

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

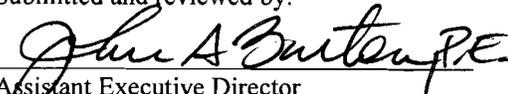
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §11.50, Access Management, §11.51, Definitions, §11.53, Locations Where the Department Controls the Access, and §11.54, Construction and Maintenance of Access Connection Facilities; the repeal of §11.52, Delegation of Access Permit Authority to Municipalities or Eligible Counties, §11.55, Local Access Roads, and §11.56, Connection with Regionally Significant Highway; and new §11.52, Access Connection Facilities, §11.55, Appeal Process, new §11.56, Delegation of Access Permit Authority to Municipalities or Eligible Counties, §11.57, Local Access Roads, and §11.58, Connection with Regionally Significant Highway, all relating to access connections to state highways to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals, and new sections, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

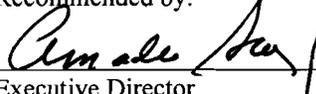
IT IS THEREFORE ORDERED by the commission that the amendments to §11.50, §11.51, §11.53, and §11.54; repeal of §11.52, §11.55, and §11.56; and new §11.52, §11.55, §11.56, §11.57, and §11.58 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Assistant Executive Director
Engineering Operations

Recommended by:


Executive Director

112102 JAN 28 10

Minute Number Date Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §11.50, Access Management, and §11.51,
4 Definitions; the repeal of §11.52, Delegation of Access Permit
5 Authority to Municipalities or Eligible Counties, and new
6 §11.52, Access Connection Facilities; Amendments to §11.53,
7 Locations Where the Department Controls the Access, and §11.54,
8 Construction and Maintenance of Access Connection Facilities;
9 the repeal of §11.55, Local Access Roads, and new §11.55, Appeal
10 Process; the repeal of §11.56, Connection with Regionally
11 Significant Highway, and new §11.56, Delegation of Access Permit
12 Authority to Municipalities or Eligible Counties; and new
13 §11.57, Local Access Roads, and §11.58, Connection with
14 Regionally Significant Highway, all concerning access
15 connections to the state highway system. The amendments to
16 §11.50, §11.51, §11.53, and §11.54, repeal of §11.52, §11.55,
17 and §11.56, and new §11.52, §§11.55 - 11.57, and §11.58 are
18 adopted without changes to the proposed text as published in the
19 November 13, 2009 issue of the *Texas Register* (34 TexReg 8007)
20 and will not be republished.

21
22 EXPLANATION OF ADOPTED AMENDMENTS, REPEALS, AND NEW SECTIONS
23 Title 43, Texas Administrative Code (TAC), Chapter 11,
24 Subchapter C, Access Connections to State Highways, was adopted
25 to prescribe requirements for the construction by adjacent

1 property owners of access connections on highways on the state
2 highway system in accordance with Transportation Code, Chapter
3 203, Subchapter C. Senate Bill 1609 (SB 1609), 81st
4 Legislature, Regular Session, 2009, amended Transportation Code,
5 §203.031 and required the Texas Transportation Commission
6 (commission) to adopt rules for the management of access to or
7 from a controlled access highway to include: (1) procedures for
8 appealing a denial of access to a specific location; (2) the
9 application to platted access points of access management
10 standards in effect on the date that a subdivision is recorded;
11 (3) notification to property owners of a highway construction
12 project if the project will permanently alter permitted access
13 at the owner's existing locations and an obligation to reinstate
14 that existing access; (4) adoption of criteria for determining
15 when a variance to access management standards may be granted;
16 and (5) clarification that remodeling or demolition and
17 rebuilding of a business does not cause new access management
18 standards to apply unless traffic patterns are significantly
19 impacted to the extent that the existing access connection
20 presents a threat to safety. The adopted amendments, repeals,
21 and new sections are necessary to comply with the provisions of
22 SB 1609 and clarify existing language.

23

24 Amendments to §11.50 include three changes. The first change in
25 §11.50(b) clarifies that the requirements contained in 43 TAC

1 Chapter 11, Subchapter C apply not only to existing access
2 connections that are reconstructed or modified as part of a
3 department highway project, but also to those existing access
4 connections located on the right of way that are reconstructed,
5 relocated, enlarged, or otherwise modified by the property owner
6 or permit holder. Further changes to §11.50 delete subsection
7 (c) concerning the January 1, 2004 effective date for
8 implementation of Subchapter C provisions, and also delete
9 subsection (d) concerning a transitional period that authorizes
10 exceptions for specific access connection requests where
11 significant prior commitments were made prior to January 1,
12 2005. Due to the passage of time following adoption of the
13 rules, the provisions in subsections (c) and (d) are no longer
14 necessary.

15
16 A definition of "Access management standards" is added as new
17 §11.51(2). It identifies Chapter 2 of the Access Management
18 Manual as the source of standards, criteria, and specifications
19 that govern the location, design, construction, and maintenance
20 of access connections. There is no current definition of this
21 term and it is necessary for describing with specificity the
22 conditions for issuance of an access connection permit.

23
24 A definition of "Construction of an access connection" is added
25 as new §11.51(5). It refers to all methods and types of

1 construction of an access connection including installation,
2 original construction, reconstruction, relocation, enlargement,
3 or other material modification. Use of the term is necessary
4 for describing permit requirements under new 43 TAC §11.52, and
5 construction and maintenance requirements for access connection
6 facilities under amended 43 TAC §11.54.

7
8 A definition of "Design division" is added as new §11.51(7). It
9 identifies the administrative office of the department
10 responsible for the development of engineering design guidance
11 and oversight of projects developed on the state highway system.
12 There is no current definition for this term and it is important
13 to clearly identify the office responsible for prescribing the
14 terms of a permit under new 43 TAC §11.52(b) and initially
15 handling a property owner's appeal under new 43 TAC §11.55.

16
17 A definition of "Development" is added as new §11.51(8). It
18 refers to the new construction or the enlargement of any
19 exterior dimension of a building, structure, or improvement.
20 Use of the term is necessary for describing requirements under
21 new 43 TAC §11.52(f) for application of the pre-existing access
22 management standards to platted access points.

23
24 A definition of "Director" is added as new §11.51(9). It
25 identifies the chief administrative officer in charge of the

1 design division as the director. There is no current definition
2 for this term and it is important to clearly identify the person
3 responsible for prescribing the terms of a permit under new 43
4 TAC §11.52(b) and initially handling a property owner's appeal
5 under new 43 TAC §11.55.

6
7 A definition of "District" is added as new §11.51(10). It
8 refers to one of the 25 geographic districts into which the
9 department is divided. There is no current definition for this
10 term and it is necessary to provide the definition of "District
11 engineer" under new 43 TAC §11.51(11).

