These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on November 19, 2009 in Austin, Texas. The meeting opened at 9:06 a.m. with the following commissioners present:

**Texas Transportation Commission**:

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| Deirdre Delisi | Chair |
| Ted Houghton | Commissioner |
| Ned Holmes | Commissioner |
| Fred Underwood | Commissioner |
| Bill Meadows | Commissioner |

**Administrative Staff**:
Amadeo Saenz, Executive Director
Steve Simmons, Deputy Executive Director
Bob Jackson, General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director
Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:22 p.m. on November 10, 2009, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. PUBLIC HEARING**
Project Selection – Receive data, comments, views and testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions relating to the 2011 Unified Transportation Program

This item was presented by Finance Division Director Brian Ragland.

**ITEM 2. Approval of Minutes** of the October 29, 2009 meeting of the Texas Transportation Commission.

Commissioner Underwood made a motion, seconded by Commissioner Holmes, and the commission approved the minutes of the October 29, 2009 meeting of the Texas Transportation Commission.

**ITEM 3. RESOLUTION**
Resolution recognizing Fred Gilliam, outgoing chair of the Public Transportation Advisory Commission

A second resolution was also presented by Executive Director Amadeo Saenz to Federal Highway Administration Urban Programs Engineer Anita Wilson, recipient of the Luther DeBerry award.

Note: The commission received comments from Public Transportation Division Director Eric Gleason; and Fred Gilliam.

**ITEM 4. REPORTS**
a. **Grand Parkway Association** – Annual report on the status of projects and activities undertaken during the preceding 12 months.

This report was presented by Grand Parkway Association Executive Director David Gornet.

Note: The commission received comments from Grand Parkway Association President of the Board Billy Burge; and Grand Parkway Association Board Member Chris Olavson.

**ITEM 7. PROPOSITION 12 BOND PROJECTS**
**Various Counties** – Approval of work to be performed in connection with highway improvement projects that will be funded with the proceeds from bonds, notes, and other public securities issued under Transportation Code, Section 222.004 (Proposition 12 Bonds) (MO)

Commissioner Meadows made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton.

112036
AEO

Section 49-p, Article III, of the Texas Constitution (constitutional provision) provides that, to provide funding for highway improvement projects, the legislature by general law may authorize the Texas Transportation Commission (commission) or its successor to issue general obligation bonds of the State of Texas in an aggregate amount not to exceed $5 billion and enter into related credit agreements.

Pursuant to the constitutional provision, the Texas Legislature, in House Bill 1, 81st Legislature, First Called Session, 2009, enacted Transportation Code, §222.004 (Enabling Act), the enabling legislation for general obligation bonds, notes, and other public securities that may be issued by the commission to fund highway improvement projects (Proposition 12 bonds).

House Bill 1 also amended Rider 60 to the appropriations to the Texas Department of Transportation (department) in Senate Bill 1, 81st Legislature, Regular Session, 2009 (General Appropriations Act), to allow the issuance of $2 billion of these bonds. For FY 2010-2011, the Legislature appropriated bond proceeds in the amount of $90 million for

right of way, $60 million for engineering, and $850 million to make progress payments on no more than $1.85 billion in construction contract obligations for nontolled highway improvement projects, and appropriated $1 billion of bond proceeds to be used to capitalize the State Infrastructure Bank (SIB) for the purpose of making loans to public entities.

During previous commission meetings, staff discussed this issue with the commission and presented potential scenarios for the use of these funds. As directed by the commission, staff worked with the state's transportation partners to develop a list of guiding principles for use in evaluating and selecting projects to be funded with the portion of Proposition 12 bond proceeds that is not used to capitalize the SIB. Based on those guiding principles, criteria by which projects may be identified, prioritized and ultimately selected for funding were established.

