

## Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

June 21, 2011

RECEIVED IN

JUN 24 2011

ADMINISTRATION

Mr. Allen Clemson  
Executive Director  
North Texas Tollway Authority  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

Dear Mr. Clemson:

As I am sure you are aware, S.B. 19, 82nd Legislature, Regular Session, 2011, establishes a streamlined primacy determination process that replaces the market valuation and primacy determination process established in Section 228.0111, Transportation Code, added by S.B. 792, 80th Legislature, Regular Session, 2007. S.B. 19 repeals Section 228.0111, and establishes a new primacy determination process in new Chapter 373, Transportation Code.

Section 13 of S.B. 19 provides that the repeal of Section 228.0111 does not affect any market valuation waiver agreement or other agreement entered into between the Texas Department of Transportation ("TxDOT") and a local toll project entity, or any resolution or minute order adopted by TxDOT or a local toll project entity, under that repealed section.

As you may know, S.B. 1420, 82nd Legislature, Regular Session, 2011, authorizes TxDOT to enter into comprehensive development agreements for ten projects, including the I-35E Managed Lanes Project and SH 183 Managed Lanes Project in Dallas and Denton counties.

In Resolution No. 08-365, dated September 17, 2008, and Resolution No. 09-138, dated May 18, 2009, the NTTA Board waived the NTTA's option to develop, finance, construct, and operate the I-35E Managed Lanes Project and the SH 183 Managed Lanes Project, with each action subject to specified conditions.

Arguably, the intent of Section 13 of S.B. 19 is to exempt projects that have already gone through the market valuation/primacy process in Section 228.0111 from having to go through the primacy process in new Chapter 373, Transportation Code. This is supported by the remainder of Section 13, which states that if a waiver of market valuation or waiver of first option to develop, finance, construct, or operate a toll project is withdrawn or terminated subsequent to the effective date of S.B. 19, TxDOT and the local toll project entity have the rights regarding the applicable project as exists under Chapter 373, Transportation Code.

However, Section 13 does not clearly provide that projects subject to the agreements, resolutions, or minute orders described in that section are exempt from Chapter 373. It is important that it be absolutely clear whether a toll project is subject to Chapter 373. A number of parties will be required to deliver opinions regarding compliance with the legal requirements

THE TEXAS PLAN:

REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY  
PRESERVE THE VALUE OF TRANSPORTATION ASSETS

*An Equal Opportunity Employer*

Mr. Allen Clemson

- 2 -

June 21, 2011

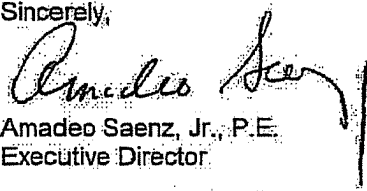
applicable to the development, construction, financing, and operation of the I-35E Managed Lanes Project and the SH 183 Managed Lanes Project, including the Office of the Attorney General, the counsel for any developers or lenders, and bond counsel. We are concerned that one or more of those parties could refuse to deliver such an opinion because of a failure to complete this new primacy determination process for those projects.

It is also likely that those opinions would not be delivered until after TxDOT had completed a comprehensive development agreement procurement for the I-35E Managed Lanes Project or the SH 183 Managed Lanes Project, as authorized by S.B. 1420, and had expended significant funds in the development of those projects. Failure to satisfy the requirements of new Chapter 373 could delay the development of those projects.

To provide greater certainty for the procurement and contracting process for the I-35E Managed Lanes Project and the SH 183 Managed Lanes Project, we request that the NTTA Board confirm its previous decisions to waive the NTTA's option by waiving or declining to exercise the NTTA's option to develop, construct, finance, and operate the I-35E Managed Lanes Project and the SH 183 Managed Lanes Project under new Chapter 373, as authorized in Section 373.055, Transportation Code. We request that the NTTA Board consider this matter no later than its July meeting.

We appreciate the partnership that we have with the NTTA and your efforts to advance the development of the I-35E Managed Lanes Project and the SH 183 Managed Lanes Project. We will continue to work with you on developing these and other projects as efficiently and expeditiously as possible. If you have any questions or would like additional information, please contact me at (512) 305-9501, or should your staff have any questions, they may contact Bill Hale, Dallas District Engineer, at (214) 320-6100.

Sincerely,



Amadeo Saenz, Jr., P.E.  
Executive Director

cc: Texas Transportation Commission  
Steven E. Simmons, P.E., Deputy Executive Director, TxDOT  
John Barton, P.E., Assistant Executive Director for Engineering Operations, TxDOT  
Bill Hale, P.E., Dallas District Engineer, TxDOT  
Mark Tomlinson, P.E., Texas Turnpike Authority Division, TxDOT