and performance on any Federal-aid highway, bridge projects on any public road, facilities for non-motorized transportation, transit capital projects and public bus terminals and facilities.

MAP-21's **Transportation Alternatives Program** (TAP) includes the functions previously included in the Transportation Enhancement, Safe Routes to Schools, and Recreational Trails programs. Planning, designing, or constructing roadways within the right of way of former Interstate routes or other divided highways is also included as eligible uses of TAP funds. Allowing TxDOT to flex our 50% of TAP funds has meant we can use these limited dollars on core projects.

MAP-21 continued the **Congestion Management and Air Quality Program** (CMAQ), which provides a flexible funding source for transportation projects and programs to address air quality, while adding new performance-based features. The bill directs the Secretary to establish measures for states to assess traffic congestion and on-road mobile source emissions. Metropolitan Planning Organizations with Transportation Management Areas with populations greater than one million representing nonattainment or maintenance areas are required to develop performance plans to for congestion reduction and for air quality.

MAP-21 doubled the size of the **Highway Safety Improvement Program**, and maintained the program's previous structure. However, the program now requires each state to regularly update their existing Strategic Highway Safety Plans with strategies to address key safety problems. States will set targets for the number of serious injuries and fatalities and the number per vehicle miles traveled. While MAP-21 eliminated the requirement that states set aside funds for High Risk Rural Roads, a state is required to obligate funds for this purpose if the fatality rate on such roads increases. The bill retained $220 million annually per year for the Rail-Highway Crossings program.

MAP-21 made numerous changes to the **Metropolitan Planning** process. MPOs and States are required to establish performance targets that address national performance measures established by the Secretary. MPOs are permitted to develop multiple scenarios for consideration in development of the metropolitan transportation plan.

Toll Interoperability

With the current state of transportation funding, many states have turned to tolling as a means to finance infrastructure our growing populations require. Texas is no exception. And, MAP-21 expanded the ability of states to develop tolling programs to be used in conjunction with federal funding. TxDOT staff participate in interstate working groups to ensure timely compliance with MAP-21's provisions requiring implementation of interoperable toll collection programs by October 2016.

TxDOT has taken a leadership role by investing in triple protocol Radio Frequency Identification Readers (RFID). TxDOT has asked its current toll equipment vendor to provide TxDOT a level of effort, both cost and schedule, to modify firmware or hardware in its current RFID toll lane readers to be able to read the three most common RFID protocols. The Texas A&M Transportation Institute (TTI) is currently testing triple protocol RFID readers.

Other states, freight providers, border crossings, and ports use several different RFID protocols that are not currently used by Texas toll agencies. Texas plans to adopt RFID readers that can read the three most common RFID protocols to ensure Texas is the most freight- and trade-friendly state for firms to do business in and with.

TXDOT/FHWA Implementation Working Groups

Early in the implementation process, TxDOT staff formed working groups with staff from Texas FHWA and USDOT to ensure our organizations have a coordinated, collaborative, and focused approach throughout the rulemaking and implementation process. The implementation working groups cooperatively analyzed and evaluated priority initiatives within MAP-21, identified opportunities and addressed challenges to ensure common goals for shared infrastructure investments are met.

These FHWA/TxDOT joint working groups focused their efforts in the areas of environmental streamlining, freight, performance measures, and program consolidation. The groups began meeting in 2012 and have continued to meet throughout the MAP-21 implementation process.

Thank you again for the opportunity to testify, and I am happy to answer any questions you may have.