In cooperation with the state's transportation partners, the department has developed a list of potential projects to be funded with the portion of Proposition 12 bond proceeds that is not used to capitalize the SIB. This minute order approves work to be performed in connection with highway improvement projects that will be funded with the proceeds of Proposition 12 bonds, as set forth in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the highway improvement projects and work to be performed in connection with highway improvement activities, as contained in Exhibit A, is approved for funding with the proceeds of Proposition 12 bonds.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Representative Charles "Doc" Anderson; Congressman Michael McCaul; Senator Eddie Lucio; Senator Glenn Hegar; Senator Dan Patrick; Representative John Zerwas; Representative Bill Callegari; Representative Ralph Sheffield; Senator Troy Frasier; Representative Allen Fletcher; Bell County Commissioner Tim Brown; City of Fort Worth Council Member Jungus Jordan; Greater San Antonio Chamber of Commerce President Richard Perez; Cameron County Commissioner David Garza; Greater Houston Partnership President Jeff Moseley; Bell County Judge Jon Burrows; City of Temple Mayor Bill Jones; Village of Salado Mayor Merle Stalcup; Killeen Temple Mayor Pro Tem Scott Cosper; Collin County Commissioner Joe Jaynes; Bexar County Commissioner Kevin Wolff; City of Primera Administrator Javier Mendez; Houston Galveston Area Council MPO Director Alan Clark; City of Waco Council Member Randy Riggs; City of Waco Council Member Jim Bush; Central Texas Council of Governments Executive Director Jim Reed; City of Terrell Assistant City Manager Mike Sims; Waller County Judge Owen Ralston; Cy-Fair Houston Chamber of Commerce President Mary Evans; West Houston Association President Roger Hord; Manny Salazar with Representative Dwayne Bohac. Congressman John Culberson; and Congresswoman Sheila Jackson-Lee were shown by video.

**ITEM 8. PROPOSITION 14 BONDS**

**Various Counties** – Approval of additional projects to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)

Commissioner Meadows made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Traffic Operations Division Interim Director Carol Rawson:

112037
AEO

Section 49-n, Article III, of the Texas Constitution (constitutional provision) provides that the Texas Legislature may authorize the Texas Transportation Commission (commission) to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund to fund state highway improvement projects.

Pursuant to the constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code (Enabling Act), which authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund. Bonds and other public securities issued under the constitutional provision and Enabling Act are commonly known as "Proposition 14" bonds.

The Enabling Act, as amended, provides that (i) the aggregate principal amount of such bonds and other public securities may not exceed $6 billion, (ii) the commission may issue bonds or other public securities in an aggregate principal amount of not more than $1.5 billion each year, (iii) $1.2 billion of the aggregate principal amount of such bonds or other public securities must be issued to fund safety projects that reduce accidents or correct or improve hazardous locations on the state highway system, and (iv) bonds and other public securities and credit agreements may not have a principal amount or terms that are expected to cause annual expenditures with respect thereto to exceed 10 percent of the amount deposited to the credit of the highway fund in the preceding year. The commission has issued approximately $3.1 billion of Proposition 14 bonds pursuant to the terms of the Enabling Act.

Pursuant to the Enabling Act, the commission has adopted rules, codified as 43 TAC §§15.170-15.174, that prescribe criteria for selecting projects (including safety projects) eligible for funding under the Enabling Act.

On October 30, 2008, January 29, 2009, February 26, 2009, March 26, 2009, July 30, 2009, and September 24, 2009, the commission adopted Minute Orders 111550, 111680, 111709, 111751, 111890, and 111976, respectively, which approved the use of proceeds of Proposition 14 bonds for state highway improvement projects and work associated with state highway improvement activities, as contained in exhibits to the Orders.

Due to continuing national economic conditions and the accompanying effects on construction contraction and material supplies, the projects that have gone to letting continue to experience underruns of the originally obligated bond funds. These underruns allow additional projects to be brought forward for funding under the bond program.

This minute order revises funding allocations for previously approved projects and activities and approves additional projects to be funded with the proceeds of Proposition 14 bonds, as set forth in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the state highway improvement projects and work to be performed in connection with state highway improvement activities, as contained in Exhibit A, is approved for funding with the proceeds of Proposition 14 bonds.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Representative Lois Kolkhorst; City of Huntsville Mayor Jay Turner; and City of Huntsville Council Member Charles Forbus.

**ITEM 4. REPORTS (continued)**

b. Annual report on the status of derivative transactions outstanding.

This item was presented by Finance Division Director Brian Ragland.

c. Update of the development of the department's Internal Compliance Program.

This item was presented by Deputy Executive Director Steve Simmons.

**ITEM 5. PROMULGATION OF ADMINISTRATIVE RULES** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. **Final Adoption**

(1) **Chapter 1 – Management** (MO)

Amendments to §1.2, Texas Department of Transportation (Organization and Responsibilities) and §1.4, Public Access to Commission Meetings (Public Meetings and Hearings)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by General Counsel Bob Jackson:

112038
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.2, Texas Department of Transportation and §1.4, Public Access to Commission Meetings relating to management to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, 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 §1.2 and §1.4 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.

