



DECEMBER 8, 2015

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY (MAP-21) PROGRAM CONSOLIDATION

HOUSE OF REPRESENTATIVES, COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON TRANSPORTATION AND PUBLIC ASSETS

ONE HUNDRED FOURTEENTH CONGRESS, FIRST SESSION

HEARING CONTENTS:

WITNESS TESTIMONY

David S. Zachry [\[View pdf\]](#)

Chairman, American Road and Transportation Builders Association

Carlos Swonke [\[View pdf\]](#)

Director, Environmental Affairs, Texas Department of Transportation

Thomas G. Echikson [\[View pdf\]](#)

Chief Counsel, Federal Highway Administration, U.S. Department of Transportation

AVAILABLE WEBCAST(S):*

[\[Watch Full Hearing\]](#)

COMPILED FROM:

- <https://oversight.house.gov/hearing/moving-ahead-for-progress-in-the-21st-century-map-21-program-consolidation-2/>

** Please note: Any external links included in this compilation were functional at its creation but are not maintained thereafter.*



Testimony of

**David S. Zachry
President & CEO
Zachry Corporation**

**On Behalf of the
American Road and Transportation Builders
Association**

**Submitted to the
United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Transportation and Public Assets**

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

December 8, 2015

Chairman Mica and Ranking Member Duckworth, thank you for holding this hearing on Moving Ahead for Progress in the 21st Century (MAP-21) Program Consolidation. My name is David Zachry. I am currently President & CEO of the Zachry Corporation in San Antonio, Texas. I also serve as Chairman of the American Road and Transportation Builders Association (ARTBA) and am appearing before you today in that capacity.

ARTBA, now in its 113th year of service, provides federal representation for more than 6,000 members from all sectors of the U.S. transportation construction industry. ARTBA's membership includes private firms and organizations, as well as public agencies that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA members must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge about specific federal burdens that can and should be alleviated.

Significant progress was made on a bipartisan basis to streamline the permitting and approval process for transportation improvements in the past three reauthorizations of the federal surface transportation program: the Transportation Equity Act for the 21st Century (TEA-21) of 1998; the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and the Moving Ahead for Progress in the 21st Century (MAP-21) Act of 2012. Each of these measures provides valuable insight about the successes and failures of legislative efforts to reduce delay in the delivery of needed transportation projects without sacrificing regulatory safeguards.

ARTBA recognizes that regulations play a vital role in protecting the public interest in the transportation review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation's transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process oriented and essentially found a path for regulatory requirements to be fulfilled in a smarter and more efficient manner.

Today's hearing focuses on the implementation of the latest round of project delivery reforms under MAP-21. As a champion of many of these project delivery reforms, ARTBA can state first-hand that these reforms have begun, and should continue, to reduce delays in the transportation project delivery process.

According to a report by the U.S. Government Accountability Office prior to the enactment of MAP-21, as many as 200 major steps are involved in developing a transportation project, from the identification of the project need to the start of construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: the National Environmental Policy Act (NEPA); state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity.

Both political parties recognized that this is simply too long to make the public wait for transportation projects that improve mobility and safety. As such, finding meaningful ways to expedite this process has been a congressional priority for more than 15 years.

Reducing Project Delay

Reducing the amount of time it takes to build transportation improvements was first addressed in 1998 with the passage of TEA-21. Efforts to reduce delay in this legislation concentrated on establishing concurrent project reviews by different federal agencies. The concept was that multiple reviews done at the same time, as opposed to one after the other, would reduce the amount of overall time it took to get a project approved. While this improvement was a step in the right direction, it had limited impact, as concurrent reviews were discretionary, rather than mandatory. Thus, it was up to the federal agencies involved in a project whether or not to take advantage of this new benefit.

In 2005, SAFETEA-LU sought to further reform the project delivery process by establishing a wider range of new ways to deliver transportation improvements. Specifically, SAFETEA-LU gave greater authority to the U.S. Department of Transportation (U.S. DOT) as “lead agency” during the delivery process, limited the window during which lawsuits could be filed against projects, and reformed the process for determining impacts on historical sites and wildlife refuges.

