

AMENDMENT TO THE TRANSPORTATION DEVELOPMENT CREDIT POLICY

Background

In September 2013, the Transportation Policy Council approved the current Transportation Development Credit Policy. The goal of the current policy is to advance projects of regional significance, increase funding flexibility in support of these projects, and/or increase or maintain funding for key transportation activities in the region. Transportation Development Credits (TDCs) are credits earned when the State, Toll Authority, or private entity expends funds on capital improvements to public highways. These credits alleviate the need for an actual cash match to federally eligible projects. The H-GAC balance of TDCs is just over 1 Billion.

Current Situation

Staff presented the draft TDC Policy at the October 2020 TAC and TPC meetings. Since that time staff has received two questions. Responses to these questions were provided by staff which provided clarity on the use of TDCs under the new TDC Policy. No additional changes have been made to the revised TDC Policy.

Action Requested

TPC approval of Resolution 2020-42.

Houston-Galveston Area Council

Transportation Development Credits Policy and Procedures

November 20, 2020

Background

Transportation Development Credits (TDCs) can be used to fulfill some or all of the requirements for non-federal, state or local matching funds associated with the use of federal highway and transit reimbursements for eligible capital, operating and planning activities (23 U.S.C. §120). TDCs are not cash. By fulfilling the requirement for a non-federal share of a federally funded transportation project, the use of TDCs allows 100% federal reimbursement of eligible project costs assuming available federal funds are sufficient to pay all eligible project costs.

Credits are earned when the state, a toll authority, or a private entity expends funds on capital improvements to public highways using revenues from toll receipts and related transactions, including borrowed funds supported by these revenues. Eligible expenditures exclude debt service, returns to investors or the routine operation and maintenance of toll facilities.

The Texas Administrative Code (Title 43 Part 1 Ch. 5 Subchapter H) grants Metropolitan Planning Organizations (MPOs) the authority to award TDCs certified by the state and made available to specific MPOs based on toll projects within that MPO's jurisdiction. The Code requires MPOs with TDCs to develop guidelines and procedures to receive, evaluate and award credits while considering how the credits will expand the availability of funding for transportation projects. The MPO will evaluate applications and award credits as well as incorporate the information regarding the award of credits into its Transportation Improvement Program.

Definitions

The following words and terms, when used in this document shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission--The Texas Transportation Commission.
- (2) Department--The Texas Department of Transportation.
- (3) Eligible entity--Any entity that is eligible for funding under Title 23, U.S.C. or Chapter 53 of Title 49, U.S.C., is in good standing with the department, and has no deficiencies or findings of noncompliance.
- (4) Eligible project--A highway, rail, transit, bicycle or pedestrian project, as authorized by Title 23, U.S.C., other than an emergency relief program authorized by 23 U.S.C. §125, or Chapter 53 of Title 49, U.S.C.
- (5) Locally earned credits--Transportation development credits earned from:
 - (A) a project of a regional tollway authority;
 - (B) a project of a county acting under Transportation Code, Chapter 284;
 - (C) a project of a regional mobility authority;
 - (D) an international bridge not owned by the state; and
 - (E) a department project located within the geographic area of a regional tollway authority, a county acting under Transportation Code Chapter 284, or a regional mobility authority that has developed one or more toll projects.

- (6) Metropolitan Planning Organization (MPO)--An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 U.S.C §134. The Transportation Policy Council is the policy making body for the Houston-Galveston area MPO.
- (7) Transportation Development Credits--A financing tool approved by the Federal Highway Administration that allows states to use federal obligation authority without the requirement of non-federal matching dollars.
- (8) Transportation Improvement Program (TIP)—A program of projects formally adopted by the Metropolitan Planning Organization covering not less than four years identifying specific transportation projects selected for federal transportation funding assistance.

Policy Goal

It is the Policy Council's intent that use of TDCs advance projects of regional significance, increase funding flexibility in support of these projects and/or increase or maintain funding for key transportation activities in the region that support local community context for which the projects serve.

Priorities for the Use of Credits

The Transportation Policy Council has identified three priority uses for Transportation Development Credits. These projects or activities are most likely to provide benefits of regional significance and include:

1. Regionally Significant Roadway Capacity Projects
 - Added capacity projects on major thoroughfares (roadways classified as "arterial roadways" or higher or, as a result of the proposed improvement, may be re-designated as such).
 - Roadway projects must result in measurable capacity or operational improvement for vehicular traffic. Roadway projects may include ancillary transit, bicycle and pedestrian treatments as a part of the overall roadway improvements.
2. Support of Federal Transit Funding
 - TDCs may be used to assist transit agencies adversely affected by federal cost eligibility rules introduced in MAP 21 and upheld in the FAST Act. Project sponsors must demonstrate that the use of TDCs will not reduce local, non-federal funding support for their transit services.
3. Other Regionally Significant Projects. To the extent the following items may be eligible for federal highway and transit funding, the following activities will be considered for TDC award:
 - Freight rail improvements addressing the safety, capacity and reliability of the transportation system;
 - Improved access to ports, airports, major manufacturing and warehousing centers that reduces delay to freight and conflict with other multi-modal, vehicular traffic;
 - Regional traffic monitoring and management, including incident management;
 - Other regional transit projects decreasing vehicular congestion, such as HOV/HOT lanes, Park and Ride facilities and services, expanded express bus services, commuter rail, and travel demand reduction through vanpooling, carpooling, teleworking and other trip reduction strategies;
 - Access management projects that improve congestion and active transportation;
 - Livable Centers studies and projects; and
 - Support for other regional strategies to promote reductions in vehicle emissions.