12
13 A definition of "District engineer" is added as new §11.51(11).
14 It identifies the chief administrative officer in charge of a
15 district, or that officer's designee. There is no current
16 definition for this term and it is necessary to identify the
17 person responsible for approving or denying a permit request
18 under new 43 TAC §11.52(b), approving or denying a variance
19 request under new 43 TAC §11.52(e), and determination of access
20 connection repairs under new 43 TAC §11.54(d).

21
22 A definition of "Permit" is added as new §11.51(17). It refers
23 to the authorization issued by the department for entry to and
24 or exit from a state highway and adjacent real property. There
25 is no current definition for this term and it is necessary for

1 defining the term "permittee" in renumbered §11.51(18),
2 describing authorization for access connections under new 43 TAC
3 §11.52, and identifying the circumstances for a property owner's
4 appeal under new 43 TAC §11.55.

5
6 Amendments to renumbered §11.51(18) add the words "real," "the
7 owner's," and "owner's" to the definition of "Permittee." The
8 changes clarify that the adjacent real property owner is the
9 appropriate person to receive an access connection permit.

10
11 A definition of "Platted access point" is added as new
12 §11.51(19). It refers to an access connection identified in a
13 plat or replat of a subdivision of real property properly
14 recorded in the county clerk's office. Use of the term is
15 necessary for describing requirements under new 43 TAC §11.52(f)
16 for application of the pre-existing access management standards
17 to platted access points.

18
19 Amendments to renumbered §11.51(21) delete the words "road or
20 street or an entrance or exit from a public school, a publicly
21 owned cemetery, or other publicly owned places or buildings that
22 provide for public access" and replace them with the words
23 "street, road, or highway" in the definition of "Public
24 driveway." The changes clarify that a public driveway is only a
25 street, road, or highway. Driveways that enter or exit publicly

1 owned places or buildings do not qualify for that status.

2

3 A definition of "Undeveloped property" is added as new
4 §11.51(24). It refers to the real property indentified in a
5 plat or replat of a subdivision properly recorded in the county
6 clerk's office on which development has not commenced. Use of
7 the term is necessary for describing requirements under new 43
8 TAC §11.52(f) for application of the pre-existing access
9 management standards to platted access points.

10

11 Current §11.52, dealing with Delegation of Access Permit
12 Authority to Municipalities or Eligible Counties, is repealed
13 and is adopted as new §11.56, which is addressed further below
14 in this preamble.

15

16 New §11.52 formalizes: (1) the process for issuance of an access
17 connection permit; (2) the access management standards governing
18 the location, design, construction, and maintenance of access
19 connections; (3) the procedure for granting a variance to a
20 requirement in the access management standards; (4) the
21 applicable standards for previously platted access points; and
22 (5) the applicable standards for remodeled and rebuilt business
23 structures. It establishes detailed requirements and processes
24 that consolidate department practices, are consistent with the
25 provisions of SB 1609, and facilitate the ability of property

1 owners to locate and understand the required procedures.

2

3 New §11.52(a) requires that a property owner obtain a permit
4 prior to: (1) the construction of an access connection; or (2) a
5 material change in the use of the real property, traffic volume,
6 or vehicle types using the access connection that would result
7 in the application of more stringent requirements under the
8 access management standards than are applicable to the existing
9 access connection. It also clarifies that the permit will not
10 be construed to grant, convey, or extinguish an interest in real
11 property held by either the state or a permittee.

12

13 New §11.52(b) authorizes the director of the design division and
14 the district engineer to establish the terms and conditions of a
15 permit to ensure compliance with access management standards and
16 to protect both the highway and the safety of the traveling
17 public. It also provides that permits will be issued in
18 accordance with applicable state and federal laws and that the
19 impact on drainage, utility relocation, and the environment will
20 also be considered. An engineering study may be required to
21 assist in the evaluation process. The district engineer is
22 authorized to approve or deny each request for a permit, and
23 each denial must be in writing and include the reasons for the
24 denial.

25

1 New §11.52(c) designates Chapter 2 of the department's December
2 2009 Access Management Manual as the access management standards
3 to govern criteria and specifications for the location, design,
4 construction, and maintenance of all access connections. The
5 standards may be periodically revised and updated by written
6 order of the commission, and the current version must be
7 available online at the department's website.

8
9 New §11.52(d) requires the property owner to design the access
10 connection in accordance with the access management standards
11 and applicable law, and authorizes the department to review and
12 approve the location and manner in which the owner constructs
13 that portion of the access connection physically located within
14 state highway right of way.

15
16 New §11.52(e) provides property owners with a procedure by which
17 a variance may be granted to any requirement contained in the
18 access management standards. A variance request must be
19 approved by the district engineer. It will be considered only
20 if the property owner demonstrates to the district engineer by
21 documented information that undue hardship or unusual conditions
22 provide justification for the change, and that alternate
23 measures can provide adequate protection for the highway and the
24 safety of the traveling public. For each request for a
25 variance, the property owner must clearly demonstrate that: (1)

1 a significant negative impact to the owner's real property or
2 its use will likely result from a denial of the variance
3 request, including (i) loss of reasonable access to the
4 property; or (ii) undue hardship on a business located on the
5 property; or (2) the existence of an unusual condition affecting
6 the property that was not caused by the owner and justifies the
7 request for the variance. When the property owner satisfies the
8 preceding requirement, the requested variance will be approved
9 unless the district engineer determines that the location,
10 design, and construction of the requested access connection
11 will: (1) adversely affect the safety, design, construction,
12 operation, or maintenance of the highway; or (2) likely impair
13 the ability of the state to receive federal funds. Finally,
14 reasonable conditions for approval of the variance may be
15 prescribed by the department in order to minimize any adverse
16 impact on the safety, design, construction, operation, or
17 maintenance of the highway.

18

19 New §11.52(f) provides that platted access points that are
20 located on undeveloped property are subject to the access
21 management standards in effect on the date that the subdivision
22 plat was properly recorded if: (1) development of the tract
23 commences and the request for a permit is submitted to the
24 department before the fifth anniversary of the date that the
25 subdivision plat was recorded; and (2) the design of the highway

1 facility in the vicinity of the platted access points did not
2 materially change after the date that the plat was recorded so
3 as to significantly impact the traffic patterns to the extent
4 that the applicable platted access points present a threat to
5 public safety.

6
7 New §11.52(g) provides that the remodeling or demolition and
8 rebuilding of a business structure on a permittee's real
9 property do not require a new permit or the application of more
10 stringent access management standards than are applicable to the
11 approved access connection, unless the district engineer finds
12 that the remodeled or rebuilt structure will significantly
13 impact traffic patterns to the extent that the existing access
14 connection location presents a threat to public safety. A
15 finding of significant impact and threat to public safety by the
16 district engineer must be in writing and include the reasons for
17 the finding.