SAFETEA-LU represented a far more expansive reforming of the project delivery process, by addressing the schedule for project reviews and also factors outside of the process itself which contribute to delay. SAFETEA-LU also went further than TEA-21 in that some of its reforms, such as the limitation on lawsuits, were mandatory, as opposed to optional.

The clear lesson between the 1998 and 2005 surface transportation bills was that simply giving federal agencies the ability to complete regulatory reviews in a more efficient manner in no way guarantees that authority would be utilized. As such, SAFETEA-LU took more aggressive steps to influence non-transportation agencies into making transportation project reviews a higher priority.

While SAFETEA-LU’s environmental streamlining provisions were a significant step forward from those enacted in TEA-21, the transportation project delivery process remained at an unacceptable pace. As such, MAP-21 took project delivery reform even further, with more tools for reducing delay. In addition to building upon the concept of “lead agency” begun in SAFETEA-LU, MAP-21 also included specific deadlines for permitting decisions as well as a scheduling mechanism to ensure environmental impact statements (EISs) do not take longer than four years. As with SAFETEA-LU, however, it is important to note that many of the reforms made in MAP-21 were discretionary. The more state and federal agencies choose to use MAP-21’s reforms, the greater the impact will be.

Expansion of the Use of Categorical Exclusions (CEs)

One of the most significant changes to existing law in MAP-21 was an expansion of the use of CEs during the environmental review process. A CE is used when projects create minimal impacts on the environment. The difference between a CE and an EA or EIS is multiple years added on to the amount of time it takes to complete a project review. Under MAP-21, many sorts of routine projects were automatically classified as CEs, these include rehabilitation and repair projects, projects within an existing right-of-way, projects with minimal federal resources and projects undertaken as a result of an emergency situation. Expanding the use of CEs to these additional areas enabled local governments to have more certainty as to when a CE can be used and also allows routine projects to be undertaken without burdensome, unnecessary levels of review.

MAP-21 also called for the development of CE guidelines for projects being constructed in response to an emergency or natural disaster. To qualify for CE status, such a project must be of the same mode/type and in the same right-of-way as the facility it is replacing and started within two years after the emergency/natural disaster. It should be noted that MAP-21 also offers states additional flexibility in emergency situations by allowing the issuance of special permits to

overweight vehicles delivering relief supplies and allows states to use any federal highway program apportionments other than those dedicated for local governments to replace transportation facilities damaged by a national emergency.

Only three months after the emergency/natural disaster CE was promulgated by the U.S. Department of Transportation (U.S. DOT), it was put to use in May 2013 when a truck hit the I-5 Skagit River Bridge in Mount Vernon, Washington. Application of the CE allowed repairs to the bridge to begin swiftly, and correctly recognized that in times of emergency, the focus should be on responding as promptly and effectively as possible. Specifically, in this instance repairs began within 24 hours after the accident and the bridge was re-opened to traffic in just 27 days and fully repaired within 115 days.

MAP-21 also created a CE for projects within an existing right-of-way. This is a logical application of the CE process, as an environmental review would have already had to be completed in order for the right-of-way to be obtained. Thus, requiring a second environmental review for a project within that right of way is duplicative and adds no additional environmental protection. The Texas Department of Transportation (TXDOT) noted a Houston widening project undertaken prior to MAP-21 involving a widening of a four-lane road. Although no additional right-of-way was required, an EA was deemed necessary. The EA took three years and costed \$100,000. Under MAP-21, that same project would qualify for a CE and be completed in a fraction of the time and cost.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a project or any identified alternative will affect those needs. Allowing certain types of projects to be classified as CEs is a very effective way of reducing delay in the review and approval process, ensuring that projects with minimal environmental impacts are not put through a needlessly long regulatory process.

