

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

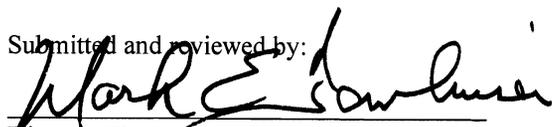
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §2.1, §2.2, §2.5, §2.12, §2.16, §2.19, §9.6, §24.11, §24.12, and §27.2 relating to the implementation of provisions in Transportation Code, Chapter 227, concerning the Trans-Texas Corridor, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted amendments, attached to this minute order as Exhibits A - H, 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 §2.1, §2.2, §2.5, §2.12, §2.16, §2.19, §9.6, §24.11, §24.12, and §27.2 are adopted and are authorized for filing with the Office of the Secretary of State.

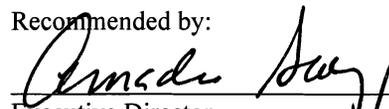
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Texas Turnpike Authority Division

Recommended by:

  
Executive Director

112779 AUG 25 11

Minute  
Number

Date  
Passed

Adoption Preamble

1  
2 The Texas Department of Transportation (department) adopts  
3 amendments to §2.1, General; Emergency Action Procedures, §2.2,  
4 Definitions, §2.5, Public Involvement, §2.12, Environmental  
5 Impact Statement (EIS), §2.16, Mitigation, and §2.19, Rail  
6 Transportation Project all concerning Environmental Review and  
7 Public Involvement for Transportation Projects. The amendments  
8 to §2.1, §2.2, §2.5, §2.12, §2.16, and §2.19 are adopted without  
9 changes to the proposed text as published in the July 15, 2011  
10 issue of the *Texas Register* (36 TexReg 4537) and will not be  
11 republished.

12

13 EXPLANATION OF ADOPTED AMENDMENTS

14 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,  
15 2011, repealed the authority for the establishment and operation  
16 of the Trans-Texas Corridor and removed all references in state  
17 statutes to the Trans-Texas Corridor. The purpose of these  
18 amendments is to remove all provisions in Chapter 2 of the rules  
19 of the department relating to the Trans-Texas Corridor. The  
20 effect of these amendments in conjunction with amendments to  
21 other chapters of the department's rules being simultaneously  
22 considered by the Texas Transportation Commission (commission)  
23 is the removal of all provisions in department's rules relating  
24 to the Trans-Texas Corridor.

25

1 Amendments to §2.1, General; Emergency Action Procedures, remove  
2 the reference in subsection (b)(2) to a construction or  
3 operation project of a facility that is part of the Trans-Texas  
4 Corridor and to Transportation Code, Chapter 227, which related  
5 to the corridor and was repealed by H.B. No. 1201. The  
6 amendments to subsection (c) remove all references in that  
7 subsection to sections in Transportation Code, Chapter 227.

8  
9 Amendments to §2.2, Definitions, remove the definition of Trans-  
10 Texas Corridor and renumber the following definition  
11 appropriately.

12  
13 Amendments to §2.5, Public Involvement, remove subsection (e)(9)  
14 relating to the notice of availability of a Final Environmental  
15 Impact Statement (FEIS) for a Trans-Texas Corridor project and  
16 redesignate the following paragraph accordingly.

17  
18 Amendments to §2.12, Environmental Impact Statement (EIS),  
19 remove subsection (e)(2) relating to the contents of a Draft  
20 Environmental Impact Statement (DEIS) for a Trans-Texas Corridor  
21 project and redesignate the following paragraphs accordingly.

22  
23 Amendments to §2.16, Mitigation, remove subsection (b)(6), which  
24 provides for compensatory mitigation of an adverse environmental  
25 impact resulting from a Trans-Texas Corridor project and

1 redesignate the following paragraph accordingly.

2

3 Amendments to §2.19, Rail Transportation Project, remove the  
4 references to Transportation Code, Chapter 227 in subsections  
5 (a) and (c).

6

7 COMMENTS

8 No comments were received on the proposed amendments.

9

10 STATUTORY AUTHORITY

11 The amendments are adopted under Transportation Code, §201.101,  
12 which provides the commission with the authority to establish  
13 rules for the conduct of the work of the department.