Note: Exhibits A through C on file with minute order clerk.

(2) **Chapter 1 – Management** (MO)
Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, and §1.85, Department Advisory Committees (Advisory Committees)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by General Counsel Bob Jackson:

112039
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §1.82, statutory advisory committee operations and procedures, §1.84, statutory advisory committees, and §1.85, department advisory committees, all relating to department advisory committees to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, 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 §1.82, §1.84, and §1.85 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.

Note: Exhibits A and B on file with minute order clerk.

(3) **Chapter 21 – Right of Way** (MO)
New §21.24, State Participation in Gas Pipeline Relocations (Utility Adjustment, Relocation, or Removal) and Amendments to §21.31, Definitions, §21.33, Applicability, §21.34, Scope, §21.36, Rights of Utilities, §21.37, Design, and New §21.42, Appeal Process (Utility Accommodation)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Right of Way Division Director John Campbell.

112040
ROW

The Texas Transportation Commission (commission) finds it necessary to adopt new §21.24, State Participation in Gas Pipeline Relocations, and amendments to §21.31,

Definitions, §21.33, Applicability, §21.34, Scope, §21.36, Rights of Utilities, §21.37, Design, and new §21.42, Appeal Process, all concerning the installation and adjustment of utility facilities in state highway rights of way to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments 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 new §21.24, the amendments to §21.31, §21.33, §21.34, §21.36, §21.37, and new §21.42 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.

Note: Exhibits A through C on file with minute order clerk.

b. **Proposed Adoption**
**(to be published in the *Texas Register* for public comment)**
(1) **Chapter 24 – Trans-Texas Corridor** (MO)
Withdrawal of proposed amendments to §24.13, Corridor Planning and Development (Development of Facilities)

Commissioner Houghton made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Mark Tomlinson.

112041
TTA

The Texas Transportation Commission (commission) finds it necessary to withdraw the previously proposed amendments to §24.13, relating to corridor planning and development, to be codified under Title 43, Texas Administrative Code, Part 1.

At its October 29, 2009 meeting, the commission proposed amendments to §15.9, concerning corridor advisory committees and new §15.10, which provides for segment advisory committees, including a sunset date for those committees. As a result of the amendments to §15.9 and proposed new §15.10, the previously proposed amendments to §24.13 are now unnecessary.

IT IS THEREFORE ORDERED by the commission that the amendments to §24.13 previously proposed by Minute Order 111922 dated August 27, 2009 are withdrawn.

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.

(2) **Chapter 24 – Trans-Texas Corridor** (MO)
Repeal of §24.13, Corridor Planning and Development (Development of Facilities)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Mark Tomlinson:

112042 TTA

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §24.13 relating to corridor planning and development, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeal, attached to this minute order as Exhibits A and B, 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 repeal of §24.13 is proposed for adoption and is authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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.

Note: Exhibits A and B on file with minute order clerk.

(3) **Chapter 25 – Traffic Operations** (MO)
Amendments to §25.973, Medical Examiner's Report (Crash Records Information System)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Traffic Division Interim Director Carol Rawson:

112043 TRF

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §25.973, Medical Examiner's Report, relating to crash records information system to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, 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 §25.973 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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.

Note: Exhibits A and B on file with minute order clerk.

**ITEM 6. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**
Discussion of the status of ARRA project delivery; approve changes to the list of mobility projects previously approved for funding from Texas' portion of the ARRA (MO)

Commissioner Underwood made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton.

112044
AEO

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides $64.1 billion nationwide for infrastructure projects, including $27.5 billion for highway and bridge construction, and $1.5 billion for surface transportation grants to be administered by the Secretary of Transportation.

Texas' share of the funding for highway and bridge construction is expected to be approximately $2.25 billion, based on the existing apportionment formula.

In anticipation of the enactment of the ARRA, the Texas Department of Transportation (department) collaborated with the Texas Division of the Federal Highway Administration (FHWA), MPOs, tolling authorities and transit providers to develop a unified approach to identifying and prioritizing projects that potentially qualify for funding. Department staff and local officials agreed upon a list of criteria to be used for evaluating projects. FHWA also issued a guidance document on funding, project selection, eligible activities, and other specific requirements to assist states in implementing the ARRA. The priority and preference selection criteria described in the ARRA and the FHWA guidelines were subsequently used in the evaluation process to develop the lists of projects recommended for funding under the ARRA.