4. Projects that will not typically be considered for TDCs because they individually lack regionally significant benefit include, but are not limited to:
 - Transportation Alternative Set Aside,
 - “Stand alone” sidewalk and on-street bicycle projects,
 - Roadway projects on collector or local streets,
 - Roadway maintenance, repaving or reconstruction projects without regionally significant added capacity components,

5. Development of the Regional Strategic Transportation Fund (RSTF)
 - Create the Regional Strategic Transportation Fund through partnership with local project sponsors that have been awarded federal funding by the TPC and can utilize TDCs for eligible activities. Through this program, local project sponsors will be required to remit 10% of match under traditional 80% Federal/20% Match formula into the Regional Strategic Transportation fund. The remittance is due when the project is let to contract. The federally eligible project will be funded 100% federal. Funds held in the Regional Strategic Transportation Fund will be used to support the following projects and programs.
 - Non-state facilities in rural areas
 - Maintenance and preservation of roadways in small-urban, rural and/or economically disadvantaged areas
 - Investment in local active transportation projects including sidewalks
 - Support for H-GAC sponsored regional grant applications
 - Localized safety improvements to address discrete pedestrian conflict points and intersections.
 - Additional details on the policies and procedures for implementation of the Regional Strategic Transportation Fund are attached.

Process for Considering Use of Credits

1. The request for TDCs should be made at the time the project is submitted for federal funding consideration. The available Transportation Development Credits will be identified by the MPO at the time it issues a call for projects to be considered for selection by the MPO Transportation Policy Council.
 - In the case of the TIP Call for projects, the use of TDCs will be considered in project scoring and ranking.
 - For other federal grant applications, a *conditional* award of TDCs may be considered by the TPC prior to the final submission of the grant application (or grant proposal). It is the responsibility of the applicant to provide its request for a conditional award by the TIP amendment deadline, one month prior to the regularly scheduled TPC meeting at which the award will be considered. An actual award will be based upon the final project scope and the actual federal funds received.

2. The award of TDCs will generally not be made retroactively (i.e. a project awarded federal funds supported by local dollars as the match may not replace the local matching funds with TDCs).
 - Consideration of a retroactive award will be made if the local project sponsor wishes to participate in the Regional Strategic Transportation Fund.

3. While a project may be in an eligible category for consideration of TDCs, it is not a guarantee that TDCs will be awarded. The final decision to award the TDCs lies with the TPC.

4. For roadway projects selected by the Transportation Policy Council, state or local matching funds that have been replaced by TDCs must be reinvested in transportation projects within the eight county MPO area consistent with the Regional Transportation Plan. Sponsoring agencies must identify the transportation project or projects to be implemented or supported with the local money which would have been used to match federal funds.
5. Federal Transit Administration (FTA) Sections 5307, 5310, 5311, 5339, and other formula funded projects will be exempt from requirements. TDCs will be separate and proportional to transit formula appropriations.

Receipt and Evaluation of Applications

TDC requests must include:

1. a detailed description of the project, the need for the project and benefits which will result from project implementation; and
2. a detailed explanation of how the award of credits will expand the availability of funding for transportation projects, considering the Policy Goal described above.

Notification of Award Decision

The MPO shall notify each applicant for Transportation Development Credits of the decision to award or not to award Transportation Development Credits no later than 60 days after TPC decision. Project sponsors whose applications are judged incomplete by the MPO Director will be notified and provided the opportunity to correct their application. However, incomplete applications will not initiate TPC review of a TDC request.

Should the MPO decline to award requested TDCs, the applicant may pursue an award from the Texas Transportation Commission provided that:

1. the project is explicitly identified and programmed in the Transportation Improvement Program or Regional Transportation Plan; or
2. the project sponsor receives a letter of support from the MPO stating that, if approved for a TDC award by the Texas Transportation Commission, the proposed project will be amended into the Regional Transportation Plan and Transportation Improvement Program as appropriate.

Opportunity for Public Review and Comment

Opportunities for public review and comment will be provided at key decision points consistent with H-GAC's adopted Public Participation Plan.

Administration of Transportation Development Credits

Before project sponsors awarded transportation development credits by the MPO may use them, the Texas Transportation Code requires the project sponsor to enter into a TDC agreement with the MPO. The purpose of this agreement is to describe the project for which the credits will be employed and the amount of credits awarded. This agreement does not substitute for project agreements required by TxDOT or federal grantor agencies. If permitted by TxDOT, the TDC agreement may be incorporated into TxDOT's Advanced Funding Agreement. The MPO shall transmit a TDC agreement for execution by the project sponsor within 90 days of Transportation Policy Council action to award TDCs. If an entity does not sign its TDC agreement within one year after receipt of the agreement, the credits may be rescinded and awarded to another eligible project(s) and project sponsor(s).

