

FEDERAL HIGHWAY ADMINISTRATION
TEXAS DIVISION OFFICE
POLICY MEMORANDUM

SUBJECT:

**Policy for Planning, Environment and Project Development
for Toll Roads**

**September 29,
2003**

1. PURPOSE

This policy guides our office in the development of toll projects with Federal funding.

A number of TxDOT Districts and Divisions and toll entities may be involved in these types of projects. The various types of toll entities and existing toll authorities include: regional tollway authorities such as the North Texas Tollway Authority (NTTA), county toll authorities such as the Harris County Toll Road Authority (HCTRA) and the Fort Bend County Toll Road Authority, the state toll authority such as TxDOT's Texas Turnpike Authority Division (TTA), private toll road companies such as the Camino Colombia, Inc., and regional mobility authorities (RMAs) such as the Central Texas Regional Mobility Authority.

The following items of project development, implementation and completion are to guide our personnel in their role of Federal oversight and stewardship for toll related projects.

2. Planning

As all projects should be considered early in the transportation planning process, so should toll facilities. The planning process should be matched to the purpose, nature, and scope of the projects or study. The lead agency will be dependent upon the project and the nature and scope of the planning process. In addition to TxDOT, toll authorities, RMAs, metropolitan planning organizations (MPO's), and metropolitan transit agencies may have the lead role or a supporting role in a planning study.

Toll facilities may be considered in a variety of state, metropolitan, and local planning studies including: State and MPO metropolitan long-range transportation plans (MTPs), corridor or area plans, and individual project plans. The analysis techniques and the level of detail will vary with the type of planning study. More detail assessments are usually done at the corridor, area, and project level. In addition, there is a difference between these types of planning studies and the investment grade traffic and revenue studies conducted by toll authorities and RMAs. The investment grade and revenue studies serve a different purpose and audience. These studies serve the basis to sell bonds on the

market to provide funding for construction. As a result, the planning assumptions, input values, and time horizons may vary depending on the type of studies.

TxDOT has been given a mandate by the Highway Commission to consider existing and future transportation projects as possible toll projects. To comply with the Commission's mandate, consideration is to be given to including a toll option as one of the alternatives in planning studies. Just as planning studies include a "no action" alternative, so could a toll option be included in planning studies as standard practice. Typically, the cross section and the general operation for toll and non-toll facilities are relatively similar. The major differences in considering toll and non-toll options in the planning process relate to environmental justice and social issues associated with travelers' ability to pay tolls, to the secondary effects of traffic diversions due to toll costs, and to the light, noise, air quality and design issues associated with toll plazas. Examining these potential issues during the planning process can save time later if a toll option is added as an alternative or selected as the preferred alternative.

The development of appropriate memoranda of understanding (MOU) or memoranda of agreement (MOA) is critical to coordination and should be initiated during the planning process if it appears that a toll option is a viable alternative. These documents identify the roles and responsibilities of the parties involved: TxDOT, counties, toll authorities, RMAs, FHWA, transit authorities and other applicable authorities. Multiple MOUs/MOAs may be used to address planning, funding, design, construction, and operation of a project, or a single document could be prepared to include all of these elements. Typically, there is a three party MOU/MOA with TxDOT, FHWA and the toll authority for the funding element, with a separate MOU/MOA between TxDOT and the toll authorities for design, construction, operation and maintenance.

3. Funding

Under 23 U.S. C. 129 (a)1, five categories of toll activities are eligible for Federal-aid highway funding:

1. Initial construction of non-Interstate highways, bridges, and tunnels.
2. Reconstructing, resurfacing, restoring, and rehabilitating of existing toll facilities.
3. Reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility.
4. Reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility.
5. Preliminary studies to determine the feasibility of any of the toll construction activities described above.

