



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

1200 New Jersey Avenue, SE.
Washington, DC 20590

MAR 19 2008

In Reply Refer To: HOTM-1

Carlos A. Lopez, P.E.
Director, Traffic Operations Division
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 E. 11th Street
Austin, TX 78701-2483

Dear Mr. Lopez:

This letter is in response to the Texas Department of Transportation's (TxDOT) recent application for the Express Lanes Demonstration Program (ELDP) under Section 1604(b) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). As an initial matter, we have reviewed the ability of the Federal Highway Administration (FHWA) to consider and approve TxDOT's toll application in light of Section 197 of the Fiscal Year 2008 Consolidated Appropriations Act (the Act), Pub. L. No. 110-161. Section 197 generally prohibits the FHWA from approving or considering an application to toll a Federal highway facility in the State of Texas. After considering the effect of this provision to TxDOT's application to toll I-635 under the ELDP, the FHWA Office of Chief Counsel has determined that this project meets the construction exemption at Section 197(b)(2). Therefore, Section 197 does not restrict the FHWA's ability to consider or approve this application.

After reviewing this application, we have determined that it meets the statutorily prescribed eligibility requirements under Section 1604(b)(4) of SAFETEA-LU. Given the information presented in the application, as well as TxDOT's progress in the development of this project, we are accepting the TxDOT's application under the ELDP. As part of this acceptance we are agreeing to reserve 1 of the 15 pilot slots for the I-635 project in Dallas that will allow TxDOT to have the authority to toll motor vehicles on the managed lanes of this facility.

Before tolling can actually be implemented for the I-635 project, a toll agreement will need to be executed between TxDOT and FHWA under the provisions of SAFETEA-LU, Section 1604(b)(3). This agreement, which must be executed prior to the FHWA's final approval to toll any portion or segment of the candidate facility, must provide for regular audits and identify how toll revenues received from operation of the facility will be used in accordance with the requirements set forth in Section 1604(c)(6) prior to tolling. We are preparing a model tolling agreement that will help you when you are ready to prepare one. When it is drafted, we will send it to you for your use in preparing the final tolling agreement.

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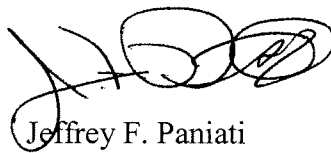
It is important to note that the statute requires the development of performance goals for the project. Specifically, under Section 1604 (b)(7) of SAFETEA-LU, the FHWA, in cooperation with your agency, is required to develop, and publish for public comment, performance goals for each project. These performance goals must include measures pertaining to the effects on travel, traffic, air quality, distribution of benefits and burdens, use of alternative modes, and the use of revenues to meet transportation or mitigation needs. In addition, the statute requires the establishment of a program for regular monitoring and reporting on the achievements of these performance goals.

We note that in your application you have proposed certain performance goals that are consistent with the requirements of the statute; however, we believe that some additional refinement may be necessary in order to better quantify these measures and add new measures that may be appropriate. Also, we note that a timetable for regular monitoring and reporting needs to be developed. As you refine the performance measures and develop a plan for monitoring and reporting performance, the FHWA will work with you. When finished you will need to transmit the refined performance goals, measures, and monitoring-reporting plan to the FHWA for publication in the Federal Register.

Finally, we want you to be aware that the execution of the toll agreement can proceed prior to publishing the performance goals and developing a monitoring and reporting plan. Further guidance concerning the contents and execution of the toll agreement, as well as the development of the performance goals and the monitoring and reporting plan, can be found in the Federal Register at 73 Fed. Reg. 6549 (2008).

Mr. Wayne Berman of my staff will be contacting you to coordinate these refinements. Please feel free to contact Mr. Berman at (202) 366-4069, should you have any questions or concerns about the approval contained in this memorandum.

Sincerely,



Jeffrey F. Paniati
Associate Administrator for Operations

cc:

John Hudspeth, P.E.
Project Manager, TxDOT
Ms. Janice Brown
FHWA Division Administrator
Austin, TX