Delegation of Environmental Review Responsibilities

Under SAFETEA-LU, a pilot program was established allowing five states (California, Alaska, Ohio, Texas and Oklahoma) to assume the role of the federal government during the NEPA process. MAP-21 expands the opportunity to participate in the program to all states. States choosing to take part would conduct their own environmental reviews, potentially saving time as a result of not having to go through multiple federal agencies.

Of the five states allowed to participate in the delegation pilot program under SAFETEA-LU, only California chose to do so and was approved in 2006. Under MAP-21, Texas was approved to participate in December of 2014. Also, Ohio recently applied to participate in the delegation program in May of 2015, and both Utah and Florida have indicated interest in applying for the program in the near future.

According to an October 30 fact sheet published by the California Department of Transportation, there have been significant reductions in delay preparing environmental review documents. Specifically, when compared to documents prepared prior to the delegation program:

- Draft EAs have seen a median time savings of 10.7 months;
- Final EAs and Findings of No Significant Impact (FONSI) have seen a median time savings of 11.5 months;
- Draft EISs have seen a median time savings of 22.9 months, and;
- Final EISs have seen a median time savings of 130.8 months—nearly 11 years!

While the Texas delegation program has not been in place as long as California's, TXDOT has estimated an average time savings of 25 percent. The Ohio Department of Transportation estimates similar time savings once Ohio's delegation program is established, as well as an estimated cost savings of \$45 million.

Additionally, MAP-21 allows states to also assume control of just the CE process as opposed to full environmental reviews. TXDOT has experienced a significant reduction in the time it takes to review CEs through this partial delegation program. Prior to assuming responsibility for CE review, the process took about one year. Under the program, the average time is now less than 45 days. Further, the documentation requirements have been reduced. CEs which used to span more than 100 pages are now two-page checklists. Utah has also assumed control of the CE process under MAP-21 and is now completing CEs in as little as six days for routine projects. Finally, Alaska has also assumed responsibility for CEs and is experiencing favorable results from the program.

While the reason for non-participation thus far by the other states has varied, potential liability and litigation costs were an overriding issue, as the state would also be assuming federal responsibilities for litigation over any project where delegation was used. Still, ARTBA believes delegation of environmental review responsibilities to states could be an important tool to save resources and speed project delivery without sacrificing regulatory safeguards.

Greater Strength for “Lead Agencies”

SAFETEA-LU established DOT as the “lead agency” for the environmental review of transportation projects, including “purpose and need” and “range of alternatives” determinations. MAP-21 expanded upon this authority by allowing DOT, as the lead agency for all transportation projects, to name a single modal administration as the lead agency in the case of multi-modal projects. The secretary of transportation also may, within 30 days of the closing of the comment period for a draft EIS, convene a meeting of the lead agency, participating agencies and project sponsor to set a schedule for meeting project deadlines. This new authority allowed the U.S. DOT to be the focal point of the review process, as opposed to a peer on equal footing with non-transportation agencies.

The opportunities to reduce the delay caused by inter-agency conflict provided by SAFETEA-LU and MAP-21 in the area of lead agency are significant. However, these reforms are only effective to the degree that the U.S. DOT chooses to take advantage of them. In other words, it is not mandatory that the agency take advantage of any of the benefits of “lead agency” status.

Even as an optional tool, though, “lead agency” status is an important mechanism for improving the project delivery process.

Construction Manager/General Contractor Contracting

MAP-21 also included a provision allowing the use of a “two-phased” contract – more commonly known as construction manager/general contractor (CM/GC) – on federal-aid highway projects. Under such an arrangement, a contracting agency retains a construction firm to serve as an advisor on constructability and other design issues during the first phase, then that firm has the first opportunity to agree on a price and build the project during the second phase. While the Federal Highway Administration (FHWA) had approved such projects on an experimental basis in the past, MAP-21 essentially mainstreamed the CM/GC contracting method so that the FHWA need not give special approval. In fact, as part of its Every Day Counts Program, the FHWA has been actively promoting the use of CM/GC by state DOTs in recent years.