Time is a critical element with regard to the selection and execution of projects. States must have 100 percent of the funds obligated within one year of receiving the apportionment or grant, or the remaining funds will be redistributed to other states. The department received the Notice of Apportionment from FHWA on March 2, 2009. The department initially submitted data on projects to be funded completely or partially with ARRA funds to FHWA on March 17, 2009. States must continue to update the data on projects to be funded with ARRA funds in a timely manner.

In Minute Order 111734, dated March 5, 2009, the Texas Transportation Commission (commission) approved the funding, under the provisions of the ARRA, of approximately $1.2 billion in mobility projects. In Minute Orders 111777, dated April 30, 2009, and 111808, dated May 28, 2009, the commission made revisions to the previously approved list of mobility projects.

The department has continued to monitor the progress of these projects to ensure that they comply with the criteria identified in the minute orders, the ARRA, and the project selection requirements established by FHWA.

As a result of these efforts, a revised list of mobility projects has been developed and is set forth in Exhibit A. The following revision has been made:

- The funds previously identified for two El Paso projects located on I-10 have been modified based on guidance from FHWA related to combining ARRA funds with other funds. The funding for CSJ 2121-04-082 has been increased from $55 million to $75 million and the funding for CSJ 2121-04-065 has been decreased from $20 million. There was no net change in the combined funding amounts for these two projects.

No other projects listed in Exhibit A have been changed or removed.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

IT IS THEREFORE ORDERED by the commission that the transportation projects set forth in Exhibit A are hereby approved for funding under the provisions of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with project development and contract awards for the projects described in Exhibit A.

IT IS FURTHER ORDERED that Exhibit A in Minute Order 111808 is rescinded and replaced with Exhibit A to this minute order.

IT IS FURTHER ORDERED that the department shall track the progress of the projects set forth in Exhibit A separately from other ongoing projects and place information regarding the status of these projects on the department's web site.

Note: Exhibit A on file with minute order clerk.

**ITEM 9. PASS-THROUGH TOLLS**
**Authority to Execute Agreement**
**El Paso County** – Authorize the executive director to negotiate and execute a final pass-through toll agreement with Camino Real Regional Mobility Authority (CRRMA) for the design and construction of two projects: (1) a portion of the I-10 at Loop 375 (Americas Interchange) project which includes four direct connectors to/from I-10 to/from Loop 375, and (2) the I-10 corridor aesthetic project from mile post 6 (Loop 375-Transmountain Road) through mile post 34 (Loop 375-Americas Avenue) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton:

112045
AEO

On July 17, 2009, the Camino Real Regional Mobility Authority (CRRMA) submitted a proposal for pass-through toll financing in the amount of $25 million. The proposal provided for the CRRMA to develop (1) a portion of the I-10 at Loop 375 (Americas Interchange) project which includes four direct connectors to/from I-10 to/from Loop 375, and (2) the I-10 corridor aesthetic project from Mile Post 6 (Loop 375-Transmountain Road) through Mile Post 34 (Loop 375-Americas Avenue) (collectively the projects).

In accordance with §222.104(b), Transportation Code, the Texas Transportation Commission (commission) granted preliminary approval on September 24, 2009 in Minute Order 111961 authorizing the Texas Department of Transportation (department) to negotiate the financial terms of an agreement with the CRRMA that provides for the payment of pass-through tolls to the CRRMA as reimbursement for construction of the projects on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

On January 29, 2009 by Minute Order 111669 the commission adopted revised rules, codified as Title 43 Texas Administrative Code §§5.51-5.60 (rules), that prescribe the policies and procedures governing the department's implementation of the pass-through toll program under Section 222.104(b), Transportation Code.

The department and the CRRMA have agreed to a total reimbursement through pass-through tolls of $10,000,000 for construction of the projects. The reimbursement rate will be $0.055 cents per vehicle. The minimum amount to be reimbursed in any year with all projects open to traffic is $2,000,000 and the maximum amount per year will be $3,000,000. The agreement will expire once the total amount of that agreement has been reimbursed. The projects will be authorized and reimbursed from Category 2 funds.

