



August 11, 2014

Mr. Jeff Graham  
General Counsel  
Office of the General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, TX 78701-2483

Re: Proposed Rules for Transportation Alternative Program, Transportation Code Chapters 11 and 16, Texas Register, July 11, 2014; BikeTexas comments and request for changes.

Dear Mr. Graham,

Thank you for the opportunity to comment on the proposed rules of the Transportation Alternative Program (TAP) as published in the Texas Register on July 11, 2014. BikeTexas would especially like to thank Texas Department of Transportation (department) staff for limiting TAP funding to bicycle and pedestrian activities as outlined in proposed Section 11.304.

### **Summary of Requests**

The transportation modes in Texas that the department works to improve—highway, railroad, waterways, general aviation—are currently networked to the extent that they each function as an effective network, optimized to a practical extent based on the strengths of each particular mode. *The glaring exception to this for many decades has been the pedestrian/bicycle network.*

BikeTexas has some concerns with the proposed rules for TAP funding in Texas. We ask that you adjust the rules as follows (more detailed discussion of each rule can be found in the next section):

- **Do not move any funds from TAP into STP-flex.** Use all federal funding that Texas receives as part of TAP to fund eligible bicycle and pedestrian projects. (Section 16.154, Transportation Allocations Funding Formulas)
- **Do not cancel Texas' Safe Routes to School (SRTS) program.** SRTS should receive at least 20% of TAP funds so Texas can continue to be a national leader in this significant program. Additionally, **allow infrastructure and non-infrastructure SRTS programs to be funded through TAP.** (Section 11.304, Walking and Bicycling to School)
- **Remove references to eminent domain and condemnation being disallowed for TAP projects.** This tool should remain available for bicycle/pedestrian projects as it is for other roadway projects. (Section 11.304, Eligible Activities, Condemnation)

- **Allow TAP funds to be used for preliminary planning and engineering for bike/ped projects.** (Section 11.305, Allowable Costs)
- **Allow up to 15% of the local match for TAP funds to be in-kind.** (Section 11.306, Funding Match)
- **Do not require the local match to be cash only.** (Section 11.308, Nomination Package)
- **Do not establish a mechanism that could eliminate a project at the local level after it has gone through the local process and been submitted to the department approval process.** (Section 11.315, Elimination of Project from the TAP)

As Texas continues to grow rapidly, improving this mode so that it can function as a system will produce (1) great dividends in safety, (2) effective use of transportation capacity through well-designed development in communities large and small, and (3) economic value for families, businesses and government. Pursuit of such a system completely aligns with the Agency Strategic Plan 2015-2019 goals to maintain a safe system, address congestion, connect Texas communities and become a best in class state agency.

### **Requested Changes to Proposed Rules**

BikeTexas respectfully submits the following seven changes to the proposed rules. Discussion of each proposed change follows the request. We are receptive to edits or equivalent language that may be suggested by the department as needed to clarify the objectives of these proposed changes.

#### **1. Section 16.154, Transportation Allocations Funding Formulas**

*In Section 16.154 Transportation Allocations Funding Formulas, (c) Non-formula allocations, (4) Category 9 Transportation Alternatives, further modify part 4 text as follows:*

*"Category 9 Transportation Alternatives - of the remaining funds in this category, a portion will be allocated to certain areas of the state, for specific projects, based on the areas' relative share of the population, and a portion ~~may~~ will be allocated in any area of the state for specific projects ~~or transferred to other eligible federal programs,~~ as authorized by law;"*

Sending TAP funds to STP-flex as currently proposed is of concern to BikeTexas as past experience has demonstrated that STP funds are not used for pedestrian/bicycle programs. We request that this provision to transfer funds be removed.

In previous calls for proposals under TAP's predecessor programs, the department has generally favored approving multiple projects funded at lower dollar levels. We recommend

pursuing fewer, higher dollar level projects in a call with TAP funding. One way to drive local initiatives such as bond proposals in Texas is to use TAP funds on larger, more comprehensive, and more visible projects that demonstrate how pedestrian and bicycle infrastructure can benefit a community or region in terms of safety, economics, and quality of life.