While ARTBA, FHWA and state departments of transportation have conducted an ongoing dialogue about CM/GC-related issues, our association does not have an official policy on the topic, nor are we in a position to endorse its use. We believe that is best left to the individual state departments of transportation in close consultation with the contracting community. It should be noted that ARTBA's contractor member-firms embrace innovation and are always eager to advance the efficiency of transportation improvement projects, whether in terms of cost, time or safety. However, while ARTBA's membership includes firms, agencies and individuals representing all sectors of transportation construction, relatively few of them have first-hand familiarity with the use of CM/GC on highway projects. Accordingly, ARTBA has undertaken a member education effort on this method in recent years.

Earlier this year, the FHWA published a Notice of Proposed Rulemaking as it works to implement the MAP-21 CM/GC provision. ARTBA submitted detailed comments based on the input of our members who do have experience with CM/GC on highway projects. Issues we raised in the comments included transparency and objectivity of the selection process, proper risk allocation, timeliness of decision-making by the public agency, maximizing open competition in the procurement process and recognizing the uniqueness of the heavy-highway construction sector in formulating this new rule.

ARTBA and our members look forward to continued dialogue with the FHWA, state departments of transportation and other groups on the use of CM/GC. We will also be working with our members and chapters to make sure they have the information and material necessary to discuss the issue with their state and local transportation agencies should there be interest in employing CM/GC in their respective markets.

Additional MAP-21 Project Delivery Reforms

MAP-21 also improved project delivery by limiting the time during which lawsuits may be filed against projects. This concept was also part of SAFETEA-LU. SAFETEA-LU set a deadline of 180 days after the issuance of a federal decision on a project for the filing of a lawsuit. MAP-21 shortened this deadline to 150 days. Establishing a firm deadline for lawsuits ensures that any possible litigation is dealt with at the beginning of the delivery process. By addressing conflicts

early, planners then are able to set schedules without fear of litigation after the deadlines have passed. Further, the deadline allows conflicts to be heard and resolved sooner, rather than later.

Under MAP-21, project sponsors were allowed to request the Secretary of Transportation to set an expedited schedule for projects undergoing an EIS for more than two years. This schedule would ensure the project's EIS would be completed within two additional years. MAP-21 also establishes new deadlines for permitting decisions from federal agencies. If these deadlines are not met, the agencies suffer financial penalties. It should be noted, however, that these provisions of MAP-21 have not yet been utilized and it remains to be seen how they would work in practice.

Still More Work to Do

Additionally, many of MAP-21's reforms still need to be implemented through the regulatory process. MAP-21 is somewhat unique in that it provided 22-months of funding, but contained enough new policy in the project delivery arena to warrant multiple years of new regulations. Thus, MAP-21 will continue to be implemented even after, hopefully, the recent enactment of the "Fixing America's Surface Transportation" (FAST) Act.

In some cases, the U.S. DOT has missed deadlines established by MAP-21. An example of this can be found in Section 1503 of the law. Under this section, U.S. DOT is required to make available to the public, via website, annual federal transportation expenditure data on a state by state basis. This tool has the potential to provide a real, tangible connection to taxpayers explaining exactly how the money they send to the federal government is spent on projects in their states and neighborhoods. MAP-21 required U.S. DOT to annually update committees in the House and Senate on these efforts. However, more than a year after the expiration of MAP-21's funding, these efforts have yet to be started.

Unfortunately, a number of the MAP-21's project reforms mentioned do not have many examples upon which to evaluate their success. A major reason for this is the uncertainty over long-term federal funding. Federal funds, on average, support 52 percent of annual state department of transportation capital outlays for highway and bridge projects. Uncertainty surrounding the short and long-term fiscal condition of the Highway Trust Fund continues to have a significant effect on state transportation planning.