In accordance with §5.57 of the rules, the commission finds that: (1) the projects serve the public interest and not merely a private interest; (2) the proposed pass-through toll agreement is in the best interest of the state; (3) the projects are compatible with existing and planned transportation facilities; and (4) the projects further state, regional, and local transportation plans, programs, policies, and goals.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) must be included in the department's UTP, thereby identifying committed funding for the projects; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate and execute a pass-through toll agreement with the CRRMA for construction of the projects in accordance with the negotiated terms and such other terms the department determines to be necessary, and to amend Category 2, Metropolitan Area (Transportation Management Areas) Corridor Projects, of the 2007 Statewide Mobility Program, approved by Minute Order 110753, dated November 16, 2006, to authorize the projects included in the executed agreement.

**ITEM 10. TRANSPORTATION PLANNING**

a. **Starr County** – Approve the transfer of Border Colonias Access Program funds from previously selected colonia projects to other eligible colonia projects (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

112046
TPP

Government Code, §1403.002, requires the Texas Public Finance Authority (TPFA), as authorized by the Office of the Governor, to issue general obligation bonds and notes in an aggregate amount not to exceed $175 million. The TPFA shall, as directed by the Texas Department of Transportation (department), distribute the proceeds to counties to provide financial assistance for colonia access roadway projects to serve border colonias. Government Code, §1403.002, further requires the Texas Transportation Commission (commission) to establish a program to administer the use of the proceeds of the bonds and notes.

The commission approved projects for funding under the third call of the Border Colonias Access Program by Minute Order 111442, dated July 31, 2008.

The Border Colonias Access Program rules allow a county to use unexpended funds from a project on any other commission-selected county colonia project. Starr County has requested to use underrun population-allocation funds resulting from lower than expected construction prices to fund work on the following projects, which were submitted as competitive applications and ranked but not selected for competitive funding: Old Escobares, La Rosita, and West Alto Bonito.

IT IS THEREFORE ORDERED by the commission that the county's request to transfer underrun population-allocation funds awarded to the county by Minute Order 111442 to other eligible colonias projects, as shown in Exhibit A, is approved.

Note: Exhibit A on file with minute order clerk.

b. **Various Counties** – Approval to authorize additional projects with CONSTRUCT authority under the work program created by Minute Order 111215 and concurrence in the selection of those projects by the Regional Transportation Council. The project development costs are to be funded with payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

112047
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA), the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0111(g)(2) and (i)(2).

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which a project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air quality project within a department district in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. The SH 121 toll project is located in the Dallas District. An air quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department's executive director to enter into, a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 121 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 121 payments has been assigned to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected through a process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with the SH 121 payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. Under Minute Order 112015, the department is required to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the Dallas District that are to be funded with the SH 121 payments. In Minute Order 111215, dated January 31, 2008; Minute Order 111439, dated July 31, 2008; Minute Order 111528, dated September 25, 2008; Minute Order 111553, dated October 30, 2008; Minute Order 111822, dated May 28, 2009; Minute Order 111854, dated June 25, 2009; and Minute Order 111928, dated August 27, 2009, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the Dallas District to be funded with the SH 121 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right of way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

Note: Exhibit A on file with minute order clerk.

c. Approve funding levels for the Unified Transportation Program for the years 2010 through 2020 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Chief Financial Officer James Bass:

112048
CFO

Transportation Code, §201.103, requires the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002, authorizes the commission to lay out, construct, maintain, and operate a modern state highway system, with emphasis on the construction of controlled access highways, and to plan for future highways.

The Unified Transportation Program (UTP) created by the Texas Department of Transportation (department) is an 11-year program that authorizes project planning and development, and is submitted to the commission for approval on an annual basis.

In consideration of available resources, the department has determined that the proposed distribution of forecasted state and federal funding provided in the target funding levels for the 2010 UTP, as set forth in Exhibit A, is the most efficient means to construct, maintain, and operate the state highway system, as required by law.

IT IS THEREFORE ORDERED by the commission that the target funding levels for fiscal years 2010 through 2020 set forth in Exhibit A are approved, and the executive director or his designee is directed to take the necessary steps to develop the 2010 UTP utilizing those target funding levels.