18
19 Amendments to §11.53(a) delete the word "Where" and replace it
20 with the word "If," and add the word "property" between the
21 words "adjacent" and "owner." These changes are for grammatical
22 and clarification purposes.

23
24 Amendments to §11.54 add captions to subsections (a), (b), (c),
25 and (e) to make the format of the section consistent with other

1 sections in this subchapter. The descriptive words
2 "construction, reconstruction, relocation, enlargement,
3 modification" are added to subsections (a) and (b) to cover all
4 of the activities that might impact an access connection. The
5 phrase "except as otherwise provided in subsection (c) of this
6 section" is added to subsections (a) and (b), and the phrase "at
7 the expense of the state" is added to subsection (c)(1) to
8 clarify that the owner's obligation to pay for all costs related
9 to the driveways does not apply when an owner's existing access
10 connection is destroyed or removed by the state in the
11 construction or reconstruction of a section of highway. When
12 the state causes the need for repair, the department rather than
13 the owner is responsible for the cost.

14
15 New §11.54(c)(2) includes a requirement of SB 1609 relating to
16 the permanent alteration of permitted access due to the
17 construction or reconstruction of a section of highway. If the
18 department determines that the proposed construction or
19 reconstruction will permanently alter permitted access at an
20 adjacent owner's existing driveway location, the department will
21 provide the owner with at least 60 days written notice prior to
22 commencement of construction, and will at the expense of the
23 state, reinstate the pre-existing access to the most practicable
24 extent possible after due consideration of the impact of the new
25 construction on highway safety, mobility, and efficient

1 operation.

2

3 New §11.54(d) authorizes the department to inspect the
4 construction of an owner's access connection and require changes
5 or repairs that the district engineer reasonably determines are
6 necessary to bring the access connection into compliance with
7 terms and conditions of the permit. A decision to require a
8 change or repair must be in writing, describe the actions to be
9 performed, and provide a reasonable period for compliance.

10

11 Current §11.55, dealing with Local Access Roads, is repealed and
12 is adopted as new §11.57, which is addressed further down in
13 this preamble.

14

15 New §11.55 provides the property owner with a procedure to
16 appeal an adverse decision by the department that relates to an
17 access connection subject to this subchapter. The appeal
18 process gives the owner an opportunity to appeal a district
19 decision first to the director of the design division, and if
20 not satisfied at that level, the appeal can be presented to the
21 department's executive director, and finally relief can be
22 requested from a board of variance. This process is consistent
23 with the requirements of SB 1609.

24

25 New §11.55(a) and (b) authorize an owner or its authorized

1 representative to file a petition of appeal to contest: (1) a
2 requirement for a change or repair under new §11.54(d); (2) the
3 denial of a request for a variance under new §11.52(e); (3) a
4 finding of significant impact and threat to public safety under
5 new §11.52(g); or (4) the denial of a request for a driveway
6 permit under new §11.52(b). The petition must be filed with the
7 director of the design division before the 31st day after the
8 date written notice of the denial is received by the applicant.

9
10 New §11.55(c) requires that the petition must: (1) be in
11 writing; (2) completely and succinctly state the grounds for the
12 appeal and its factual basis; and (3) include sufficient factual
13 documentation, such as drawings, surveys, or photographs to
14 establish the merits of the appeal.

15
16 New §11.55(d) provides that the applicant has the burden of
17 demonstrating that the department incorrectly applied its access
18 connection requirements to the applicable facts.

19
20 New §11.55(e) requires the director of the design division to
21 issue, before the 91st day after the date of receipt of the
22 petition, a written decision approving or disapproving the
23 appeal, and to immediately send the decision to the applicant.
24 If a written decision is not issued within the 90-day period,
25 the appeal is considered to be approved and the request granted.

1 The deemed approval is subject to: (1) any required purchase of
2 access rights in accordance with §11.53 if the applicant has no
3 existing right of access; and (2) consent of the Federal Highway
4 Administration in accordance with 23 C.F.R. §710.401 if the
5 requested access connection is on an interstate highway.

6
7 New §11.55(f) provides the owner an opportunity to appeal the
8 design division director's decision under new §11.55(e). The
9 owner must submit its written petition of appeal to the
10 executive director before the 31st day after the date that
11 written notice of the decision is received. The executive
12 director will issue, before the 91st day after the date of
13 receipt of the petition, a written decision approving or
14 disapproving the appeal.

15
16 New §11.55(g) provides the owner an opportunity to appeal the
17 executive director's decision to a board of variance under new
18 §11.55(f). The owner must submit to the executive director its
19 written petition of appeal to a board of variance, before the
20 31st day after the date that written notice of the adverse
21 decision is received. The executive director will then appoint
22 a board of variance composed of at least three persons who are
23 not below the level of department division director, office
24 director, or district engineer and each of whom was not involved
25 in the original decision to deny the applicant's request. A

1 majority of the members of the board constitutes a quorum. The
2 board of variance shall, before the 10th day preceding the date
3 of the board meeting, give the applicant notice of the time and
4 place of the meeting and afford the applicant an opportunity to
5 attend and present evidence regarding the appeal. Before the
6 11th day after the date of the meeting, the board of variance
7 will issue a final written decision approving or disapproving
8 the appeal.

9
10 Current §11.56, dealing with Connection with Regionally
11 Significant Highway, is repealed and is adopted as new §11.58,
12 which is addressed further down in this preamble.

13
14 New §11.56 uses the language from repealed §11.52 and, in
15 addition, corrects a section number reference from §11.56 to
16 §11.58 to correspond to the new section in the subchapter and
17 deletes a superfluous reference to "United States Department of
18 Transportation" to consistently reference the Federal Highway
19 Administration throughout the subchapter.

20
21 New §11.57 uses the language from repealed §11.55 and, in
22 addition, corrects a section number reference from §11.56 to
23 §11.58 to correspond to the new section in the subchapter.

24
25 New §11.58 uses the language from repealed §11.56 with no

1 changes to the text.

2

3 COMMENTS

4 Comments were received and are addressed below.

5

6 **COMMENT:**

7 The County Judge of Williamson County, Dan A. Gattis, submitted
8 the following written comments.

9

10 (1) The requirement in §11.58(c)(1) that a regionally
11 significant highway must be in a conforming Transportation
12 Improvement Program (TIP) prior to commission approval of its
13 connection to the state system is not a reasonable requirement.
14 There is the possibility of many intervening years between early
15 project development and inclusion in the TIP.

16

17 (2) The county requests clarification of the department's intent
18 with regard to §11.58(e)(2) that provides an exemption for
19 certain toll roads from the environmental review and public
20 involvement requirements of subsection (e). Is the exemption
21 intended to apply only to toll roads? If so, the county further
22 requests that the rule be amended to also exempt all projects
23 developed and funded by counties.