Following the expiration of MAP-21 at the end of September 2014, Congress put in place a series of short-term program extensions and temporary Highway Trust Fund revenue patches to keep highway and public transportation funds flowing to the states. This period of uncertainty led DOT officials in 35 states to publicly declare their state programs would be impacted by a shutdown of the federal surface transportation funds. In fact, eight states have delayed or canceled projects valued at \$1.90 billion.

The types of projects which require an EIS (and sometimes even an EA) are complex, multi-year projects. Without the assurance of long-term federal funding, states are often reluctant to proceed with such projects. The recent enactment of a five year surface transportation reauthorization bill is a positive sign that this uncertainty may soon be coming to an end. With an assurance that federal investment will be provided through FY 2020, states will hopefully

undertake more long-term transportation construction projects and we will have a better opportunity to witness more of MAP-21's reforms in practice.

Conclusion

The transportation sector has made significant strides in the area of project delivery. Beginning with TEA-21 and continuing through to the FAST Act, members of both parties have worked together to ensure our nation's infrastructure continues to improve at a pace matching the growth of our country. Continuing to streamline the project review and approval process for our nation's infrastructure is essential in assuring the public the government is making every dollar spent of transportation go as far as possible without sacrificing necessary regulatory safeguards.

Subcommittee Chairman Mica, Representative Duckworth, thank you for allowing me to appear before you today to discuss ARTBA's long history of promoting common sense reforms in the transportation project delivery process. We stand ready to assist the subcommittee as it continues to work towards the goal of reforming the project review and approval process for the transportation improvements our nation desperately requires.

I would be happy to answer any questions from you or other members of the subcommittee.

David S. Zachry

Chief Executive Officer

DAVID S. ZACHRY, P.E., is the Chief Executive Officer of Zachry Corporation. He has worked for Zachry since 1986 and is a third generation Zachry in the company founded by his grandfather H. B. (Pat) Zachry in 1924.

His work experience at Zachry has been a progression of assignments in the highway, petrochemical, power, and pipeline industries. In 1996 he was named President of the Civil Group. In August 2004 he assumed the responsibilities of President and Chief Operating Officer of Zachry Construction Corporation. In January 2008 he was named President and Chief Executive Officer of Zachry Corporation. He also participates on the Board of Directors of many subsidiaries and affiliated companies.

He has a Master of Business Administration from the University of Texas at Austin - 1994 and a B. S. in Civil Engineering from Texas A&M University - 1986. After graduation, he served three years active duty in the United States Army, which included domestic and international assignments and Airborne School.

Mr. Zachry presently serves on the Texas A&M Civil Engineering Advisory Council, board of directors for the Southwest Research Institute, and AGC of America, as well as the executive committee and board of directors for the American Road & Transportation Builders Association. He is currently chair of the Steering Committee of the Construction Industry Ethics and Compliance Initiative. He is a member of the Texas Cavaliers. He previously served on the following boards: Centro Partnership, the San Antonio Medical Foundation, San Antonio Zoo, the Mission Road Ministries, the Unicorn Center, St. Anthony School, the Greater San Antonio Chamber of Commerce, the HemisFair Park Area Redevelopment Corporation, and the Texas AGC. He served as chairman of the 2011 Greater San Antonio Chamber's SA to DC Trip Committee. He also served on the Executive Committee for the Mayor's Task Force on Sustainable Buildings, the Mayor's Corporate Retention and Recruitment Subcommittee, and the Mayor's Green Jobs Council. He is actively involved in his church and numerous charitable organizations and events.

He is married and has three children.





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

Testimony before the US House
Oversight Committee

Washington, DC

December 8, 2015

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.



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Carlos Swonke, P.G., serves as director of the Environmental Affairs Division at the Texas Department of Transportation.

Mr. Swonke joined the TxDOT Automation Division in 1987 after earning a bachelor's degree in geology from Sul Ross State University in 1984 and doing graduate work at Texas State University in the Applied Geography Program. He soon moved to the Environmental Section of the Design Division and in 1993 took a Water Resources Branch manager position in the then newly created Environmental Affairs Division.