The flexible portion of the TAP is well suited for this. The department can and should ensure that at least one such substantial project is selected for each region type: a large metropolitan area, a medium-sized city and surroundings, and a rural area. BikeTexas is aware of several such potential projects across all parts of the state. The following two potential projects are presented as examples of great community value for TAP funding; BikeTexas does not necessarily endorse these projects over any other potential TAP-funded projects in other Texas communities that also have great value. Both of these projects would feature complete, protected active transportation networks for all ages, and offer a positive economic impact along with a mode-share shift that lessens congestion.

- The 130-mile-long Northeast Texas Trail, connecting Texarkana through Paris to Farmersville near Dallas and many rural communities in between, would boost economic development and tourism. This sort of regional project that spans multiple jurisdictions can have strong regional or state significance.
- Brownsville's Bicycle and Trail Master Plan is targeted for a community that seeks to greatly increase physical activity as a part of daily life, but would also produce benefits in economic development and tourism throughout the region.

Although the matching funds for larger projects may seem to be out of reach, communities can work with the department, the legislature, and Texas Parks and Wildlife, among others, to find creative ways to fund these projects that communities will compete to have. For example, the sales tax on bicycles and bicycle accessories in Texas comes to approximately \$20 million per year; perhaps these funds could be used for a future source of funding for communities in the future.

## **2. Section 11.304, Walking and Bicycling to School**

In Section 11.304(a)(4), Eligible Activities, "*Construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle facilities and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.*" Add below the above sentence the following:

"The department may set aside a portion of the TAP funds solely for project proposals at or in the vicinity of schools pursuant to federal rules and the Texas Safe Routes to School program."

The best opportunity to establish walking and bicycling as lifelong and beneficial activities is during childhood between the home and local school. Safe Routes to School funding provides the intrinsic value of safe and comfortable infrastructure for such purposes. A second important function of such funding is to demonstrate to local officials the great need for such infrastructure, and local parents' demand for safe biking and walking infrastructure near schools. Safe Routes to School funding can only meet a very small part of the need,

which in a large part exists because of the inexplicable practice of many local officials to exclude construction of such infrastructure when building new schools even to the present day.

By continuing to support the Texas Safe Routes to School program by name, the department is directly signaling to local officials that walking and bicycling infrastructure is an important and indispensable component of the school site. This impresses upon local officials the importance of safety, not just for children who *might* walk or bike to school if suitable infrastructure is in place, but also for children who currently *must* walk or bike to school in the complete absence of *any* walking or biking infrastructure.

### **3. Section 11.304, Eligible Activities, Condemnation**

In Section 11.304, *Eligible Activities*, part (b) remove the following sentence as follows and re-label (c) to (b):

~~"A project that will require the acquisition of real property through eminent domain or condemnation is not eligible for participation in the TAP"~~

Negotiation with landowners is the norm practiced by Texas government entities when seeking trail corridors. BikeTexas supports this practice and is not aware any instances in Texas in which eminent domain or condemnation were used for trail corridors. However, this tool should remain available to governments as defined by law. This tool is of course legally available for use in roadway construction projects.

By excluding tools that are available for other roadway projects from bicycle and pedestrian projects, the department risks setting up for failure these projects that are produced with federal funds.

### **4. Section 11.305, Allowable Costs**

In Section 11.305, *Allowable Costs*, part (b) remove the following sentence as follows and re-label (c) and (d) accordingly:

~~"The Costs of preliminary engineering (including planning, design, and plans, specifications, and estimates) are not allowable costs"~~

Discussion of this change is included with Item 6.