A toll agreement with FHWA must be executed to construct or improve a toll facility or to convert an existing Federally funded free facility to a toll facility. The toll agreement must include five items:

1. The Section 129 (a)(1) category that permitted tolling.
2. A description of the toll facility covered by the agreement.
3. A commitment that all revenues will be used for debt service, operations and maintenance, a reasonable return on private investment, and establishment of necessary reserve funds.
4. If excess toll revenues are to be generated, a provision of how any access toll revenues will be used.
5. A stipulation regarding FHWA's access to records.

The Federal share payable for a project shall be a percentage determined by the State but not to exceed 80 percent. For privately owned facilities, it is acceptable for the private owner to take responsibility for the non-Federal share of eligible project costs.

Federal funding can also be secured through the State Infrastructure Bank (SIB) with a SIB Loan, or under the Transportation Infrastructure Finance and Innovation Act (TIFIA). TIFIA has threshold eligibility criteria for regular highway and ITS projects. Highway projects must cost at least \$100 million and ITS projects, \$30 million. Other eligibility criteria apply. Examples of these additional funding sources are the Turnpike Projects in Dallas, President George Bush Turnpike, (SIB Loan), and SH 130 in Austin (TIFIA).

4. Environmental Review

The environmental process follows from the planning process. The project that results from the environmental review/public involvement (PI) process must agree with the description of that project in the MTP/TIP STIP. The project design concept and scope, must agree. If the project does not agree, then appropriate revisions to the MTP/TIP/STIP by the MPO policy board would have to be made, and, in a non-attainment area, a new conformity determination on the revised MTP/TIP/STIP would have to be completed before the environmental document could be approved by FHWA.

The project that is built must be the alternative resulting from the environmental review/PI process. Subsequently, any changes would need to be evaluated to determine if they were substantial enough to warrant additional environmental review, PI and approval. In addition, MPO revisions to the MTP/TIP/STIP could be required and in non-attainment areas a new conformity determination might also be required, before the project could be authorized and constructed. For example, if FHWA/TxDOT issued a ROD on a non-toll facility, the MTP/TIP/STIP also reflected the project was a non-toll facility. Following the ROD, if the decision is made to toll the facility, additional environmental studies would likely be necessary to determine whether or not the tolling results in significant impacts. Further, additional PI would be needed since the project was originally presented to the public as a non-toll facility.

This guidance discusses three scenarios for toll facility implementation: converting an existing facility; converting a facility that is under construction; and projects under project development.

- A. Converting an existing facility that has been completed and is open to traffic and which was built using Federal funds.
- The State has the responsibility for operations and maintenance of the project and will have to make the determination for additional environmental studies and PI. FHWA recommends additional environmental studies and PI be undertaken.
 - The existing facility was built under a project agreement between the State and FHWA that requires the project to be maintained in an acceptable manner. If another toll authority other than TxDOT assumes control of the facility, then the elements contained in the project agreement, along with any environmental commitments must be carried through to any agreement with TxDOT and the tolling authority.

B. Converting a facility that is under construction.

If a toll authority wants to assume control, it has two options:

1. Buy out the amount of Federal funds expended on the project.
2. Complete the entire process of changing the MTP/TIP/STIP, performing an environmental reevaluation with PI and executing satisfactory agreements.

These actions could be underway and completed during construction of the facility.

C. Project under project development.

There are a number of possible scenarios including:

1. It is/was assumed that the project was going to be a non-toll road. The project was environmentally reviewed and approved as a non-toll road. Prior to construction it is determined that the project is going to be tolled. Additional environmental analysis/PI will be required and the appropriate revisions to the MTP/TIP/STIP will need to be made by the MPO.
2. The project will be a toll road prior to beginning of the NEPA process. If the toll is viable, then the purpose and need of the project is structured such that all the alternatives are toll alternatives. Conduct the environmental review and PI process on the project being a toll road.
3. It is not known if the project will be toll or non-toll prior to the beginning of the NEPA process. Then conduct the environmental review and PI on the project being either a toll or non-toll road. The purpose and need can be structured to support both. Toll and non-toll alternatives can be developed. The NEPA process will be accomplished on alternatives that contain both scenarios. If the ROD, FONSI or CE is approved on one scenario, and it is subsequently determined to implement the other scenario, then an amended ROD, FONSI or CE could be pursued since the

environmental review considered both options. However, the MTP/TIP/STIP will need to be revised prior to issuing the amended ROD, FONSI or CE.