While at TxDOT, Mr. Swonke was instrumental in TxDOT's first wetland banking efforts, led the compliance program for the new EPA construction storm water rules and municipal storm sewer system permitting program, and co-authored TxDOT's first storm water guidance manual. Additionally, he was the TxDOT liaison for the development of the state's coastal management program and served on several state- and national-level research advisory committees.

In 1998, he left TxDOT to serve as a project manager at Turner Collie & Braden. Ten years later, he joined Blanton & Associates, where he stayed until he accepted the Environmental Affairs Division director position in January 2012.

STATEMENT OF
THOMAS G. ECHIKSON
CHIEF COUNSEL
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TRANSPORTATION AND PUBLIC ASSETS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

MAP-21 PROGRAM CONSOLIDATION

DECEMBER 8, 2015

Chairman Mica, Ranking Member Duckworth, and Members of the Subcommittee, thank you for the invitation to appear before you today on behalf of the Federal Highway Administration (FHWA) to discuss program consolidation under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the implementation of key provisions designed to improve administrative flexibility and efficiency and accelerate project delivery. Accompanying me today are Brian Bezio, FHWA Chief Financial Officer, and Peter Stephanos, Director of FHWA's Office of Transportation Performance Management.

Consolidation of Programs

MAP-21 consolidated a complex array of FHWA programs into a smaller number of broader programs, with the eligibilities generally continuing under such programs. This revised program structure has helped provide our grantees with flexibility to deliver projects more efficiently. It also anticipates the flexibility grantees will need to make data-driven investment decisions to meet performance targets. However, while FHWA programs were consolidated for funding purposes, the same activities previously authorized remained eligible for funding under MAP-21. As such, FHWA remains responsible for administering a \$42 billion program with eligible projects of a comparable number and breadth as under the pre-MAP 21 program. Because FHWA still must review and approve the eligibility of projects, including projects using funding still available under pre-MAP-21 authorities, neither the number nor the complexity of the projects we review has diminished. In order to carry out our dual mission of protecting taxpayers and advancing national goals, FHWA must still provide effective oversight of State implementation of the Federal-aid highway program. FHWA personnel remain focused on providing appropriate oversight, shortening project delivery, and advancing innovation.

In the past decade, while funding for the Federal-aid highway program has grown, the number of full-time employees (FTEs) employed to support this growth has remained relatively constant. In Fiscal Year (FY) 2003, 2,366 FTEs were dedicated to administer a \$30.8 billion program. In FY 2012, FHWA used 2,302 FTEs to administer a \$40 billion program; in FY 2014, FHWA

used 2,281 FTEs to administer a \$42 billion program. It is important to note that FHWA is organized around areas of expertise, including safety, infrastructure, operations, environment, and planning, rather than by program, meaning the FTEs are not specifically dedicated to specific programs. Therefore, disaggregating an individual's time based on a particular program is not possible. Many discontinued or streamlined programs are still active as grantees spend down prior balances. Similarly, projects that were eligible under these discontinued programs still remain eligible under the larger, consolidated programs. While the structure under MAP-21 provides greater flexibility to the States using these funds, the program still requires the same amount of Federal oversight. In short, FHWA still has many of the same responsibilities for programs under MAP-21 as existed prior to MAP-21.

The areas around which FHWA has been and continues to be organized remain critical to delivering the consolidated program structure under MAP-21. More than two-thirds of FHWA's employees are located in our field offices, providing valuable expertise and working directly with State departments of transportation and other partners to deliver projects. FHWA staff workload is a function of the number and complexity of projects that FHWA oversees, not the number of programs.

Performance Management

The cornerstone of MAP-21's Federal highway program transformation is the transition to a performance-based program, which sets the stage for States and metropolitan planning organizations (MPOs) to make more strategic and efficient investment of Federal-aid highway funds through performance-based planning and programming. The performance-based structure promotes the use of system information to make informed investment and policy decisions to achieve the national performance goals established in statute. These performance measures are intended to assist States and MPOs in making data-driven funding and investment decisions.