Transportation Development Credits will not be combined with actual cash match on the TxDOT advanced funding agreement. All federally eligible costs will be eligible for the use of TDCs

Annual Report

Not later than December 1st of each year, the MPO will submit a report to the Texas Department of Transportation documenting the management of its credit allocations for the previous fiscal year. This document will list all projects to which credits have been awarded and their implementation status.

Transfer of Credits

Based upon a documented request from another Metropolitan Planning Organization or the Texas Department of Transportation, the Transportation Policy Council may approve a transfer of Transportation Development Credits allocated to it to another MPO or to the Texas Transportation Commission. An approved transfer shall be documented in the MPO's Annual TDC Report.

Regional Strategic Transportation Fund

Policies and Procedures

The goal of the fund is to support lower-cost, high impact transportation projects that are quick to implement and improve funding flexibility (eligibility criteria and timing).

- Focus areas for projects to receive funds:
 - Non-state routes in rural areas
 - Maintenance and preservation of roadways in small-urban, rural and economically disadvantaged areas
 - Investment in local active transportation projects
 - Localized safety improvements to address discrete pedestrian conflict points and intersections
- Project will be approved by the TPC
- Support for lower cost, strategic investments
- Fund roadways that make critical connections to communities that may not be a major arterial and above in the Federal Functional Classification System
- Leverage larger, regional projects through planning and technical assistance
- Sponsor H-GAC led regional grant applications
- Project sponsors must demonstrate that the use of TDCs will not reduce local, non-federal funding support for transportation projects in the eight-county MPO area consistent with the Regional Transportation Plan. Sponsoring agencies must identify the transportation planning or construction project(s) to be implemented or supported with the freed up local funds which would have been used to match federal funds.
- Steps to contribute to the Regional Strategic Transportation Fund
 - Must have a federally funded project that requires local match
 - Local project sponsor must complete a TDC application and in addition express interest to participate in the Regional Strategic Transportation Fund by fulfilling the requirements
 - Local project sponsor would contribute 10% of the project cost to the Regional Strategic Transportation Fund when the project is let to contract
- Steps to utilize the Regional Strategic Transportation Fund

- Local project sponsor will submit project ideas to H-GAC that align with the focus areas
- H-GAC staff will review the proposed projects and work with the appropriate Subcommittees, TAC, and TPC for recommendation and approval.
 - Consistency with the RTP
 - Cost benefit analysis
 - Project readiness
 - Leverage of funds
 - Regional significance or local impact
- Funds will be replenished based upon participation in the program
- Awards will be made throughout the year as applications are submitted, reviewed, and approved by TPC.
- Local project sponsor will enter into an agreement with H-GAC to receive the funds
- Funds will be reimbursed based upon approved documentation at 100% of eligible cost.



Resolution

NO. 2020-42

APPROVING THE AMENDMENTS TO THE H-GAC TRANSPORTATION DEVELOPMENT CREDIT POLICY.

WHEREAS, Texas Administrative Code, Title 43 Subchapter H, identifies the purpose, goals, and administrative requirements for the Transportation Development Credit Program in the State of Texas, including the sub-allocation of credits to Metropolitan Planning Organizations (MPOs); and

WHEREAS, the Texas Department of Transportation has documented the current balance of credits allocated to H-GAC, the MPO for the Houston-Galveston Transportation Management Area; and

WHEREAS, Texas Administrative Code, Title 43 §5.106, establishes requirements for the award of transportation development credits by MPOs; and

WHEREAS, the Houston-Galveston Area Council is required to establish a documented process for the evaluation of applications and the award of credits; and

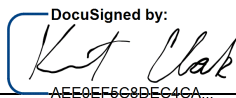
WHEREAS, the Houston-Galveston Area Council Transportation Development Credit policy has been revised to include the creation of the Regional Strategic Transportation Fund; and

WHEREAS, the Regional Strategic Transportation Fund will utilize up to \$100 million in federal surface transportation funds and 100 million Transportation Development Credits in exchange for local contributions.

NOW, THEREFORE, BE IT RESOLVED BY THE TRANSPORTATION POLICY COUNCIL (TPC) FOR THE HOUSTON-GALVESTON TRANSPORTATION MANAGEMENT AREA THAT **TRANSPORTATION DEVELOPMENT CREDITS POLICY NOVEMBER 2020 UPDATE BE APPROVED AND ESTABLISHES THE REGIONAL STRATEGIC TRANSPORTATION FUND**, AND THAT THE TRANSPORTATION DIRECTOR IS DIRECTED TO ENTER INTO ANY NECESSARY PROJECT AGREEMENTS.

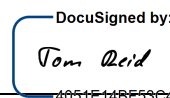
PASSED AND APPROVED this 20th day of November 2020, at a regularly called meeting of the Transportation Policy Council.

APPROVED:

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Hon. Kenneth Clark, Chairman
Transportation Policy Council

ATTEST:

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Hon. Tom Reid, Secretary
Transportation Policy Council