### **5. Section 11.306, Funding Match**

In Section 11.306 *Funding Match*, modify (a) as follows:

"the local funding match is a cash match must be one or a combination of the following: cash, the market value of critical preliminary work such as design and/or engineering, the market value of acquisition of right-of-

way, and in-kind contributions as allowed by department guidance, provided by or through the project sponsor."

Discussion of this change is included with Item 6.

## **6. Section 11.308, Nomination Package**

In *Section 11.308 Nomination Package*, modify (b) as follows:

*"The nomination package must present persuasive evidence of support for the project from the communities in which it would be implemented and include a commitment to provide a match ~~cash amount~~ pursuant to Section 11.306 (a) of at least 20% of the allowable costs of the project"*.

BikeTexas understands that the department has concerns about local execution under TAP predecessor projects. *It appears that many local governments need more guidance and help in order to be successful with TAP grants.* BikeTexas believes that local governments now better understand both the value and the challenges of pedestrian/bicycle projects and are positioned to perform better overall in the future.

We believe that a cash-only match is too restrictive. This is not required of other roadway project proposals. We hope the department can design a better strategy, perhaps including engaging in a closer dialogue, exploring workable protocols, and using department expertise, to help local government entities perform better in submitting grant proposals, executing plans, and implementing infrastructure.

One potentially helpful step for the department, in consultation with local governments, would be to create a guidance document for match requirements that meets the letter of the law and yet provides options and flexibility to accommodate the financial conditions of the local government.

BikeTexas believes that with support, experience, and steady, reliable funding, government entities will quickly reach a level of performance on project execution comparable to that of other roadway projects.

## **7. Section 11.315, Elimination of Project from the TAP**

In *Section 11.315 Elimination of Project from the TAP*, remove (a) as follows and re-label "(b)" to "(a)":

~~"a project will be eliminated from participation in the TAP if at any time prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order or other official action, notifies the department of its opposition to the project"~~

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Communities and regions have a process to determine if support exists to move forward with a transportation project proposal. This includes public input and close involvement of local elected officials. This also takes place with communication with department district engineers. In addition, the commission provides the final authorization of the project. This issue is already specified in proposed Section 11.308 (b),

*“The nomination package must present persuasive evidence of support for the project from the communities in which it would be implemented”.*

To establish a mechanism that eliminates a project at the local level after it has gone through the local process and been submitted to the department approval process introduces a continuing degree of uncertainty that makes it difficult for a community to initiate such projects. We are not aware of similar mechanisms or requirements in any other department programs. BikeTexas requests elimination of this text from the proposed rules.

### **Safety, Economic, and Community Benefits of a Bicycle/Pedestrian Network**

Texas roadway fatalities are unacceptably high and each death is a tragedy. Each death also has an economic impact of \$6 million and all costs of roadway crashes nationally is three times greater than the cost of congestion.<sup>[1]</sup> About 16% of Texas roadway fatalities are pedestrians and bicyclists.<sup>[2]</sup>

Pedestrian and bicyclist fatalities convey a sense to many Texans of unsafe Texas roadways. Pedestrian/bicycle infrastructure improvements reduce crashes and encourage more bike/ped activity. The flexible portion of the TAP can significantly impact the 16% pedestrian/bicyclist share of the fatalities.

In addition, research shows that both well-designed infrastructure and interaction of more pedestrians and bicyclists with motorists increases awareness, reduces crashes involving motorists with pedestrians and bicyclists, and through an overall awareness of safety, actually reduces crashes among motorists themselves.<sup>[3]</sup> Research engineers believe implementation of well-designed infrastructure balanced with development of an overall traffic safety culture of responsible behavior by all Texas roadway users—motorists, bicyclists, pedestrians—is the most promising formula to reduce crashes, injuries, and fatalities in the future.<sup>[4,5]</sup>

BikeTexas does not view bicycle/pedestrian activity as a frill or adjunct to the transportation network. A great opportunity lies in, for example, capturing many of the 28% of motor vehicle short trips of less than one mile and converting those trips to bicycling or walking.<sup>[6]</sup> The return on investment (ROI) in bicycle/pedestrian infrastructure presents a great opportunity in a state that projects 11 million additional Texans by 2040, with about 80% of new arrivals going to just 16 Texas counties.<sup>[7]</sup>