The Department has been working diligently to finalize the performance management rules as quickly as possible. The MAP-21 requirements cover a number of performance areas that vary in maturity levels. In some cases, we have had to establish the new methods, standards, and data sources necessary to implement an effective national program. In addition, all States and MPOs receiving Federal-aid highway funds will need to comply with these new requirements. For these reasons, we have worked through many proposed implementation options, carefully considering the impact on these entities. Additionally, the Department felt strongly about engaging the public early before the formal rulemaking process began. Right after President Obama signed MAP-21 into law, the Department began a series of stakeholder engagements in which nearly 10,000 people participated.

FHWA is using a comprehensive approach to implement performance management, publishing rulemakings in three phases related to safety; infrastructure; and freight, traffic congestion, and air quality. In timeframes coinciding with these phases, FHWA also is issuing three program-related rulemakings: planning, highway safety improvement, and asset management. FHWA has published notices of proposed rulemaking (NPRM) for all but one of these rulemakings and anticipates publishing the final rules in the first half of next year. FHWA expects to publish the final NPRM focused on measures for the performance of the National Highway System, the

Congestion Mitigation and Air Quality Improvement program, and freight movement on the Interstate System soon. To provide transparency regarding these rulemakings, the Department updates the schedules on a monthly basis on its website:

<http://www.transportation.gov/regulations/report-on-significant-rulemakings>.

At FHWA, we are looking forward to reaping the benefits that the performance-based policy framework in MAP-21 will create in terms of helping maximize investments. By focusing on national goals and increasing accountability and transparency, these changes will improve decision-making in States and MPOs through more informed planning and programming. Implementing the performance management requirements and assisting States and MPOs as they transition toward this framework remains a priority at FHWA. We believe performance management is a key tool in preparation for the Federal-aid highway program of the future.

Project Delivery and Innovation

MAP-21 included provisions designed to further increase innovation and improve efficiency in the delivery of transportation projects. Immediately after passage of MAP-21, FHWA began working aggressively to implement these provisions by conducting outreach sessions with stakeholders, issuing guidance, and working collaboratively with other Federal agencies. FHWA and the Federal Transit Administration (FTA) jointly took swift action to implement MAP-21 provisions requiring regulatory changes in the area of project delivery, including the exclusion from requirements under the National Environmental Policy Act to prepare an environmental impact statement or environmental assessment for actions following declarations of emergency. FHWA and FTA also published quickly an NPRM for new categorical exclusions related to actions within the operational right-of-way and for projects with limited Federal financial assistance.

Many MAP-21 provisions complement the successes of FHWA's Every Day Counts (EDC) partnership with States, local governments, and the private sector. EDC focuses on shortening project delivery and getting proven innovations quickly and broadly deployed to benefit road users. Designed to complement other initiatives centered on innovative technologies, practices and investment, EDC plays an important role in helping transportation agencies fulfill their obligation to the American people to deliver the greatest value for the tax dollars spent. Simply stated, EDC is a State-based model to identify and rapidly deploy proven, yet underutilized, innovations to move projects from concept to completion more efficiently, saving time and money, enhancing roadway safety, reducing congestion, and improving environmental sustainability.

Congress incorporated into MAP-21 process innovations advanced in EDC, such as Programmatic Agreements, and innovative contracting strategies such as Construction Manager/General Contractor (CM/GC). CM/GC and other innovative contracting methods allow a project owner to evaluate new ideas, receive constructability advice from the contractors, and consider approaches that have the potential to reduce time, cost, and overall risk in the construction of projects.