4. The project is already in the environmental process and a decision is made to toll the outcome of the selected alternative. This is the most difficult scenario to determine an adequate action plan since it depends on each specific project's situation. It could vary from a project that has only issued a NOI and just started the environmental process to a project that has almost completed the environmental processing/PI and is near the ROD or FONSI. In most cases, it may be simpler to finish the process as a non-toll project and then accomplish a re-evaluation/PI after the determination that the project would be tolled.

5. Interstate

Section 129 of Title 23 discusses the prohibition of tolls on the Interstate System. ISTEA of 1991 modified that requirement by allowing the collection of tolls or congestion pricing on value pricing projects. Value pricing is normally applied to a HOV lane operation to sell or value price the excess traffic capacity in the lane. TEA 21 expanded the options for placing tolls on the Interstate by adding a pilot program for three facilities in the US. TEA 21, Section 1216(a) is the value pricing program from ISTEA and Section 1216(b) is the Interstate Reconstruction and Rehabilitation Program that permits collection of tolls on three pilot facilities on the Interstate system. In order to be eligible for the program, among other requirements, an analysis must demonstrate that the facility could not be reconstructed to meet current and future needs from the State. Also, the tolling must be for the complete facility. (So far, no State has been able to take advantage of this program) (There is pending legislation that could modify the requirements for tolling on the Interstate. One bill has proposed to allow the tolling of the Interstate for additional added capacity lanes.)

6. Design

In general, TxDOT and toll authorities tend to use similar design standards, based on the TxDOT Design Manual, standard plans, and specifications. Legislation approved in 2003 gives TTA and RMAs expanded authority in the use of exclusive or comprehensive development agreements (EDAs/CDAs), which may complicate the coordination of design and construction. If the toll authorities choose not to follow AASHTO design standards or TxDOT's Design Manual, standard plans and specifications, which FHWA has approved, then formal approval by FHWA of the toll authorities standards and specifications will be required.

The basic philosophy of a toll authority is greatly different to that of TxDOT. TxDOT's mission is to provide safe, effective and efficient movement of people and goods. The toll authority's mission is to provide an adequate mobility that will generate enough income to pay off the bonds. There can be differences of opinion on design elements such

as pavement thickness, shoulder widths, etc. These decisions should be based on the adequate standards shown in a manual based on the national AASHTO process and approved by FHWA.

The use of an MOU to outline the roles, responsibilities, and review process for design of a toll facility and the design of connections to state and local roadways is encouraged.

7. Construction

Cooperation and coordination among TxDOT, toll authorities, and RMA's is critical during construction of a toll project. Ensuring a high quality facility, as well as the safety of construction workers and the traveling public are important.

The use of TxDOT standard plans; specifications and special specifications will generally expedite a toll authority construction process. As described in the Design phase, if the toll authority chooses to use their own standard plans and specifications, then FHWA would have to formally approve these documents.

As discussed above, the toll authority's mission is somewhat different from TxDOT and this can and has led to compromising the traffic-handling phase during construction. Project construction decisions are sometimes predicated on meeting an opening date that was set by a financial decision. If meeting that opening date is the prime consideration, then traffic handling can sometimes suffer. FHWA holds high standards concerning the handling of construction traffic during construction.

The construction management for a toll authority project is frequently a consultant. There will generally be a learning-curve problem in the initial part of the project unless the consultant has had experience with other projects.

8. Maintenance

On toll projects, in which Federal funds were used, the maintenance requirement for all federal projects is still in effect. Since TxDOT has ultimate responsibility for the utilization of Federal funds, FHWA will look to TxDOT to enforce the maintenance requirement. Normally, the initial agreements will define the maintenance responsibility of each signer to the agreement. FHWA will assess maintenance sufficiency through its oversight program.

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