Residents of large Texas cities benefit from an optimized, efficient pedestrian/bicycle transportation network by having transportation options that are less expensive,<sup>[8]</sup> reduced healthcare costs,<sup>[9,10,11]</sup> and more efficient living environments. Property owners benefit from higher rents, businesses benefit from higher sales, and governments benefit from higher tax receipts.<sup>[12]</sup> Suburban commuters benefit from freed capacity on parts of

highways and arterials in the most congested central city areas. And regional rural residents benefit from the openness and quiet due to less development encroaching out from the city.

Suburban residents can also benefit from a local pedestrian/bicycle transportation network through alternative modes for shopping, community events, sending kids to school, and enjoying greenbelts and other amenities. Rural communities can benefit from pedestrian/bicycle options and, depending on the facility and setting, tourism income.<sup>[13,14,15]</sup> All communities can benefit from safe pedestrian/bicycle transportation options for our senior citizens as they age in place. Besides being part of our communities, retirees also bring a wide range of incomes and apply their strong skills and vast lifetime experience through countless volunteer hours.

### **Conclusion**

A complete network of bicycle and pedestrian facilities will see a great return on investment through increasing safety both on-system and off-system, encouraging economic development in urban and rural areas, reducing congestion where it matters most, reducing health care costs statewide, and making our state more attractive for business investment.

The positive public response to existing pedestrian/bicycle system components currently on the ground in Texas shows that citizens and community leaders want and value such infrastructure. The pedestrian/bicycle network in Texas will attract more creative class workers, winter Texans, and tourism to the state, due to the demonstrable reduction of costs from transportation, health care, and other considerations.

Through TAP predecessor programs, the professional expertise is in place in the department, MPOs, and local governments to implement, maintain, and improve such infrastructure. Full TAP funding is critical to provide momentum and attract more local funding. Now is the time to make the pedestrian/bicycle network in Texas a true, functional system. *BikeTexas respectfully urges the department to modify the proposed TAP rules to keep all of the TAP funds in place for their original intended use and to make the process as workable as possible for our local Texas governments.*

### **Transportation Code Section 201.811(a)(5) Disclosure Statement**

Since 1991, BikeTexas has served as the statewide advocacy, safety and education non-profit organization for bicycling and walking in Texas. Over 30,000 Texans provide direct or indirect support to BikeTexas each year. Our constituents are Texans of all ages who walk or bike, or would like to walk or bike, as part of their daily lives.

As a non-profit organization, BikeTexas has conducted bicycle and pedestrian safety education programs for children and adults in Texas since 2002 through competitive requests for proposals from the department funded by "Section 402" and previous Safe Routes to School non-infrastructure grants. BikeTexas does not anticipate any monetary benefit from the TAP rules as proposed in the July 11, 2014 Texas Register or through the proposed changes submitted in this letter. BikeTexas staff members are not employees of the department.

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Thank you for thoughtfully considering these comments. Please contact me any time at 512-469-9158 or [robin@biketexas.org](mailto:robin@biketexas.org) if I can be of further service.

Sincerely,



Robin Stallings  
Executive Director

cc: Texas Transportation Commission  
LtGen JF Weber, USMC (ret.), Executive Director, TxDOT  
John Barton, P.E., Deputy Executive Director and Chief Engineer, TxDOT  
Marc Williams, P.E., Director of Planning, Planning and Projects Office, TxDOT  
Mark Marek, P.E., Director, Engineering Operations, TxDOT  
Teri Kaplan, State Bicycle and Pedestrian Coordinator, TxDOT  
Caroline Love, Texas Transportation Commission Aide, TxDOT  
Regina Garcia, Chair, TxDOT Bicycle Advisory Committee

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