In addition to process innovations, technology innovations like Safety Edge_{SM} and High Friction Surface Treatments are improving safety. Other innovations are helping to deliver transportation projects faster and cheaper. Using Accelerated Bridge Construction (ABC), transportation agencies have been able to replace bridges over a weekend (within 48 to 72 hours), reducing overall project construction time by months to years in some cases. Most States now have a specification and/or contractual language for use of Warm Mix Asphalt, which is mixed and placed at lower temperatures—saving fuel used for production; extending the paving season; and reducing emissions, odors, and fumes.

Across the Nation, transportation stakeholders want to look beyond "business as usual" and become more innovative in the way they deliver projects. Through the EDC model, FHWA works with stakeholders to identify a new collection of market-ready innovations to champion every two years. After the process of selecting EDC innovations for deployment is completed, transportation leaders from across the country gather at regional summits. These summits provide transportation professionals the opportunity to learn about and assess the innovations being promoted through EDC, exchange ideas with their agency and industry counterparts in neighboring States, and provide feedback to FHWA on the support and resources needed to adopt the innovations in their own States. These summits also begin the process for States and locals to focus on the innovations that make the most sense for their unique program needs, establish performance goals, and commit to finding opportunities to get those innovations into practice.

Forty-nine States have created State Transportation Innovation Councils (STICs), which are often responsible for the evaluation of innovations and oversight of deployment efforts. Co-chaired by a State DOT leader and FHWA Division Administrator in each State, the STICs can encourage innovation and cooperation among a wide range of partners at the State and local levels and allow each State to customize EDC implementation to its own needs and challenges. The STICs have become an essential component in helping create a national network to deploy innovation and get the most value out of every Federal, State, and local transportation dollar.

Through three cycles of EDC, a total of 32 proven innovations and enhanced business processes have been promoted, saving millions that can be used to deliver more projects for the same investment. Since EDC's inception in 2010, every State transportation agency has used eight or more of the innovations promoted under the initiative, and some have adopted over twenty. Through EDC, we are saving money, saving time, and saving lives—exactly the results we believed were possible if we and our State partners made innovation a standard industry practice.

Conclusion

As you know, last week, Congress passed a long-term transportation authorization bill, finally ending the cycle of continued short-term patches that create uncertainty for project sponsors and inhibit their ability to plan effectively. FHWA will continue to help prepare States and locals to deliver the highway program of the future while providing appropriate oversight and effective implementation.

Thank you again for the invitation to appear before you today to discuss MAP-21 program consolidation and implementation. I will gladly answer any questions at this time.

###



Echikson, Thomas G.

Chief Counsel, Office Of The Chief Counsel

Tom Echikson joined FHWA as Chief Counsel in August 2014. As Chief Counsel, Tom is part of the Agency's leadership team and oversees a team of 49 lawyers responsible for all legal matters within FHWA. This work includes legal and policy matters arising under federal transportation, administrative and environmental laws and touches upon an extensive range of subjects. He works closely with Agency leadership and the Agency's program offices.

Before joining the FHWA, Tom spent more than 25 years in private practice at several law firms in Washington DC as an environmental counselor and litigator. His work focused on environmental enforcement, litigation, regulatory counseling, permitting, advocacy and toxic tort defense. He defended clients in civil and criminal enforcement matters under the Clean Air Act, Clean Water Act, RCRA, CERCLA, the Hazardous Materials Transportation Act, and the Energy Policy and Conservation Act. He also counseled clients and litigated cases involving claims for costs and damages associated with contaminated properties, including toxic tort defense, contaminated site cleanup, cost recovery and natural resource damage issues. Additionally, he represented clients in administrative and regulatory rulemaking, permitting and variance proceedings before the U.S. Environmental Protection Agency and agencies within the Department of Interior, including challenges to and defense of federal environmental and natural resource regulations in the District Courts and Courts of Appeal. A large part of his practice involved providing counsel to clients regarding compliance with and litigation arising under NEPA and other natural resource laws in the context of federal permitting and authorizations.

Tom received a B.A. in Earth Sciences and Environmental Studies from Dartmouth College, and a J.D. from Northwestern University School of Law. He is licensed to practice law in Washington, D.C. and New York.