

ATTACHMENT B

FHWA Concurrence with Description of Changes to Key Information in TxDOT's Application



U.S. Department
of Transportation
**Federal Highway
Administration**

November 30, 2018

1200 New Jersey Ave., SE
Washington, D.C. 20590

In Reply Refer To:
HEPE

Mr. Carlos Swonke
Director, Environmental Affairs Division
Texas Department of Transportation
125 East 11th Street
Austin, TX 78401

Dear Mr. Swonke:

This letter is in reply to Executive Director James M. Bass' November 8 letter to Deputy Federal Highway Administrator Brandye L. Hendrickson regarding changes to TxDOT's 2014 application for NEPA assignment. The Office of Environment, Planning, and Realty, our Texas FHWA Division Office, and our Office of Chief Counsel have reviewed Mr. Bass's letter identifying the changes to the 2014 NEPA assignment application. Director Bass asked us to notify you of FHWA's response.

Pursuant to 23 C.F.R. 773.115(b), our staffs have been coordinating over the last 3 months to determine if significant changes have occurred, or new assignment responsibilities are being sought by TxDOT. The FHWA must make a determination on whether the changes in the renewal package would warrant statewide notice and opportunity for public comment prior to the TxDOT's submission of the renewal package.

We have reviewed your proposal regarding the contents of the TxDOT renewal package and found that TxDOT need not subject the renewal package to statewide notice and an opportunity for comment. This determination is based on the fact that TxDOT proposes very few changes in its original application for responsibilities to be assumed. Also, we found the two up-to-date certifications for the waiver of sovereign immunity and compatible State law to the U.S. Freedom of Information Act [as required in 23 C.F.R. 109(a)(6) and (7)] to be acceptable.

Even though FHWA has decided that public notice and comment on the renewal package is not required, we urge TxDOT, in the spirit of transparency, to post the renewal package in a place of public access (perhaps on the TxDOT Web site) and to consider any comments submitted. We further urge TxDOT to inform its State and Federal partners (perhaps as part of routine or previously scheduled meetings) of the intent to renew the 327 Memorandum of Understanding (MOU), and that the MOU will be published as a notice in the *Federal Register* for comment.

Thank you for providing this information in a timely manner. We look forward to working with you and your staff to develop an MOU so that the Surface Transportation Delivery Program may continue to be successfully implemented in Texas.

If you have any questions, please contact Owen Lindauer at 202- 366-2655.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Emily Biondi". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Emily Biondi
Director, Office of Project Development
and Environmental Review