



ENVIRONMENTAL DEFENSE FUND

finding the ways that work

**Texas Office of Environmental Defense Fund**  
**Testimony by Mary Sanger**  
**Senate Committee on Transportation and Homeland Security**  
**Regarding**  
**Comprehensive Development Agreements**  
**July 22, 2008**

Chairman Corona and Members of the Committee, the Texas Office of Environmental Defense Fund is here today to highlight examples of performance goals for transportation agreements, our hope is the inclusion of such goals will become a policy for all TXDOT projects whether it is a primary sponsor or as a partner, including regional toll authorities, MPOs, and regional RMAs, not just the proposed Trans Texas Corridor.

As we have stated at previous meetings, EDF believes there are many opportunities to improve the efficiency of use of existing urban and rural transportation infrastructure in Texas through fix-it-first strategies, improved travel choices, and smarter growth and travel incentives. These should be pursued before major investments are made in additional road capacity, especially in new greenfield corridors.

EDF does support the use of PPPs to help develop and operate transportation systems, but only if they are designed to deliver superior performance for the environment and public welfare. PPPs are not a panacea. They can mobilize private investment and innovation to address problems and opportunities.

But if used to pursue the wrong ends, and without extensive public involvement, they can enable bigger mistakes to be made than if the constraints of public financing and project development remain in place. EDF is concerned at the pace at which Texas has been using PPPs to develop new toll roads that will exacerbate sprawl, pollution, dependence on cars and imported oil, and traffic growth. At the same time, we recognize the central role Texas plays in the movement of freight. We would suggest that Texas make more use of PPPs to improve public transportation and address freight system needs, thereby helping to reduce fuel use that is driving up gasoline prices.

The incorporation of environmental stewardship goals in CDAs for the proposed TTC is unlikely to allay all of our concerns about the proposed TTC, given the impacts of many TTC elements on land, water, air, and greenhouse gas emissions.

Finally, we must ask, if private corporations believe they can make money by building and operating Texas toll roads and make a profit for their shareholders, is it perhaps time for the State to have confidence it, too, can design and operate toll roads cheaper than a private company, and to use tolls on existing lanes to better manage road capacity for high performance and to finance expanded public transportation choices?

We want to acknowledge Mr. Ed Pensock, Mr. Phillip Russell, Dianna Noble and other TXDOT staff for their constructive responses to a series of conversations we have had on these topics and recognize this Committee and TXDOT for the steps taken on new stewardship initiatives and public involvement activities. EDF also has been discussing with TXDOT officials new ways of addressing environmental compliance through performance based contracting that ensures that commitments to mitigate or avoid adverse impacts will be effective and looks forward to working further with the State to advance such approaches.

*Comprehensive Development Agreements and Performance Goals*

- Key stakeholders should be involved in an extensive “visioning” process on key performance outcomes, not just for mobility and economic development, but also to achieve community goals, reduce impacts on land and aquatic resources, reduce pollution, greenhouse gases, near-road elevated levels of fine soot PM and mobile source air toxics that cause adverse health impacts.
- CDAs should be designed so that a percentage of the tolls collected are dedicated, unlike the highway #161 project, to transit alternatives, such as rapid bus, rail, not to build more roads. The Port Authority of NY-NJ (which is a regional/bi-state transport funding authority), uses about 40% of its bridge and tunnel toll revenues on Hudson River Bridges & Tunnels to fund PATH rail service. The Dulles Toll Road was recently turned over to the Washington Airport Authority with the purpose of using toll revenues to fund a Dulles Rail extension. The San Diego Association of Governments uses toll revenues from HOT lanes to fund express bus services.
- CDAs should be tied to specific environmental and operating performance requirements. SR-91 in Southern California was approved conditional on achieving superior environmental performance, reduce air pollution and increase motor vehicle occupancy. The Sea-to-Sky Highway in British Columbia PPP concession contract includes environmental performance and environmental justice agreements (in Canada called First People's Agreements) with a portion of contractor revenue tied to achievement of performance goals. The Federal Transit Administration full funding grant agreement for the West Side Light Rail in Portland, OR, included a provision that the federal funds had to be returned if local governments didn't change their zoning in transit station areas to support transit-oriented development as assumed in the transit plan. All these are different examples of environmental performance agreements.
- Whether transportation projects are built by public private partnerships, by RMAs, by the State, they should all address SAFE-TEA-LU federal planning objectives, improving mobility and promoting economic development, while minimizing fuel use and emissions. Projects should protect public health by effectively monitoring near road elevated air pollution concentrations of fine particulate matter. Projects should be part of plans that ensure timely progress to ensure equal access to jobs and public facilities for all, including people without cars, without undue time and cost burdens. Projects should be compatible with existing or planned land uses.

- The design criteria for new roads and road expansion should reflect the variety of environments of a state as large as Texas. The range of alternatives need to be expanded and facilities, not just vegetation, varied in design to match their context.
- Require the developer to identify locations on the region's road network with traffic levels that might be affected by the operation of the new facility and which are most likely to experience near-road violations of PM 2.5 national ambient air quality standards. Require installation an emissions monitoring at that site at the closest proximity to the highway suitable for a middle scale monitor (e.g. 100 m for roads over 100,000 ADT). Require mitigation if a NAAQS violation is detected, such as emission based tolls.
- Require concession companies (RMAs, Regional Toll Authorities) to adopt air standards for off-road and on road highway construction equipment.
- Design a program for monitoring and assessing greenhouse gas emissions for the project with strategies for reducing those emissions due to construction, operation and management of the highway and the emissions due to users of the highway.
- Require concessionaire to subsidize express bus or flexible bus/van services to expand access to jobs and public facilities in corridor for people without cars.
- CDAs have been used with FHWA SEP-14 and SEP-15 exception procedures to fast track toll projects before the environmental review process is completed. EDF has many concerns about this end-run on the National Environmental Policy Act. The environmental review process answers essential questions and if well executed, can lead to consensus about how to solve mobility problems while minimizing harms to the environment and communities. It should not be looked upon as an obstacle. Well designed CDAs could enable new ways of addressing environmental compliance through performance based contracting.

#### Additional Information Attached

“Environmental Stewardship for Pennsylvania Turnpike”

“Best Management Practices for Environmental Stewardship for PPP Toll Roads”