Note: Exhibit A on file with minute order clerk.

d. Approve funding levels for planning purposes for the years 2021 through 2035 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton:

112049
AEO

Transportation Code, §201.103 requires the Texas Transportation Commission (commission) to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002, authorizes the commission to lay out, construct, maintain, and operate a modern state highway system, with emphasis on the construction of controlled access highways, and to plan for future highways.

Title 23, United States Code, §135 requires each state to develop a statewide transportation plan to provide for the development and integrated management and operation of transportation systems and facilities. The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs.

Title 23, United States Code, §134 requires each metropolitan planning organization to prepare and update a transportation plan for its metropolitan planning area. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

The Texas Department of Transportation (department) and the Texas Association of Metropolitan Planning Organizations worked cooperatively to develop a financial forecast methodology suitable for both the department and the state's metropolitan planning organizations to use in the development of long range plans.

The department has developed a financial forecast and target funding levels for fiscal years 2010 through 2020. To encompass long-range planning horizons required for the development of the statewide transportation plan and metropolitan transportation plans, it is necessary to develop a financial forecast and target funding levels for fiscal years 2021 through 2035. In consideration of available resources, the department has determined that the proposed distribution of forecasted state and federal funding set forth in Exhibit A is the most efficient means to construct, maintain, and operate the state highway system, as required by law.

IT IS THEREFORE ORDERED by the commission that the target funding levels for fiscal years 2021 through 2035 set forth in Exhibit A are approved, and the executive director or his designee is directed to take the necessary steps to develop the statewide transportation plan using those target funding levels.

IT IS FURTHER ORDERED by the commission that the executive director make this information available to the metropolitan planning organizations for the development of their metropolitan transportation plans.

Note: Exhibit A on file with minute order clerk.

**ITEM 11. STATE INFRASTRUCTURE BANK**
**Final Approval**
El Paso County – **City of El Paso** – Consider granting final approval of an application from the City of El Paso to borrow $6,356,000 from the State Infrastructure Bank to pay for improvements to the Paso Del Norte International Port of Entry in El Paso (MO)

Commissioner Houghton made a motion, seconded by Commissioner Meadows and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

112050
FIN

On September 24, 2009, by Minute Order 111964, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the City of El Paso to borrow $6,356,000 from the State Infrastructure Bank (SIB) to pay for improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso (project).

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact studies have been completed, and that the Texas Department of Transportation has approved those studies. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the application for SIB financial assistance submitted by the City of El Paso to borrow $6,356,000 from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with the city. The loan will be repaid over a period of 10 years at 3.25 percent interest per annum.

**ITEM 12. OBLIGATION LIMIT REPORT**
Status report on the FY 2010 Obligation Limit and report on the actual obligations utilized through November 2009 and proposed remaining highway maintenance and construction contract letting for the fiscal year.

This item was presented by Chief Financial Officer James Bass.

**ITEM 13. CONTRACTS**
a. **Award or Reject Highway Improvement Contracts**
(1) **Highway Maintenance and Department Building Construction** (see attached itemized list) (MO)

Commissioner Underwood made a motion, seconded by Commissioner Holmes and the commission approved the following minute presented by Construction Section Director for Construction Section Ken Barnett:

112051
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on November 5 and 6, 2009.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance and department building construction contracts, with an engineer's estimated cost of $300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) **Highway and Transportation Enhancement Building Construction** (see attached itemized list) (MO)

Commissioner Holmes made a motion, seconded by Commissioner Meadows and the commission approved the following minute order with the exception of Project IM 0203(077) in Eastland County as recommended by staff and presented by Construction Section Director for Construction Section Ken Barnett:

112052 CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on November 5 & 6, 2009.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract or an exhibit to this order.

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract or an exhibit to this order, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Northeastern Pavers Inc. President Shane Barrington.

