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Sunset Advisory Commission
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Attention: Amy Tripp
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Re: Comments and Recommendations re TxDOT Sunset Review Process

The Citizens' Transportation Coalition submits the following brief response to the Sunset Review Commission's request for comments and recommendations for the sunset process for the Texas Department of Transportation.

CTC is a Houston-based, 501(c)(3) all-volunteer, nonprofit multi-modal transportation organization, which advocates for most effective transportation infrastructure, expenditures, processes, and solutions that improve access to mobility and quality of life for all. Since 2004, we have worked to engage residents of the Houston-Galveston (H-GAC) area in the planning of transportation projects that affect our neighborhoods and maximize access to mobility for all.

Our organization submitted extensive comments for the July 2011 sunset process at the request of your agency's attorneys. We would welcome the opportunity to provide further clarification to any of the following points.

Summary: TxDOT should continue but should be reviewed again in four years.

Several of the improvements recommended in the 2011 Sunset Review Report have been made to TxDOT's operations and public involvement process, but many of these improvements have been undermined by recent legislative and regulatory changes, such as FAST and the TxDOT MOU with the FHWA. The implications of the post-2011 changes require further close

oversight. Two recommendations (regarding an inspector general and CDA and funding disclosures) carryover from 2011, and we hope the sunset commission will take up serious review of these issues and will recommend the necessity for appropriate legislative or regulatory changes.

We think the four-year time horizon will cause TxDOT to have a more robust concern for how this powerful agency interacts with stakeholders, projects, environmental reviews and permitting, and access to funds.

TxDOT should establish an Office of Inspector General. The State Auditor is not an appropriate or timely watch dog of stakeholder money or TxDOT operations.

CTC had strongly supported the need for an OIG in 2011. TxDOT is far too big and powerful not to have such an agency. It is the only major agency that does not have such an office, and there is no supportable reason not to. It only raises red flags with stakeholders.

TxDOT and the TTC had previously lobbied that the OIG would just be duplicative of the State Auditor functions. Not having an OIG deprives the public of ongoing disclosures and reports and deprives stakeholders of having an office with the necessary expertise to perform the oversight functions to which an overseer is entrusted. TxDOT spends far more money on lesser functions than staffing an independent agency to provide continual oversight of its operations, contracting, and financial transactions.

A State Auditor is necessary, but not sufficient to review and oversee TxDOT's projects. While a State Auditor is good and necessary for after the fact auditing functions, audits are not ongoing and often are not line itemed and are not undertaken by road project experts. For example, CTC, like many others, had been upset with the failure to document and account for massive sums of monies expended on a certain segment of the Katy Freeway project; the underbidding of the Katy Freeway project; drawing HCTRA into the project using forecasts the public still does not know and causing the exit of HCTRA from the project; and the loss of more than a billion dollars that was later "found". Although TxDOT was reprimanded for the Katy Freeway project about accounting protocols, the agency still does not show improvement in accounting for segregated real estate costs or privately negotiated transactions. No other agency gets to hotspot such costs. Further, if TxDOT or suing lawyers insist on confidentiality while negotiating, such information must be unsealed in litigation and certainly after resolution is made of a particular transaction, not all of the transactions.

For example, the OIG can peer into such matters and not disclose confidential communications and make certain the negotiations are being conducted on a fair basis among the various parties with varying access to expensive legal representative. The OIG would have the expertise to review plans, designs, and interim contracts that would not be reached by an auditor.

With TxDOT's MOU with the FHWA, mentioned below, TxDOT essentially has no oversight body making an OIG even more essential.

We do not care how many “hotlines” are established, and CTC would like to see the hotline reports to see if any complaints are made and what their nature is.

The agency has overstepped environmental streamlining and has made environmental review all but none existent.

NEPA is still the law, and most of TxDOT’s projects are subject to federal law because they either share space with a federal aid highway or tie into a federal aid highway. Environmental streamlining provisions under FAST, and vastly expanded and improper use by TxDOT of the claim of categorical exclusion from NEPA review and vastly shortened timeframes for judicial review of project make far worse transparency and accountability.

Implications of the MOU between TxDOT and FHWA cut off federal review for all intents and purposes.

Under the terms of a Memorandum of Understanding with the Federal Highway Administration and federal statutes, TxDOT was allowed to cut off the oversight by the FHWA of nearly all federal aid highway projects. Most of the large projects in our metropolitan area are federal aid highway projects because they either share space with a federal aid highway or connect to a federal aid highway, regardless of how they are funded. This MOU effectively eliminates oversight by any outside administrative agency and gives essentially unregulated power to TxDOT to control its projects and delivery.

Special funding provisions must be carefully detailed to the public as to use restrictions and source of funds.

Proposals for special funding mechanisms such as Prop 1 and Prop 7 must be clearly specified on ballots and on public information sheets. The wording of these sorts of propositions on ballots is often deliberately confusing. The devil is in the details, and the public frequently does not understand the scope of what it is voting for.

TxDOT continues to show no commitment to reducing lane miles of highway and improving efficient use of the space and rights of way it controls though the development of any form of transportation other than roadways.

The citizens of the State of Texas do not want roadways to be the first solution to a transportation problem, particularly not roadway congestion. Deliverables must include other modes.

TxDOT must take an honest look at the issue of recommending that congestion projects be undertaken by other agencies or at least jointly with other agencies.

For maximum mobility and efficiency, more projects need to be done jointly. CTC thinks TxDOT is the most efficient transportation agency in terms of project construction and

management—largely because it has all the money, but it needs to take a lead and make vast improvement on mass transit designs to make them feasible and not only default to building a road. TxDOT should have to explain why any major project cannot be built both with bidirectional HOV/HOT lanes with associated bike paths. Bridges must be rebuilt with appropriate 20 year designs and safety features.

Texans simply cannot afford, either in terms of space, money, or environmental impacts, to keep building roads as our number one solution.

TxDOT insisted on taking over railroad operations but it shows no funding commitment. TxDOT must show real movement toward freight rail funding and improvements or announce that same are not feasible and let another agency work on this issue and other mass transit issues. TxDOT's attitude toward developing mass transit joint ventures must improve and designs must become more neighborhood friendly rather than defaulting to the dismissive categorical exclusion.

TxDOT must permit greater input on the terms of comprehensive development agreements (CDAs).

CDAs are particularly prone to containing terms that while beneficial to TxDOT's deliverables or result in a bucket of cash upfront, but CDAs are particularly prone to containing terms not in the public interest such as lack of investment grade ridership studies, covenants not to maintain nearby roads, and imposition of guarantees of the full faith and credit of the State of Texas.

Financial and operational constraints of these project agreements are unnecessarily opaque. The interested reader, with only a minimal understanding of interest rates and derivatives, can review the terms of exemplar and actual agreements, particularly after they are signed. There is no secret sauce. At the very least, there must be disclosure of the amounts of upfront cash paid to TxDOT and the uses, or restrictions on uses, determined by the Legislature, of that cash.

Several of our tolling projects were predicated on revenue forecasts that have not come to fruition or have lacked investment grade ridership studies. If the project developer has recourse to the full faith and credit of the State of Texas, it will not be as cautious in requiring such numbers. Stakeholders must know who is on the hook for revenue shortfalls. Many Houstonians would vote not to spend one red copper cent on a mass transit project but get stuck with project shortfalls for tolling agreements that were advertised as paying for themselves.

Best Regards,

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