24

1 **RESPONSE:**

2 Both of the comments from Williamson County relate to provisions
3 of text in §11.58 that are currently in the rule and are not
4 being revised by these amendments. The only part of §11.58 that
5 is changed from the former section is the section number.

6
7 (1) The requirement that a transportation improvement project be
8 in a "conforming" Transportation Improvement Program (TIP)
9 involves compliance with the requirements of the federal Clean
10 Air Act and its related federal rules. The addition of a
11 regionally significant highway that is not in the TIP,
12 especially in non-attainment areas, can threaten the entire
13 area's transportation conformity under the federal Clean Air
14 Act, resulting in sanctions that could severely hamper the
15 state's federal highway program. This requirement ensures that
16 proper state planning is employed in the construction of major
17 highway facilities that connect to the state highway system,
18 that the facilities are properly designed and constructed in
19 compliance with federal laws, and that environmental impacts are
20 adequately considered. The applicable federal law requirements
21 are provided in 23 C.F.R. §450.324(d) and 40 C.F.R.
22 §93.102(a)(2) and §93.121(a).

23
24 (2) The exemption provided by §11.58(e)(2) is intended to apply
25 only to a certain class of projects. It exempts local authority

1 projects developed under Transportation Code, §228.011 or
2 §228.0111 or that the department funds solely with money held in
3 a project subaccount created under Transportation Code,
4 §228.012, pursuant to Senate Bill 792, 80th Legislature, 2007.
5 Senate Bill 792 mandates that the local authority have primary
6 authority for the projects in a manner consistent with the
7 practices and procedures by which the local authority finances,
8 constructs, or operates a project and requires the commission
9 and the department to allow the local authority access to the
10 state highway system. That primacy does not apply to normal
11 county projects.

12

13 STATUTORY AUTHORITY

14 The amendments, repeals, and new sections are adopted under
15 Transportation Code, §201.101, which provides the commission
16 with the authority to establish rules for the conduct of the
17 work of the department, and more specifically, Transportation
18 Code, §203.031, which provides the commission with the authority
19 to control access to highways.

20

21 CROSS REFERENCE TO STATUTE

22 Transportation Code, Chapter 203.

1 SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

2 §11.50. Access Management.

3 (a) Purpose and need. Access management is an engineering
4 and planning method of balancing the needs of mobility and
5 safety on a highway system with the needs of access to adjacent
6 land uses. Access management is one method of preserving the
7 substantial public investment in the ground transportation
8 system by preserving the roadway level of service. Further,
9 access management can significantly enhance traffic safety by
10 reducing traffic accidents, personal injury, and property
11 damage. It has been noted that access management practices can
12 promote a more coordinated intergovernmental, long term approach
13 to land use and transportation decisions in the context of
14 quality of life, economic development, livable communities, and
15 public safety. Given the benefits to the ground transportation
16 system and public safety, it is the intention of the department
17 to promote the use of access management on the state highway
18 system.

19 (b) Applicability. This subchapter applies to all new
20 access connections constructed on highways on the state highway
21 system. It also applies to existing access connections that
22 are: [~~may be reconstructed or otherwise modified as part of a~~
23 ~~department project.~~]

1 (1) reconstructed or otherwise modified as part of a
2 department project; or

3 (2) located on the right of way and are reconstructed,
4 relocated, enlarged, or otherwise modified by the permittee or
5 property owner.

6 ~~[(c) Effective date. The provisions of this subchapter are~~
7 ~~effective January 1, 2004.]~~

8 ~~[(d) Transition period. Exceptions to the provisions of~~
9 ~~this subchapter may be granted for specific access connection~~
10 ~~requests where significant prior commitments have been made,~~
11 ~~prior to January 1, 2005, based on previous department policy.]~~

12
13 §11.51. Definitions. The following words and terms, when used
14 in this subchapter, shall have the following meanings, unless
15 the context clearly indicates otherwise.

16 (1) Access connection--Facility for entry and/or exit
17 such as a driveway, street, road, or highway that connects to a
18 highway on the state highway system.

19 (2) Access management standards--The standards, criteria,
20 and specifications prescribed in Chapter 2, Access Management
21 Standards, of the department's Access Management Manual that
22 govern the location, design, construction, and maintenance of
23 access connections.

1 (3) [~~2~~] Commercial driveway--An entrance to, or exit
2 from, any commercial, business, or similar type establishment.

3 (4) [~~3~~] Commission--The Texas Transportation
4 Commission.

5 (5) Construction of an access connection--The
6 installation, construction, reconstruction, relocation,
7 enlargement, or other material modification of an access
8 connection.

9 (6) [~~4~~] Department--The Texas Department of
10 Transportation.

11 (7) Design division--The administrative office of the
12 department responsible for the development of engineering design
13 guidance and oversight of projects developed on the state
14 highway system.

15 (8) Development--The new construction or the enlargement
16 of any exterior dimension of a building, structure, or
17 improvement.

18 (9) Director--The chief administrative officer in charge
19 of the design division.

20 (10) District--One of the 25 geographic districts into
21 which the department is divided.

22 (11) District engineer--The chief administrative officer
23 in charge of the district in which the access connection is

1 located, or that officer's designee.

2 (12) [~~(5)~~] Eligible county--A county with a population of
3 3.3 million or more or a county adjacent to a county with a
4 population of 3.3 million or more.

5 (13) [~~(6)~~] Engineering study--An appropriate level of
6 analysis as determined by the department, which may include a
7 traffic impact analysis, that determines the expected impact
8 that permitting access will have on mobility, safety, and the
9 efficient operation of the state highway system.

10 (14) [~~(7)~~] Executive director--The executive director of
11 the department, or a designee not below the level of deputy
12 executive director or assistant executive director.

13 (15) [~~(8)~~] Local access management plan--A plan or
14 guideline in a formally adopted rule or ordinance that is
15 related to the application of access management within the
16 municipality's or eligible county's jurisdiction.

17 (16) [~~(9)~~] Local access road--A local public street or
18 road, generally one parallel to a highway on the state highway
19 system to which access for businesses or properties located
20 between the highway and the local access road is provided as a
21 substitute for access to the highway. A local access road may
22 also be called a lateral road or reverse frontage road,
23 depending on individual location and application.

1 (17) Permit--Authorization for entry to or exit from a
2 state highway and adjacent real property, issued by the
3 department under Transportation Code, Chapter 203.

4 (18) [(+10)] Permittee--A real property owner, or the
5 owner's [its] authorized representative, who receives an access
6 connection permit from the department to construct or modify an
7 access connection from the owner's property to a highway on the
8 state highway system.

9 (19) Platted access point--An access connection
10 identified in a plat or replat of a subdivision of real property
11 properly recorded in the county clerk's office in accordance
12 with Property Code, §12.002.

13 (20) [(+11)] Private driveway--An entrance to or exit from
14 a residential dwelling, farm, or ranch for the exclusive use and
15 benefit of the permittee.

16 (21) [(+12)] Public driveway--An approach from a publicly
17 maintained street, road, or highway [~~road or street or an~~
18 ~~entrance or exit from a public school, a publicly owned~~
19 ~~cemetery, or other publicly owned places or buildings that~~
20 ~~provide for public access].~~

21 (22) [(+13)] Regionally significant highway--A highway
22 functionally classified as a minor arterial or higher.

23 (23) [(+14)] Traffic impact analysis--A traffic

1 engineering study to the level of analysis determined by the
2 department that determines the potential current and future
3 traffic impacts of a proposed traffic generator and is signed,
4 sealed, and dated by an engineer licensed to practice in the
5 state of Texas.

6 (24) Undeveloped property--The real property identified
7 in a plat or replat of a subdivision properly recorded in the
8 county clerk's office in accordance with Property Code, §12.002,
9 on which development has not commenced.

10

11 §11.52. Access Connection Facilities.

12 (a) Permit.

13 (1) A permit is required before:

14 (A) the construction of an access connection; or

15 (B) a material change in the use of a permittee's real

16 property, traffic volume for the access connection, or vehicle

17 types using the access connection, that would result in the

18 application of more stringent requirements under the

19 department's access management standards than are applicable to

20 the existing approved access connection.

21 (2) The permit provides for a definite understanding as

22 to the location and manner in which the access connection will

23 be constructed and maintained.

1 (3) No term or condition of a permit will be construed to
2 grant, convey, or extinguish an interest in real property held
3 by either the state or a permittee.

4 (b) Permit requirements.

5 (1) The permit will include the terms, conditions, and
6 attachments for driveway design and location plans that are
7 prescribed by the director and the district engineer in order to
8 ensure compliance with the access management standards and to
9 protect and preserve the state highway system and the safety,
10 health, and welfare of its use by the traveling public.

11 (2) Permits will be issued in accordance with the access
12 management standards and all applicable state and federal laws,
13 including rules and regulations. Access connection spacing,
14 materials, geometrics, accessibility, and other design
15 specifications will be considered, as well as the impact on
16 drainage and hydraulics, utility location or relocation, and the
17 environment that will result from the requested construction of
18 an access connection.

19 (3) An engineering study may be required to assist in the
20 permit evaluation process.

21 (4) The district engineer will approve or deny each
22 request for a permit. A decision denying a request for access
23 to a specific location must be in writing and include the

1 reasons for the denial.

2 (c) Access Management Standards. Chapter 2, Access
3 Management Standards, of the department's December 2009 Access
4 Management Manual, governs the standards, criteria, and
5 specifications for the location, design, construction, and
6 maintenance of all access connections. Chapter 2, Access
7 Management Standards is available online at the Texas Department
8 of Transportation web site. That chapter may be periodically
9 revised and updated by the department, provided that the
10 revisions and updates are first approved by written order of the
11 commission. The web site will reflect each change approved by
12 the commission and the changes will be applicable to
13 applications for permits filed after the effective date of such
14 a change.

15 (d) Design.

16 (1) The design for the construction of an access
17 connection is the responsibility of the permittee. The design
18 must be accomplished in a manner and to the standards described
19 in subsection (b) of this section.

20 (2) The location and manner in which the construction of
21 an access connection will be performed within the right of way
22 must be reviewed and approved by the department.

23 (e) Variance.

1 (1) A variance to any requirement contained in the access
2 management standards may be granted if justified in accordance
3 with this subsection and approved by the district engineer.

4 (2) A request for a variance will be considered only if
5 the property owner or its authorized representative demonstrates
6 that undue hardship or unusual conditions provide justification
7 and alternate measures can be prescribed in keeping with the
8 intent of this subchapter. All requests for a variance must be
9 fully documented with design data and other pertinent
10 information.

11 (3) For each request for a variance, the property owner,
12 or the owner's authorized representative, must clearly
13 demonstrate that:

14 (A) a significant negative impact to the owner's real
15 property or its use will likely result from the denial of its
16 request for the variance, including:

17 (i) the loss of reasonable access to the property; or

18 (ii) undue hardship on a business located on the
19 property; or

20 (B) an unusual condition affecting the property exists
21 that was not caused by the property owner and justifies the
22 request for the variance.

23 (4) When the property owner or its authorized

1 representative satisfies the requirement of paragraph (3) of
2 this subsection, the requested variance will be approved unless
3 the district engineer determines that the location, design, and
4 construction of the requested access connection will:

5 (A) adversely affect the safety, design, construction,
6 mobility, efficient operation, or maintenance of the highway; or

7 (B) likely impair the ability of the state or the
8 department to receive funds for highway construction or
9 maintenance from the federal government.

10 (5) Reasonable conditions for approval of a variance,
11 including a requirement for alternate measures, may be
12 prescribed by the department in order to minimize any adverse
13 impact on the safety, design, construction, mobility, efficient
14 operation, or maintenance of the highway.

15 (f) Platted access points.

16 (1) Platted access points that are located on undeveloped
17 property are subject to the access management standards in
18 effect on the date that the subdivision plat or replat was
19 properly recorded if:

20 (A) development of the tract of real property to be
21 served by the permit commences, and the request for a permit at
22 a platted access point location is submitted to the department,
23 before the fifth anniversary of the date that the subdivision

1 plat or replat was properly recorded; and

2 (B) any material changes to the design of the highway
3 facility in the vicinity of the platted access points after the
4 date that the subdivision plat or replat was properly recorded
5 do not significantly impact traffic patterns to the extent that
6 the platted access points present a threat to public safety.

7 (2) Platted access points that are located on undeveloped
8 property to which paragraph (1) of this subsection do not apply,
9 are subject to the access management standards in effect on the
10 date that the request for the permit is submitted to the
11 department.

12 (g) Remodeled business. The remodeling or demolition and
13 rebuilding of a business structure or improvement on a
14 permittee's real property do not require a new permit or the
15 application of more stringent access management standards than
16 are applicable to the approved access connection, unless the
17 district engineer makes an affirmative finding that the
18 remodeled or rebuilt structure or improvement will significantly
19 impact traffic patterns to the extent that the existing access
20 connection location presents a threat to public safety. The
21 finding of significant impact and threat to public safety must
22 be in writing and include the reasons for the finding. To the
23 extent this subsection conflicts with the requirement in

1 subsection (a) of this section for a new permit related to a
2 material change in the use of the permitted real property, this
3 subsection controls.

4

5 §11.53. Locations Where the Department Controls the Access.

6 (a) Access purchase requests. If [~~Where~~] new access
7 connections are requested on highways where the adjacent
8 property owner has no existing right of access, requests to
9 purchase access will be considered under the provisions of this
10 section. The request must include an engineering study
11 acceptable to the department.

12 (b) Approval. The commission will make the final
13 determination concerning new access connections under this
14 section. The commission may consider the findings of the
15 engineering study and the mobility and safety of the highway
16 system, or any other relevant factors.

17 (c) Documentation. When the commission approves the sale
18 of access to the owner of property adjoining the highway
19 facility, the sale will be accomplished under Transportation
20 Code, Chapter 202, Subchapter B. Access points approved by the
21 commission under this section will be specifically described by
22 a metes and bounds property description.

23

1 §11.54. Construction and Maintenance of Access Connection
2 Facilities.

3 (a) Cost for commercial and private driveways. For
4 commercial and private driveways, the cost of materials,
5 installation, construction, reconstruction, relocation,
6 enlargement, modification, and maintenance shall be the
7 responsibility of the permittee, except as otherwise provided in
8 subsection (c) of this section.

9 (b) Cost for public driveways. For public driveways, the
10 cost of materials, ~~and~~ installation, construction,
11 reconstruction, relocation, enlargement, and modification shall
12 be the responsibility of the permittee, except as otherwise
13 provided in subsection (c) of this section. The department
14 shall maintain all portions of public [~~access~~] driveways that
15 lie within the state highway right of way and that connect to
16 highways that are the maintenance responsibility of the
17 department.

18 (c) Reconstruction by department. [~~Any existing access~~
19 ~~connections that are destroyed or removed in the construction or~~
20 ~~reconstruction of a section of highway will be reestablished by~~
21 ~~the department to the extent necessary to provide reasonable~~
22 ~~access.~~]

23 (1) Any existing access connections that are destroyed or

1 removed in the construction or reconstruction of a section of
2 highway will be reestablished by the department at the expense
3 of the state to the extent necessary to provide reasonable
4 access.

5 (2) If the department determines that the proposed
6 construction or reconstruction of a section of highway will
7 permanently alter permitted access to or from a state highway at
8 an adjacent property owner's existing driveway location, the
9 department will:

10 (A) provide the property owner with written notice of
11 the highway project before the 60th day preceding the date
12 construction of the highway project begins; and

13 (B) at the expense of the state, reinstate the pre-
14 existing access to the most practicable extent possible after
15 due consideration of the impact on highway safety, mobility, and
16 efficient operation, and of any changes to traffic patterns that
17 are likely to result from the highway construction or
18 reconstruction.

19 (d) Inspection. The department may inspect the
20 construction of an access connection at the time the work is
21 being performed and at any time after the work is completed.
22 The permittee or the permittee's heirs, successors, and assigns
23 shall make the changes or repairs that the district engineer

1 reasonably determines are necessary to bring the access
2 connection into compliance with terms and conditions of the
3 permit. A decision to require a change or repair will be in
4 writing, describe the actions to be performed, and provide a
5 reasonable period for compliance.

6 (e) [~~(d)~~] Drainage and safety. The department may
7 undertake actions deemed necessary to correct drainage or safety
8 problems related to existing or new access connection
9 facilities.

10

11 §11.55. Appeal Process.

12 (a) A property owner or its authorized representative, as
13 the applicant, may file a petition of appeal to contest:

14 (1) a requirement for a change or repair under §11.54(d)
15 of this subchapter (relating to Inspection);

16 (2) the denial of a request for a variance under
17 §11.52(e) of this subchapter (relating to Variance);

18 (3) a finding of significant impact and threat to public
19 safety under §11.52(g) of this subchapter (relating to Remodeled
20 business); or

21 (4) the denial of a request for a driveway permit under
22 §11.52(b) of this subchapter (relating to Permit requirements).

23 (b) The petition must be filed with the director before the

1 31st day after the date written notice of the denial,
2 requirement, or finding is received by the applicant.

3 (c) The petition must:

4 (1) be in writing;

5 (2) completely and succinctly state the grounds for
6 appeal and its factual basis; and

7 (3) include sufficient factual documentation, such as
8 drawings, surveys, or photographs, to establish the merits of
9 the appeal.

10 (d) The applicant has the burden of demonstrating that the
11 department incorrectly applied its access connection
12 requirements to the applicable facts.

13 (e) For a petition that satisfies the requirements of this
14 section, the director will issue, before the 91st day after the
15 date of receipt of the petition, a written decision approving or
16 disapproving the appeal and, on issuance, immediately send the
17 decision to the applicant. If a written decision is not issued
18 within the 90-day period, the appeal is considered to be
19 approved and the request granted, subject to:

20 (1) purchase of access rights in accordance with §11.53
21 of this subchapter (relating to Locations Where the Department
22 Controls the Access) if the applicant has no existing right of
23 access; and

1 (2) consent of the Federal Highway Administration in
2 accordance with 23 C.F.R. §710.401 if the requested access
3 connection is on an interstate highway.

4 (f) To appeal a decision issued under subsection (e) of
5 this section, the applicant must submit its written petition of
6 appeal to the executive director before the 31st day after the
7 date that written notice of the decision is received. The
8 petition must satisfy the requirements of subsection (c) of this
9 section. The executive director will issue, before the 31st day
10 after the date of receipt of the petition, a written decision
11 approving or disapproving the appeal.

12 (g) To appeal a decision of the executive director issued
13 under subsection (f) of this section, the applicant must submit
14 to the executive director its written petition of appeal to a
15 board of variance, before the 31st day after the date that the
16 executive director's decision under subsection (f) of this
17 section is received. On receipt of the petition, the procedure
18 set out in this subsection applies.

19 (1) The executive director will appoint a board of
20 variance composed of at least three persons, each of whom is not
21 below the level of department division director, office
22 director, or district engineer and was not involved in the
23 original decision to deny the applicant's request. A majority

1 of the members of the board constitutes a quorum.

2 (2) The board of variance will meet and consider the
3 appeal. Before the 10th day preceding the date of the meeting,
4 the board will give the applicant notice of the time and place
5 of the meeting and afford the applicant an opportunity to attend
6 and present evidence regarding the appeal.

7 (3) Before the 11th day after the date of the meeting,
8 the board of variance will issue a final written decision
9 approving or disapproving the appeal.

10

11 §11.56. [~~§11.52.~~] Delegation of Access Permit Authority to
12 Municipalities or Eligible Counties.

13 (a) Intent. Except as provided in §11.58 [~~§11.56~~] of this
14 subchapter (relating to Connection with Regionally Significant
15 Highway), a municipality or eligible county may include highways
16 on the state highway system in its local access management plan.
17 The intent of the department is to allow municipalities or
18 eligible counties, upon request, to assume responsibility for
19 issuing permits for access connections to state highways within
20 the jurisdiction of the municipality or eligible county under a
21 local access management plan when the municipality or eligible
22 county has the ability to issue permits.

23 (b) Precedence. A local access management plan supersedes

1 an order of the commission under Transportation Code,
2 §203.031(a) (2) or (4) to the extent that they conflict, unless:

3 (1) the [~~United States Department of Transportation~~]
4 Federal Highway Administration notifies the department that
5 enforcement of the local access management plan would impair the
6 ability of the state or the department to receive funds for
7 highway construction or maintenance from the federal government;
8 or

9 (2) the department owns the access rights.

10 (c) Application. The department will apply a local access
11 management plan under this section when the municipality or
12 eligible county provides its local access management plan to the
13 department with an indication of its desire that the plan be
14 applied within its jurisdiction and an implementation date. The
15 department will implement any subsequent changes to the local
16 access management plan when the municipality or eligible county
17 submits the changes to the department with a proposed
18 implementation date for the changes.

19 (d) Local access permitting function. A municipality or
20 eligible county that desires to undertake the access permitting
21 process on highways on the state highway system shall submit its
22 proposed permitting procedures to the department. If the
23 department determines that the proposed procedures adequately

1 address the requirements in subsection (f) of this section, it
2 will transfer to the municipality or eligible county the access
3 permitting function within the municipality's or eligible
4 county's jurisdiction. The municipality or eligible county
5 shall submit to the department a copy of each approved access
6 permit on the state highway system within ten working days of
7 its approval.

8 (e) Assumption of permitting function optional.

9 Municipalities or eligible counties are not required to take
10 over the access permitting function for state highways within
11 their jurisdiction.

12 (f) Engineering. Granting access location permit authority
13 to municipalities or eligible counties does not preclude the
14 need to properly engineer access locations. Any impacts to
15 drainage or hydraulics on highways on the state highway system
16 resulting from access connections must be coordinated with the
17 department prior to any local access approval. Issuance of
18 access permits by a municipality or eligible county must address
19 driveway geometrics, utility location or relocation, compliance
20 with the Americans with Disabilities Act (ADA) and Texas
21 Accessibility Standards (TAS), and all other applicable state
22 and federal laws, rules, and regulations. In addition, each
23 access connection must comply with the applicable environmental

1 review requirements in Chapter 2 of this title (relating to
2 Environmental Policy).

3

4 §11.57. [~~§11.55.~~] Local Access Roads.

5 (a) If local access roads are necessary to restore
6 circulation or to resolve a landlocked condition on a remaining
7 parcel of land, or will otherwise benefit the state highway
8 system, local access roads may be included in a department
9 project on a standard participation basis as established in
10 Appendix A of §15.55 of this title (relating to Construction
11 Cost Participation).

12 (b) Except as provided in §11.58 [~~§11.56~~] of this
13 subchapter (relating to Connection with Regionally Significant
14 Highway), executive director approval must be obtained prior to
15 the department entering into any agreements to provide local
16 access roads in conjunction with a department project.

17 (c) Local access roads will not be considered service
18 projects as defined in §15.56 of this title (relating to Local
19 Financing of Highway Improvement Projects on the State Highway
20 System).

21

22 §11.58. [~~§11.56.~~] Connection with Regionally Significant
23 Highway.

1 (a) Purpose. A public or private entity may not connect a
2 regionally significant highway to a segment of the state highway
3 system without the approval of the commission. This section
4 prescribes the procedure by which the commission will consider
5 approval.

6 (b) Request. An entity seeking approval to connect a
7 regionally significant highway to a segment of the state highway
8 system must send a written request to the executive director.
9 The request must include a detailed schematic indicating the
10 location of the connection, including an overpass, underpass,
11 intersection, or interchange, and the location of the logical
12 termini of the connection.

13 (c) Approval criteria. The commission will approve a
14 request made under this section if:

15 (1) the highway to be connected is identified in a
16 conforming Transportation Improvement Program;

17 (2) the requestor agrees to design and construct the
18 connection in compliance with subsection (d) of this section;
19 and

20 (3) the requestor satisfies the applicable requirements
21 under subsection (e) of this section concerning public
22 involvement and a study of the social, environmental, and
23 economic impacts of the connection.

1 (d) Design and construction. The requestor shall design
2 and construct the connection in accordance with the schematics
3 required by subsection (b) of this section and §26.33(d), (f),
4 and (g)-(l) of this title (relating to Design and Construction),
5 which for the purposes of this subsection apply as if the
6 requestor were a regional mobility authority.

7 (e) Environmental review and public involvement.

8 (1) This subsection applies only to construction
9 activities and utility adjustments related to the proposed
10 connection that are:

11 (A) within rights of way owned by the department; and

12 (B) if a terminus of the proposed connection is outside
13 of the department's right of way, between the terminus and the
14 department's right of way.

15 (2) This subsection does not apply to a project developed
16 by a county or other local governmental entity under
17 Transportation Code, §228.011 or §228.0111, or that the
18 department funds solely with money held in a project subaccount
19 created under Transportation Code, §228.012.

20 (3) The requestor, as project sponsor, shall perform and
21 document all environmental studies, environmental compliance,
22 and public involvement activities arising as a result of
23 construction of the proposed access connection. The requestor

1 will not perform its environmental compliance and public
2 involvement activities under memoranda of agreement,
3 programmatic agreements, or other environmental agreements
4 between the department and a state or federal agency. The
5 requestor shall apply for, obtain, and comply with all permits
6 and approvals required by state and federal law, and shall
7 establish all commitments needed to address public, state
8 agency, and federal agency concerns.

9 (4) The requestor's environmental documents,
10 environmental studies, environmental compliance, and public
11 involvement activities must comply with the requirements of
12 Chapter 2, Subchapter A, of this title (relating to
13 Environmental Review and Public Involvement for Transportation
14 Projects).

15 (5) The requestor shall submit the environmental
16 documentation, including supporting documents, to the
17 department, and request the department review the environmental
18 documentation. The department shall review the environmental
19 documentation and supporting documents and shall determine
20 whether or not the requestor has completed agency coordination
21 relating to the environmental impact of the proposed access
22 connection, and has responded to public comments relating to the
23 connection. If the department determines that the requestor has

1 not demonstrated completion of agency coordination or response
2 to public comment related to the connection, the requestor shall
3 provide any additional documentation requested by the
4 department. The commission will not grant access connection
5 until the requestor satisfies the requirements of this
6 paragraph.

7 (6) If Federal Highway Administration (FHWA) regulations
8 specify that a project or connection requires FHWA approval, the
9 requestor shall perform all environmental and public involvement
10 activities as the project sponsor, and shall produce an
11 environmental document that meets FHWA requirements.

1 SUBCHAPTER C. Access Connections to State Highways

2 §11.52. Delegation of Access Permit Authority to Municipalities
3 or Eligible Counties.

4 (a) Intent. Except as provided in §11.56 of this
5 subchapter (relating to Connection with Regionally Significant
6 Highway, a municipality or eligible county may include highways
7 on the state highway system in its local access management plan.
8 The intent of the department is to allow municipalities or
9 eligible counties, upon request, to assume responsibility for
10 issuing permits for access connections to state highways within
11 the jurisdiction of the municipality or eligible county under a
12 local access management plan when the municipality or eligible
13 county has the ability to issue permits.

14 (b) Precedence. A local access management plan supersedes
15 an order of the commission under Transportation Code,
16 §203.031(a) (2) or (4) to the extent that they conflict, unless:

17 (1) the United States Department of Transportation
18 Federal Highway Administration notifies the department that
19 enforcement of the local access management plan would impair the
20 ability of the state or the department to receive funds for
21 highway construction or maintenance from the federal government;

22 or

23 (2) the department owns the access rights.

1 (c) Application. The department will apply a local access
2 management plan under this section when the municipality or
3 eligible county provides its local access management plan to the
4 department with an indication of its desire that the plan be
5 applied within its jurisdiction and an implementation date. The
6 department will implement any subsequent changes to the local
7 access management plan when the municipality or eligible county
8 submits the changes to the department with a proposed
9 implementation date for the changes.

10 (d) Local access permitting function. A municipality or
11 eligible county that desires to undertake the access permitting
12 process on highways on the state highway system shall submit its
13 proposed permitting procedures to the department. If the
14 department determines that the proposed procedures adequately
15 address the requirements in subsection (f) of this section, it
16 will transfer to the municipality or eligible county the access
17 permitting function within the municipality's or eligible
18 county's jurisdiction. The municipality or eligible county
19 shall submit to the department a copy of each approved access
20 permit on the state highway system within ten working days of
21 its approval.

22 (e) Assumption of permitting function optional.
23 Municipalities or eligible counties are not required to take

1 over the access permitting function for state highways within
2 their jurisdiction.

3 (f) Engineering. Granting access location permit authority
4 to municipalities or eligible counties does not preclude the
5 need to properly engineer access locations. Any impacts to
6 drainage or hydraulics on highways on the state highway system
7 resulting from access connections must be coordinated with the
8 department prior to any local access approval. Issuance of
9 access permits by a municipality or eligible county must address
10 driveway geometrics, utility location or relocation, compliance
11 with the Americans with Disabilities Act (ADA) and Texas
12 Accessibility Standards (TAS), and all other applicable state
13 and federal laws, rules, and regulations. In addition, each
14 access connection must comply with the applicable environmental
15 review requirements in Chapter 2 of this title (relating to
16 Environmental Policy).

17
18 §11.55. Local Access Roads.

19 (a) If local access roads are necessary to restore
20 circulation or to resolve a landlocked condition on a remaining
21 parcel of land, or will otherwise benefit the state highway
22 system, local access roads may be included in a department
23 project on a standard participation basis as established in

1 Appendix A of §15.55 of this title (relating to Construction
2 Cost Participation).

3 (b) Except as provided in §11.56 of this subchapter
4 (relating to Connection with Regionally Significant Highway),
5 executive director approval must be obtained prior to the
6 department entering into any agreements to provide local access
7 roads in conjunction with a department project.

8 (c) Local access roads will not be considered service
9 projects as defined in §15.56 of this title (relating to Local
10 Financing of Highway Improvement Projects on the State Highway
11 System).

12
13 §11.56. Connection with Regionally Significant Highway.

14 (a) Purpose. A public or private entity may not connect a
15 regionally significant highway to a segment of the state highway
16 system without the approval of the commission. This section
17 prescribes the procedure by which the commission will consider
18 approval.

19 (b) Request. An entity seeking approval to connect a
20 regionally significant highway to a segment of the state highway
21 system must send a written request to the executive director.
22 The request must include a detailed schematic indicating the
23 location of the connection, including an overpass, underpass,

1 intersection, or interchange, and the location of the logical
2 termini of the connection.

3 (c) Approval criteria. The commission will approve a
4 request made under this section if:

5 (1) the highway to be connected is identified in a
6 conforming Transportation Improvement Program;

7 (2) the requestor agrees to design and construct the
8 connection in compliance with subsection (d) of this section;

9 and

10 (3) the requestor satisfies the applicable requirements
11 under subsection (e) of this section concerning public
12 involvement and a study of the social, environmental, and
13 economic impacts of the connection.

14 (d) Design and construction. The requestor shall design
15 and construct the connection in accordance with the schematics
16 required by subsection (b) of this section and 43 TAC §26.33(d),
17 (f), and (g)-(1) of this title (relating to Design and
18 Construction), which for the purposes of this subsection apply
19 as if the requestor were a regional mobility authority.

20 (e) Environmental review and public involvement.

21 (1) This subsection applies only to construction
22 activities and utility adjustments related to the proposed
23 connection that are:

1 (A) within rights of way owned by the department; and

2 (B) if a terminus of the proposed connection is outside
3 of the department's right of way, between the terminus and the
4 department's right of way.

5 (2) This subsection does not apply to a project developed
6 by a county or other local governmental entity under
7 Transportation Code, §228.011 or §228.0111, or that the
8 department funds solely with money held in a project subaccount
9 created under Transportation Code, §228.012.

10 (3) The requestor, as project sponsor, shall perform and
11 document all environmental studies, environmental compliance,
12 and public involvement activities arising as a result of
13 construction of the proposed access connection. The requestor
14 will not perform its environmental compliance and public
15 involvement activities under memoranda of agreement,
16 programmatic agreements, or other environmental agreements
17 between the department and a state or federal agency. The
18 requestor shall apply for, obtain, and comply with all permits
19 and approvals required by state and federal law, and shall
20 establish all commitments needed to address public, state
21 agency, and federal agency concerns.

22 (4) The requestor's environmental documents,
23 environmental studies, environmental compliance, and public

1 involvement activities must comply with the requirements of 43
2 TAC Chapter 2, Subchapter A, of this title (relating to
3 Environmental Review and Public Involvement for Projects).

4 (5) The requestor shall submit the environmental
5 documentation, including supporting documents, to the
6 department, and request the department review the environmental
7 documentation. The department shall review the environmental
8 documentation and supporting documents and shall determine
9 whether or not the requestor has completed agency coordination
10 relating to the environmental impact of the proposed access
11 connection, and has responded to public comments relating to the
12 connection. If the department determines that the requestor has
13 not demonstrated completion of agency coordination or response
14 to public comment related to the connection, the requestor shall
15 provide any additional documentation requested by the
16 department. The commission will not grant access connection
17 until the requestor satisfies the requirements of this
18 paragraph.

19 (6) If Federal Highway Administration (FHWA) regulations
20 specify that a project or connection requires FHWA approval, the
21 requestor shall perform all environmental and public involvement
22 activities as the project sponsor, and shall produce an
23 environmental document that meets FHWA requirements.