14

15 CROSS REFERENCE TO STATUTE

16 None.

1 SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT  
2 FOR TRANSPORTATION PROJECTS

3 §2.1. General; Emergency Action Procedures.

4 (a) (No change.)

5 (b) Applicability; Exception.

6 (1) (No change.)

7 (2) Transportation project. A transportation project is  
8 a highway improvement, rest area, aviation, toll project, public  
9 transportation, rail transportation project, ferry landing  
10 project, ferry maintenance, or transportation enhancement~~[, or a~~  
11 ~~project for the construction or operation of a facility that is~~  
12 ~~a part of the Trans Texas Corridor]~~. A highway improvement  
13 project is a highway construction or maintenance project under  
14 one or more of Transportation Code, Chapters 201, 203, 221, 223,  
15 ~~[227,~~ or 228.

16 (3) (No change.)

17 (c) Purpose. This subchapter implements the requirements  
18 of Transportation Code, §91.033, §91.034, §201.604, §201.607,  
19 §201.610, §201.617, §203.021, and §203.022~~[, §227.004, §227.013,~~  
20 ~~§227.027, and §227.028]~~. Also, the requirements in this chapter  
21 follow the requirements of the National Environmental Policy  
22 Act, 42 United States Code §§4321 et seq., 23 United States Code  
23 §109(h), and federal rules adopted under those laws. For a

1 federal-aid transportation project, the subchapter sets forth  
2 additional requirements the department shall follow in order to  
3 comply with the National Environmental Policy Act and federal  
4 rules adopted under that law.

5 (d) - (h) (No change.)

6

7 §2.2. Definitions. The following words and terms, when used in  
8 this subchapter and Subchapters B and C of this chapter shall  
9 have the following meanings, unless the context clearly  
10 indicates otherwise.

11 (1) - (46) (No change.)

12 [~~(47) Trans Texas Corridor~~ The system of multimodal  
13 facilities designated by the commission under Transportation  
14 Code, ~~§227.011.~~]

15 (47) [~~(48)~~] Toll project--Has the meaning assigned by  
16 Transportation Code, §201.001.

17

18 §2.5. Public Involvement.

19 (a) - (d) (No change.)

20 (e) Public involvement for EIS project or supplemental EIS  
21 project.

22 (1) - (8) (No change.)

23 [~~(9) Notice of availability of FEIS for project on Trans-~~

1 ~~Texas Corridor. In addition to the requirements in paragraph~~  
2 ~~(7) of this subsection, after the FEIS for a project on the~~  
3 ~~Trans-Texas corridor is approved under §2.12 of this subchapter,~~  
4 ~~the district shall take the actions described in this~~  
5 ~~paragraph.]~~

6 [~~(A) The district shall post the FEIS on the~~  
7 ~~department's internet website, along with information detailing~~  
8 ~~where a copy may be reviewed or obtained.]~~

9 [~~(B) The district shall notify the following persons~~  
10 ~~that the FEIS is available on the department's website:]~~

11 [~~(i) each state senator and representative who~~  
12 ~~represents any part of the area in which a segment of the~~  
13 ~~project is located; and]~~

14 [~~(ii) the commissioners court of each county in which~~  
15 ~~the project is located.]~~

16 (9) [~~(10)~~] Notice of ROD. The environmental division  
17 shall publish notice of the ROD in the *Texas Register*. The  
18 district shall publish a notice of availability of the ROD in  
19 local newspapers.

20 (f) - (i) (No change.)

21

22 §2.12. Environmental Impact Statement (EIS)

23 (a) - (d) (No change.)

1 (e) DEIS.

2 (1) (No change.)

3 [~~(2) In accordance with Transportation Code, §227.004, a~~  
4 ~~DEIS for a Trans Texas Corridor project shall explain each of~~  
5 ~~the matters described in this paragraph.]~~

6 [~~(A) The reasons for the immediate and future needs of~~  
7 ~~the project.]~~

8 [~~(B) The reasonableness of and necessity for the~~  
9 ~~project.]~~

10 [~~(C) The reasons for the immediate and future needs for~~  
11 ~~each mode of transportation in that segment of the project.]~~

12 [~~(D) The reasonableness and necessity for each mode of~~  
13 ~~transportation in that segment of the project.]~~

14 (2) [~~(3)~~] The environmental division shall review the  
15 DEIS to determine if it complies with this subsection and other  
16 requirements, and if appropriate, approve it for circulation by  
17 signing and dating the cover sheet. For a federal-aid project,  
18 the FHWA shall review and if appropriate approve the DEIS.

19 (3) [~~(4)~~] The district shall circulate the DEIS in  
20 accordance with §2.5(e) of this subchapter.

21 (4) [~~(5)~~] The district and environmental division shall  
22 give notice of availability of the DEIS in accordance with  
23 §2.5(e) of this subchapter.

1           (5) [~~(6)~~] After the DEIS is circulated, public hearing  
2 held, and comments reviewed, the district shall prepare an FEIS  
3 or a supplemental DEIS.

4           (f) (No change.)

5

6 §2.16. Mitigation.

7           (a) (No change.)

8           (b) Compensatory mitigation may include:

9           (1) - (4) (No change.)

10           (5) an agreement with the Texas Historical Commission  
11 under §2.24 of this chapter (relating to Memorandum of  
12 Understanding with the Texas Historical Commission) on  
13 appropriate mitigation measures for an adverse effect directly  
14 resulting from a transportation project; or

15           ~~[(6) mitigation for the Trans-Texas Corridor as provided~~  
16 ~~by Transportation Code, §227.028; or]~~

17           (6) [~~(7)~~] the transfer of real property to a public  
18 agency or private entity with or without monetary consideration  
19 if the property is used or is proposed to be used for mitigation  
20 purposes.

21           (c) (No change.)

22

23 §2.19. Rail Transportation Project.

1 (a) Environmental studies for the acquisition, abandonment,  
2 design, construction, lease, maintenance, or operation of a  
3 passenger or freight rail facility under Transportation Code,  
4 Chapter 91 [~~or Chapter 227~~] that are subject to 49 United States  
5 Code §10901 will be accomplished in accordance with applicable  
6 state and federal requirements and, in particular, 49 Code of  
7 Federal Regulations Part 1105.

8 (b) Public involvement for a rail transportation project  
9 that is subject to 49 United States Code §10901 shall be  
10 consistent with applicable state and federal law, particularly  
11 49 Code of Federal Regulations Part 1105, this subchapter, and  
12 Subchapters B and C of this chapter.

13 (c) Environmental studies and public involvement for the  
14 acquisition, abandonment, design, construction, lease,  
15 maintenance, or operation of a passenger or freight rail  
16 facility, under Transportation Code, Chapter [~~Chapters~~] 91 [~~and~~  
17 ~~227~~], that are not subject to 49 United States Code §10901 shall  
18 be accomplished in accordance with this subchapter and  
19 Subchapters B and C of this chapter.



1 COMMENTS

2 No comments on the proposed amendments were received.

3

4 STATUTORY AUTHORITY

5 The amendments are adopted under Transportation Code, §201.101,

6 which provides the commission with the authority to establish

7 rules for the conduct of the work of the department.

8

9 CROSS REFERENCE TO STATUTE

10 None.

SUBCHAPTER A. GENERAL

§9.6. Contract Claim Procedure for Comprehensive Development Agreement.

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities)~~[, and under Transportation Code, §227.023 (Trans-Texas Corridor)]~~. A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

(3) - (9) (No change.)

(d) - (m) (No change.)



1 COMMENTS

2 No comments on the proposed repeals were received.

3

4 STATUTORY AUTHORITY

5 The repeals are adopted under Transportation Code, §201.101,  
6 which provides the commission with the authority to establish  
7 rules for the conduct of the work of the department.

8

9 CROSS REFERENCE TO STATUTE

10 None.

1                   SUBCHAPTER B. DEVELOPMENT OF FACILITIES

2   §24.11. Comprehensive Development Agreements.

3           (a) To the extent and in the manner that the department may  
4 enter into comprehensive development agreements with respect to  
5 turnpike projects under §§27.1-27.5 of this title (relating to  
6 Policy, Rules, and Procedures for Private Involvement in  
7 Department Turnpike Projects), the department may enter into  
8 comprehensive development agreements for the financing, design,  
9 construction, maintenance, or operation of a facility on the  
10 Trans-Texas Corridor.