## ITEM 14. ROUTINE MINUTE ORDERS

Commissioner Meadows made a motion, seconded by Commissioner Underwood and the commission approved the following minute orders presented by Executive Director Amadeo Saenz:

a. **Donations to the Department**

(1) **Construction Division** – Acknowledge a donation from the Southeastern Asphalt User Producer Group (SEAUPG) for a department employee's travel expenses to speak and participate in SEAUPG's annual meeting. The meeting was held in Hilton Head, South Carolina from November 9-12, 2009 (MO)

112053 GSD

This minute order considers a donation of $1,436.17 from the Southeastern Asphalt User Producer Group (SEAUPG) for a Texas Department of Transportation (department) employee's travel expenses to speak and participate in SEAUPG's annual meeting. The meeting was held in Hilton Head, South Carolina from November 9-12, 2009.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at $500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of $1,436.17 from the Southeastern Asphalt User Producer Group is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) **Construction Division** – Acknowledge a donation from the Texas Asphalt Pavement Association (TxAPA) for a department employee's travel expenses to speak and participate in the Southeastern Asphalt User Producer Group's (SEAUPG) annual meeting. The meeting was held in Hilton Head, South Carolina from November 9-12, 2009 (MO)

112054 GSD

This minute order considers a donation of $1,228.28 from the Texas Asphalt Pavement Association (TxAPA) for a Texas Department of Transportation (department)

employee's travel expenses to speak and participate in the Southeastern Asphalt User Producer Group's (SEAUPG) annual meeting. The meeting was held in Hilton Head, South Carolina from November 9-12, 2009.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at $500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation furthers the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

The commission also finds that the donor is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of $1,228.28 from the Texas Asphalt Pavement Association is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. **Eminent Domain Proceedings**

**Various Counties** – noncontrolled and controlled access highways (see attached itemized list) (MO)

112055
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public

necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

| COUNTY | HIGHWAY | EXHIBIT | ROW CSJ NO. | PARCEL |
|---|---|---|---|---|
| Dallas | SS 366 | 4 | 0196-07-023 | 12 |
| Denton | FM 423 | 1 | 1567-02-030 | 83 |
| Montgomery | FM 1774 | 5 | 1400-04-026 | 213 |
| Montgomery | FM 1774 | 6 | 1400-04-027 | 103 |
| Montgomery | FM 1774 | 3 | 1400-04-027 | 215 |
| Montgomery | FM 1774 | 2 | 1400-04-027 | 102 |
| Travis | RM 2769 | 7 | 2718-01-011 | 3 |

CONTROLLED ACCESS

| COUNTY | HIGHWAY | EXHIBIT | ROW CSJ NO. | PARCEL |
|---|---|---|---|---|
| Bell | IH 35 | H | 0015-07-079 | 3 |
| Caldwell | SH 130 | K | 3583-01-002 | 499B |
| Comal | SH 46 | L | 0215-01-050 | 15 |
| Dallas | SH 114 | J | 0353-06-051 | 2 |
| Dallas | SH 114 | D | 0353-06-051 | 10 |
| Lampasas | FM 2657 | M | 3131-03-008 | 6A |
| Lampasas | FM 2657 | N | 3131-03-008 | 6B |
| Lampasas | FM 2657 | O | 3131-03-008 | 6C |
| McLennan | IH 35 | E | 0015-01-219 | 20E |
| McLennan | IH 35 | F | 0015-01-219 | 24AC |
| McLennan | IH 35 | G | 0015-01-219 | 29AC |
| McLennan | IH 35 | I | 0015-01-219 | 32AC |
| Shelby | SL 500 | C | 3315-01-017 | 26 &26AC |
| Shelby | SL 500 | B | 3315-01-017 | 4 |
| Shelby | SL 500 | A | 3315-01-017 | 21 |

Note: Exhibits 1 through 7 and A through O on file with minute order clerk.

c. **Highway Designation**

**Grayson County** – Extend the designation of SH 289 on new location from SH 56, north to FM 120 (MO)

112056 TPP

In GRAYSON COUNTY, local officials have requested to extend the designation of STATE HIGHWAY 289 from its current terminus at SH 56 in Southmayd, northward to Farm to Market Road 120 in Pottsboro, a total distance of approximately 10.7 miles.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended extending the designation of SH 289 from its current terminus at SH 56 in Southmayd to FM 120 in Pottsboro.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that SH 289 be extended from its current terminus at SH 56 in Southmayd, northward to FM 120 in Pottsboro, a distance of approximately 10.7 miles, as shown in Exhibit A.

Note: Exhibit A on file with minute order clerk.

d. **Load Zones & Postings**

**Various Counties** – Revise load restrictions on the state highway system:

(1) **Roadways** (MO)

112057 CST

The Texas Transportation Commission (commission) under provision of Texas Transportation Code §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made on the state highway system to determine and fix the maximum loads to be transported or moved on, over or upon the roads of the highway system.