11           (b) The department shall utilize the processes and  
12 procedures provided in §§27.1-27.5 of this title when  
13 considering the use of a comprehensive development agreement,  
14 including when:

15           (1) requesting qualifications and proposals or accepting  
16 unsolicited proposals for the financing, design, construction,  
17 maintenance, or operation of a facility;

18           (2) evaluating and ranking submissions and proposals; and

19           (3) selecting the proposal that provides the best value  
20 to the department.

21           (c) The following words and terms, when used in this  
22 section, shall have the following meanings, unless the context  
23 clearly indicates otherwise.

1           (1) Facility--Has the meaning assigned by Transportation  
2 Code, §227.001(4).

3           (2) Trans-Texas Corridor--The system of multimodal  
4 facilities designated under Transportation Code, §227.011.

5

6 §24.12. Environmental Review and Public Involvement.

7           (a) To the extent and in the manner that the department  
8 utilizes those processes and procedures for highway construction  
9 projects, the department shall utilize the processes and  
10 procedures provided in Chapter 2, Subchapter C, of this title  
11 (relating to Environmental Review and Public Involvement for  
12 Transportation Projects) when:

13           (1) performing environmental studies and preparing  
14 environmental documents for the design, construction,  
15 maintenance, or operation of a facility on the Trans-Texas  
16 Corridor; and

17           (2) providing for public involvement in, and carrying out  
18 other environmental review and consultation requirements for,  
19 the design, construction, maintenance, or operation of a  
20 facility on the Trans-Texas Corridor.

21           (b) The terms facility and Trans-Texas Corridor have the  
22 meanings provided in §24.11 of this subchapter.

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to §27.2, Definitions concerning Comprehensive  
4 Development Agreements. The amendments are adopted without  
5 changes to the proposed text as published in the July 15, 2011  
6 issue of the *Texas Register* (36 TexReg 4548) and will not be  
7 republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS

10 House Bill No. 1201, Acts of 82nd Legislature, Regular Session,  
11 2011, repealed the authority for the establishment and operation  
12 of the Trans-Texas Corridor and removed all references in state  
13 statutes to the Trans-Texas Corridor. The purpose of these  
14 amendments is to remove all provisions in Chapter 27 of the  
15 rules of the department relating to the Trans-Texas Corridor.  
16 The effect of these amendments in conjunction with amendments to  
17 other chapters of the department's rules being simultaneously  
18 considered by the Texas Transportation Commission (commission)  
19 is the removal of all provisions in the department's rules  
20 relating to the Trans-Texas Corridor.

21

22 Amendments to §27.2, remove paragraph (15)(B) relating to a  
23 facility or a combination of facilities on the Trans-Texas  
24 Corridor being an eligible project for the purposes of 43 TAC  
25 Chapter 27, Subchapter A and redesignate the following

1 subparagraphs accordingly.

2

3 COMMENTS

4 No comments on the proposed amendments were received.

5

6 STATUTORY AUTHORITY

7 The amendments are adopted under Transportation Code, §201.101,

8 which provides the commission with the authority to establish

9 rules for the conduct of the work of the department.

10

11 CROSS REFERENCE TO STATUTE

12 None.

1 SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

2 §27.2. Definitions. The following words and terms, when used  
3 in this subchapter, shall have the following meanings, unless  
4 the context clearly indicates otherwise.

5 (1) - (14) (No change.)

6 (15) Eligible project--A project described in  
7 Transportation Code, §223.201, and including a:

8 (A) toll project;

9 [~~(B) facility or a combination of facilities on the~~  
10 ~~Trans Texas Corridor, as defined in §24.11 of this title~~  
11 ~~(relating to Comprehensive Development Agreements);]~~

12 (B) [~~(C)~~] state highway improvement project that  
13 includes both tolled and nontolled lanes and that may include  
14 nontolled appurtenant facilities;

15 (C) [~~(D)~~] state highway improvement project in which  
16 the private entity has an interest in the project;

17 (D) [~~(E)~~] state highway improvement project financed  
18 wholly or partly with the proceeds of private activity bonds, as  
19 defined by Section 141(a), Internal Revenue Code of 1986; or

20 (E) [~~(F)~~] project that combines a toll project and a  
21 rail facility as defined in Transportation Code, §91.001.

22 (16) - (33) (No change.)