It has been determined from this investigation that the load restrictions on certain sections of roads of the state highway system should be removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the roads described in Exhibit A be removed for the month of November 2009, as set forth therein, superseding any portion of a previous action in conflict. The executive director shall proceed with the removal of signs as appropriate, making the removal of this load limitation effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) **Bridges** (MO)

112058 BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibit A be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

e. **Right of Way Dispositions and Donations**

(1) **Dallas County** – I-20 east of Honeysuckle Lane in Dallas – Consider the sale of surplus access rights to the abutting landowner (MO)

112059
ROW

In DALLAS COUNTY, on INTERSTATE 20, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 962, Page 49, Deed Records of Dallas County, Texas, and the state owns and controls certain access rights to the highway facility to and from the abutting lands.

Portions of the access rights (surplus access rights), shown on Exhibit A, are no longer needed for a state highway purpose.

Texas M Squared Farms, Ltd., owner of a 29.812-acre tract of land conveyed by deed recorded in Volume 99211, Page 5162, Deed Records, Dallas County, Texas (Texas M Squared Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Texas M Squared for $195,000.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus access rights to the abutting landowner.

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to the abutting landowner for a cash consideration of $195,000.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state's interest in the surplus access rights to Texas M Squared Farms, Ltd., for a cash consideration of $195,000.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Texas M Squared Tract, and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Texas M Squared Tract.

Note: Exhibit A on file with minute order clerk.

(2) **Dallas County** – I-20 west of Bonnie View Road in Dallas – Consider the sale of surplus access rights to the abutting landowner (MO)

112060 ROW

In DALLAS COUNTY, on INTERSTATE 20, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 68124, Page 1829, Deed Records of Dallas County, Texas, and the state owns and controls certain access rights to the highway facility to and from the abutting lands.

Portions of the access rights (surplus access rights), shown on Exhibit A, are no longer needed for a state highway purpose.

Dallas Land, LLC, owner of a 3.106-acre tract of land conveyed by deed recorded in Instrument No. 200600279497, Official Public Records, Dallas County, Texas (Dallas Land Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Dallas Land, LLC, for $132,597.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus access rights to the abutting landowner.

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to the abutting landowner for a cash consideration of $132,597.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state's interest in the surplus access rights to Dallas Land, LLC, for a cash consideration of $132,597.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Dallas Land Tract, and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Dallas Land Tract.

Note: Exhibit A on file with minute order clerk.

(3) **Lubbock County** – US 84 at I-27 and US 87 in Lubbock – Consider the sale of surplus right of way to the abutting landowner (MO)

112061 ROW

In the city of Lubbock, LUBBOCK COUNTY, on US 84, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 985, Page 471, Deed Records of Lubbock County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowner.

Prem Supply, Inc., is the abutting landowner and has requested that the surplus land be sold to the corporation for $46,935.

The commission finds $46,935 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Prem Supply, Inc., for $46,935; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(4) **Tarrant County** – SH 121 from I-30 to Alta Mesa Boulevard – Consider the acceptance of a donation of land for a highway improvement project (MO)

112062
ROW

In TARRANT COUNTY, on STATE HIGHWAY 121 from Interstate 30 to Alta Mesa Boulevard, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at $500 or more by majority vote at an open meeting.

The Fort Worth Transportation Authority (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at $1,523,184, to the department for construction of a highway improvement project.

The owner may be subject to department regulations or oversight, but is not currently party to a contested case before the department. The owner may also be interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

f. **Speed Zones**

**Various Counties** – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

112063
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that the speed limit on one segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portion of the minute order establishing the speed zone shown on the attached Exhibit C is canceled.

Note: Exhibits A through C on file with minute order clerk.

**OPEN COMMENT PERIOD** – At the conclusion of all other agenda items, the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the commission. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.

15. **Executive Session** Pursuant to Government Code, Chapter 551, **Section 551**
a. **Section 551.071** – Consultation with and advice from legal counsel regarding any item on this agenda
b. **Section 551.074** – Evaluate the performance of the executive director

Note: The commission met in executive session to take up Item 15.b. No action was taken in Executive Session.

The regular meeting of the Texas Transportation Commission adjourned at 1:49 p.m.

APPROVED:

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Deirdre Delisi, Chair
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on November 19, 2009, in Austin, Texas.

_____
Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation