

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on September 24, 2009 in Austin, Texas. The meeting opened at 9:06 a.m. with the following commissioners present:

Texas Transportation Commission:

Deirdre Delisi	Chair
Ted Houghton	Commissioner
Ned Holmes	Commissioner
Fred Underwood	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 4:17 p.m. on September 16, 2009, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. RESOLUTION

Resolution to recognize Thomas Bohuslav, Construction Division Director, upon his retirement after more than 28 years with the department

A resolution was first presented by Executive Director Amadeo Saenz to Bryan District Engineer Bryan Wood upon his retirement. The second resolution was then presented to Construction Division Director Thomas Bohuslav.

ITEM 2. Approval of Minutes of the August 26, 2009 and August 27, 2009 meetings of the Texas Transportation Commission.

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the minutes of the August 26, 2009 and August 27, 2009 meetings of the Texas Transportation Commission.

ITEM 12. PASS-THROUGH TOLLS**Authority to Execute Agreement**

El Paso County – Authorize the executive director to negotiate a 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.

111961
ADM

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).

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. 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 Texas Transportation Commission (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 program under Section 222.104(b), Transportation Code.

On February 26, 2009 by Minute Order 111710 the commission approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call). The commission further determined that in the event that a critical transportation need which can be addressed with a pass-through toll agreement arises after expiration of the 60 day deadline for submitting proposals under the program call, or a funding source other than Category 12 becomes available for a specific transportation project, the commission may, at any time and irrespective of the limitations adopted under Minute Order 111710, authorize acceptance of an individual proposal for development of a pass-through toll project to meet that need or utilize those funds.

After considering the CRRMA proposal, the limitations and exceptions to the program call under Minute Order 111710, and the factors described by §5.55 of the commission's rules, it is determined that: (1) the proposal requests funding from Category 2 funds and the proposed projects will satisfy a critical transportation need; (2) the

proposal satisfies provisions under Minute Order 111710 for an exception to the program call; (3) the proposer will make a significant financial contribution to the projects from sources other than the department; (4) the CRRMA's proposal indicated broad public support for the projects and did not identify any opposition; (5) the projects are in the current UTP; (6) the projects demonstrate the potential to relieve congestion on the state highway system; (7) the projects appear to provide potential benefits to safety; (8) the projects appear to provide potential benefits to regional air quality but must be quantified and documented by the CRRMA through the air quality conformity process in accordance with all state and federal regulations; (9) the projects are compatible with existing and planned transportation facilities; (10) the proposer will utilize a contiguous geographic area in the jurisdiction of the City of El Paso as a transportation reinvestment zone; (11) the projects demonstrate the potential to provide economic development in the area; (12) the proposer appears to have sufficient financial strength to complete the projects; (13) the CRRMA lacks significant experience developing highway projects, but has delegated responsibility to a program manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects; and (14) the projects are compatible with the commission's stated goals.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) prior to construction, must be included in the department's Statewide Transportation Improvement Program; and (2) 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 the financial terms of a pass-through toll agreement with Camino Real Regional Mobility Authority. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.57 of its rules.

Note: The commission received comments from City of El Paso Mayor John Cook; Camino Real Regional Mobility Authority Chairman Harold Hahn; Greater El Paso Chamber of Commerce CEO Richard Dayoub; Representative Norma Chavez; and El Paso MPO Executive Director Roy Gilyard.

ITEM 13. TOLL ROAD PROJECTS

a. El Paso County – Designate tolled managed lanes on Loop 375 (Cesar Chavez Border Highway), from US 54 to Zaragoza Road in El Paso County, as a toll project on the state highway system (MO)

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

111962
TTA

The Texas Department of Transportation received final environmental clearance from the Federal Highway Administration in September 2009 for the proposed

improvements to Loop 375 (Cesar Chavez Border Highway), from US 54 to Zaragoza Road in El Paso County. This segment of Loop 375 will continue as a controlled-access facility and will consist of four general-purpose lanes reconstructed in each direction and two new tolled managed lanes in each direction.

Transportation Code, §228.051 provides that the Texas Transportation Commission (commission), by order, may designate one or more lanes of a segment of the state highway system as a toll project or system.

IT IS THEREFORE ORDERED by the commission that the tolled managed lanes on Loop 375 from US 54 to Zaragoza Road are designated as a toll project on the state highway system.

Note: The commission received comments from City of El Paso Mayor John Cook; and Greater El Paso Chamber of Commerce CEO Richard Dayoub.

ITEM 16. TRANSPORTATION PLANNING

c. El Paso County – Consider amending Minute Order 111662, passed January 29, 2009, to authorize additional funding for preliminary work by the Camino Real Regional Mobility Authority (CRRMA) to develop plans, studies, and cost estimates for three Loop 375 projects under the existing project development agreement (MO)

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

111963
TTA

The Texas Transportation Commission (commission) by Minute Order 111662, dated January 29, 2009, approved execution of a project development agreement (Agreement) with the Camino Real Regional Mobility Authority (CRRMA) to perform preliminary development work on three projects to be located on Loop 375 in the City of El Paso, and authorized funding in the total amount of \$2.2 million.

On May 28, 2009, the commission by Minute Order 111819 authorized the executive director to execute an amendment to the Agreement with CRRMA to increase the scope of work for one of the three original projects by adding development of documents necessary for procurement of a design/build provider for the design and construction of the I-10 at Loop 375 (Americas Interchange) project which includes four additional direct connectors to/from I-10 to/from Loop 375. No additional funding was provided for the increased scope of work.

It is now necessary to authorize additional funding in order for the CRRMA to complete the original scope of work under the Agreement, as amended. The Texas Department of Transportation (department) proposes that the Agreement be further amended to authorize the expenditure of an additional \$971,900.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to execute a second amendment to the Agreement with Camino Real Regional Mobility Authority to increase funding for the Agreement by the total amount of \$971,900, and to include such other terms the department determines are necessary.

Note: The commission received comments from City of El Paso Mayor John Cook; and Greater El Paso Chamber of Commerce Richard Dayoub.

ITEM 14. STATE INFRASTRUCTURE BANK

Preliminary Approval

a. El Paso County – City of El Paso – Consider granting preliminary 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 Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland.

111964
FIN

The City of El Paso (city) submitted an application for \$6,356,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intends to use the financial assistance to pay for improvements to the Paso Del Norte International Bridge, an international port of entry in El Paso (project).

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the revised project.

Based on department review and analysis of the revised application, the commission makes the following findings: 1) the city has offered its bridge toll revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2002-2004 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the revised project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of El Paso meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$6,356,00 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

Note: The commission received comments from City of El Paso Mayor John Cook; and Greater El Paso Chamber of Commerce Richard Dayoub.

b. El Paso County – Camino Real Regional Mobility Authority (CRRMA) –Consider granting preliminary approval of an application from the CRRMA to borrow \$35 million from the State Infrastructure Bank for the development of 1) a portion of the I-10/Loop 375 (Americas) interchange, which includes four direct connectors, 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 Finance Division Director Brian Ragland.

111965
FIN

The Camino Real Regional Mobility Authority (CRRMA) submitted an application for \$35 million in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the CRRMA of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The CRRMA intends to use the financial assistance to pay for a portion of the total cost for developing and constructing four direct connectors on I-10 at Loop 375 along with other interchange improvements (Americas Interchange Project) and aesthetic improvements along the I-10 Corridor (Aesthetic Project), collectively known as the “Projects”.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the Projects.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the CRRMA has offered Transportation Reinvestment Zone revenues as security to assure likely repayment of the financial assistance; 2) the Projects are consistent with the Statewide Transportation Plan; 3) the Projects are listed in the Statewide Transportation Improvement Program and are consistent with the State Implementation Plan; 4) the Projects will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the Camino Real Regional Mobility Authority meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$35 million from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

IT IS FURTHER ORDERED that this commission approval is contingent upon further actions, specifically formal assignment by the City of El Paso of transportation reinvestment zone generated revenues to the CRRMA, and submission of a financial assessment that demonstrates bonding capacity of the transportation reinvestment zone sufficient to secure the loan.

Note: The commission received comments from City of El Paso Mayor John Cook; and Greater El Paso Chamber of Commerce Richard Dayoub.

ITEM 3. AVIATION**Various Counties – Award federal grant funding for airport improvement projects at various locations (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Aviation Division Director Dave Fulton.

111966
AVN

The Texas Department of Transportation (department) is authorized, under the federal Aviation Development Act, to award federal funding for capital improvement projects and to assist in the development and establishment of airports in the state of Texas.

The airport listed in Exhibit A is currently in need of improvements to preserve the airport or to meet standards. The department recommends the award of federal grant funds for the improvements.

On Thursday, August 20, 2009, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the project described in Exhibit A at an estimated cost of \$7.6 million.

Note: Exhibit A on file with minute order clerk.

ITEM 4. PUBLIC TRANSPORTATION**Ector and Midland Counties – Award transportation development credits to the City of Odessa for the construction of a transit facility (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason.

111967
PTN

The Texas Transportation Commission (commission) desires to award 570,278 in Transportation Development Credits (TDC) to the City of Odessa, to be used as the local match for a federal funding award for a transit facility construction project.

The commission recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission.

On December 14, 2006, the commission passed Minute Order 110771, expressing its intent to award TDC for projects that promote public transportation, fleet replacement, fleet expansion, maintenance facilities and capital projects that support regional coordination and further the goals of the Texas Department of Transportation (department), which are: reduce congestion; expand economic opportunity; enhance safety; improve air quality; and increase the value of transportation assets.

The commission finds that investments in public transportation projects reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access; enhance safety by reducing mechanical breakdowns; improve air quality by reducing emissions with technological advances in the bus industry; and increase the value of the transportation assets by investing into the construction of a transit facility, thus yielding savings or efficiencies which can be reinvested into additional trips.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the department.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the award to the City of Odessa and enter into the necessary contract in accordance with the priorities established in this minute order.

Note: The commission received comments from EZ Rider General Manager Edward Esparza.

ITEM 5. AUDIT PLAN

Approve the Audit Plan for Fiscal Year 2010 and determine whether adequate resources have been dedicated to the internal audit program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Audit Office Director Owen Whitworth.

111968
AUD

The Texas Internal Auditing Act, Government Code, Chapter 2102, requires the internal auditor to create an annual audit plan that is prepared using risk assessment techniques and that identifies the individual audits to be conducted during the year. The audit plan must be approved by the state agency's governing board. In addition, the governing board must periodically review the resources dedicated to the internal audit program and determine if adequate resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.

The Audit Office developed an Audit Plan for Fiscal Year (FY) 2010, which is set forth in Exhibit A. This audit plan was prepared by completing a risk assessment of the department's functions; obtaining input from the district engineers, division directors, office directors and regional support center directors; discussing potential audit areas with members of the department's administration; and seeking input from the Audit Subcommittee. This audit plan identifies the audits to be conducted and the resources available to the Audit Office for FY 2010. The Audit Office considers its resources for FY 2010 to be adequate to address the risks that warrant audit coverage.

The Audit Plan for FY 2010 is being presented to the Texas Transportation Commission (commission) for approval and a determination that adequate resources exist to ensure that the risks identified are adequately covered.

IT IS THEREFORE ORDERED by the commission that the Audit Plan for FY 2010, as shown in Exhibit A, is hereby approved.

FURTHER, the commission finds that adequate resources have been dedicated to the internal audit program in order to ensure that the risks identified in the annual risk assessment are covered within a reasonable time frame.

Note: Exhibit A on file with minute order clerk.

ITEM 6. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Discussion of the status of ARRA project delivery; approve substitute mobility projects to be funded from Texas' portion of the ARRA in the event that previously approved projects cannot meet program deadlines (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.

111969
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 prosecution of projects. States must have 100 percent of the funds obligated within one year of receiving the apportionment from FHWA or the remaining funds will be redistributed to other states. The department received the Notice of Apportionment from FHWA on March 2, 2009. States 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. In Minute Order 111920, dated August 27, 2009, the commission approved a list of additional mobility projects to address construction cost underruns.

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.

The department has identified previously approved mobility projects that may be at project development risk in terms of federal obligation deadlines established by the ARRA. The department has developed a proposed list of substitute mobility projects, prioritized by region, which is set forth in Exhibit A. The department recommends that these projects be funded, in priority order, only in the event that any previously approved mobility projects cannot meet ARRA deadlines.

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

IT IS THEREFORE ORDERED by the commission that the mobility projects set forth in Exhibit A are hereby approved for funding under the provisions of the ARRA only in the event that any previously approved mobility projects cannot meet ARRA deadlines. Projects will be selected in the order set forth in the exhibit.

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 and to enter into any necessary agreements associated with these projects and activities.

IT IS FURTHER ORDERED that the department shall track the progress of the transportation 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.

Note: The commission received comments from Central Texas Regional Mobility Authority Executive Director Mike Heiligenstein.

ITEM 7. STRATEGIC PLAN

Adoption of Draft 2011-2015 Strategic Plan Vision, Mission, Values, Goals, and Focus Area Statements (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Strategic Policy and Performance Management Office Director Mary Meyland:

111970
SPP

Texas Government Code, Chapter 2056, requires that each state agency prepare a five-year strategic plan every biennium.

The Texas Department of Transportation (department) has developed a set of draft strategic direction statements (Exhibit A), including the proposed vision, mission, values, goals, and focus areas, for the department for the 2001-2015 planning horizon.

This set of draft strategic planning statements represents the collective work of the Texas Transportation Commission (commission), the department, and select external stakeholders to focus the department's efforts over the next five years in fulfilling its mission. The commission conducted two workshops in August and September to provide input to the draft strategic plan statements. The department held a series of five internal regional strategic planning workshops, facilitated regional public focus groups, and conducted a public online poll on the department's strategic direction.

The department plans to present these draft statements to the public through a series of local meetings and open houses across the state. The department will collect public input on these draft statements and incorporate those comments, as appropriate, in the final strategic plan document.

The department will also use these draft statements as the foundation of the draft Strategic Plan document, to include appropriate performance measures and five year targets.

IT IS THEREFORE ORDERED by the commission that the document as shown in Exhibit A is adopted as the draft vision, mission, values, goals, and focus areas for the department's 2011-2015 Strategic Plan; and the commission directs the Executive Director or his designee to proceed with the collection of public comments on the document and appropriate incorporation of public comments in the final draft Strategic Plan.

IT IS FURTHER ORDERED, that the commission directs the executive director or his designee to establish an internal Strategic Planning Workgroup to draft a final Strategic Plan document, including the development of proposed strategies, targets, and performance measures, and present that draft to the commission for adoption at a later date.

Note: Exhibit A on file with minute order clerk.

ITEM 8. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption

(1) Chapter 17 – Vehicle Titles and Registration (MO)

Amendments to §17.21, Definitions, and §17.23, Temporary Registration Permits (Motor Vehicle Registration)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Vehicle Titles and Registration Division Director Rebecca Davio:

111971
VTR

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §17.21, Definitions, and §17.23, Temporary Registration Permits, 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 §17.21 and §17.23 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.

(2) Chapter 25 – Traffic Operations (MO)

Amendments to §25.977, Reporting by Investigating Officers (Crash Records Information System)

This item was deferred.

Note: The commission received comments from Insurance Council of Texas Spokesman Mark Hanna; Texas Department of Public Safety Assistant Director of Highway Patrol David Baker; Austin Attorney Javier Guajardo.

b. Proposed Adoption

(to be published in the *Texas Register* for public comment)

(1) Chapter 2 – Environmental Affairs (MO)

Repeal of §2.22, Memorandum of Understanding with Texas Parks and Wildlife Department (Memoranda of Understanding with Natural Resource Agencies); and New Subchapter E, Memorandum of Understanding with Texas Parks and Wildlife Department, §2.101, Purpose, §2.102, Texas Natural Diversity Database, §2.103, Applicability of MOU, §2.104, Definitions, §2.105, Coordination with TPWD Concerning Transportation Project, §2.106, Standard Coordination Procedure, §2.107, Coordination During Early Project Development, §2.108, Review and Comment on Maintenance Programs, §2.109, Mitigation and Mitigation Payments to TPWD, §2.110, Agreement for Calculating Mitigation Payments for Unregulated Resources, §2.111, TxDOT and TPWD Commitment to Enter into Other Agreements, §2.112, Review of Performance; Updates of MOU

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Environmental Division Director Dianna Noble:

111972
ENV

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §2.22 and new 43 TAC Chapter 2, Subchapter E, §§2.101-2.112 all relating to memorandum of understanding with Texas Parks and Wildlife Department to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the repeal of §2.22 and new §§2.101-2.112 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 through C on file with minute order clerk.

(2) Chapter 9 – Contract Management (MO)

Amendments to §9.3, Protest of Department Purchases under the State Purchasing and General Services Act (General)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by General Services Division Director of Purchasing Glen Hagler:

111973
GSD

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.3 relating to Protest of Department Purchases under the State Purchasing and General Services Act 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 §9.3 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.

(3) Chapter 9 – Contract Management (MO)

Amendments to §9.51, Definitions, §9.54, Historically Underutilized Business (HUB) Program and §9.55, Small Business Enterprise (SBE) Program (Business Opportunity Programs)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Maintenance Division Director Toribio Garza:

111974
MNT

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.51, Definitions, and §9.54, Historically Underutilized Business (HUB)

Program, relating to business opportunity programs 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 §9.51 and §9.54 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 9. RULEMAKING ADVISORY COMMITTEE

Create a rulemaking advisory committee to advise the department on the development of rules for a program to make loans from the State Infrastructure Bank using the proceeds of bonds issued under Transportation Code, §222.004 (Proposition 12 bonds), and designate entities authorized to appoint members of the committee (MO)

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

111975
CFO

House Bill 1, 81st Legislature, First Called Session, 2009, enacted Transportation Code, §222.004, the enabling legislation for general obligation bonds, notes, and other public securities that may be issued by the Texas Transportation Commission (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 provide that \$1 billion in Proposition 12 bond proceeds shall be used to capitalize the State Infrastructure Bank (SIB) for the purpose of making loans to public entities.

Pursuant to Transportation Code, §222.077(d), the commission has adopted rules specifying the procedures and conditions by which an eligible entity may apply for and obtain financial assistance from the SIB in Title 43, Texas Administrative Code, Chapter 6 (SIB rules). The commission will be proposing amendments to the SIB rules to prescribe the procedures and conditions by which public entities may apply for and obtain loans of Proposition 12 bond proceeds from the SIB.

Under Government Code §2001.031 and 43 Texas Administrative Code §1.85, the commission may appoint a rulemaking advisory committee to advise the department and the commission with respect to contemplated rulemaking.

IT IS THEREFORE ORDERED by the commission that the State Infrastructure Bank Rulemaking Advisory Committee (committee) composed of seven members shall be created, and will continue until final adoption of SIB rule amendments by the commission.

IT IS FURTHER ORDERED that the executive director or designee is directed to designate an office or division of the department to be responsible for development of the rules and providing any necessary administrative support essential to the functions of the committee.

IT IS FURTHER ORDERED that the committee shall report its advice and recommendations to the Chief Financial Officer and Finance Division of the department.

IT IS FURTHER ORDERED that the entities identified in the attached Exhibit A are authorized to appoint members of the State Infrastructure Bank Rulemaking Advisory Committee.

Note: Exhibit A on file with minute order clerk.

ITEM 10. REVENUE BONDS

Approve revisions to funding allocations for previously approved projects and activities and approve 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 Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton:

111976
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, March 26, 2009, and July 30, 2009, the commission adopted Minute Orders 111550, 111680, 111751, and 111890 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.

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 Williamson County Judge Dan Gattis; and Williamson County Commissioner Lisa Birkman.

ITEM 11. PASS-THROUGH TOLL PROGRAM

Select pass-through toll proposals submitted under the February 26, 2009 pass-through toll program call in accordance with Minute Order 111710 and authorize the executive director or designee to negotiate the financial terms of a potential pass-through toll agreement with the selected public entity proposers (MO)

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

111977
AEO

Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

On January 29, 2009 by Minute Order 111669 the Texas Transportation Commission (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 program under Section 222.104(b), Transportation Code.

Section 5.54 of the rules provides that if the commission determines that funds available for use in the program are limited, it may periodically limit the periods of time during which the department will accept proposals for pass-through toll projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement (agreement).

On February 26, 2009 by Minute Order 111710 the commission approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call). The commission further determined that (i) monies available that can be allocated among all proposals selected under the program call will be limited to an estimated total of \$300 million in Category 12 funds, and (ii) only the following category of project costs will be considered as eligible for reimbursement under the program call: construction cost, exclusive of construction engineering cost, and in the case of a pass-through toll project submitted as a design-build project, the construction cost, exclusive of construction engineering costs must be broken out separately as one component of the total project cost. The cost categories of design, development (including environmental clearance, right of way acquisition, utility adjustment), financing, maintenance, and operation are specifically excluded.

Pursuant to Minute Order 111710 and §5.54 of the rules, the department published in the Texas Register a notice designating a 60-day period commencing on March 13, 2009 for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was May 12, 2009. Department staff evaluated the public entity proposals that were timely submitted under the program call using the items of consideration set forth in set forth §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission. No private entity pass-through toll proposals were received in this program call.

After considering the factors described by §5.55 of the rules and the criteria set forth in Minute Order 111710, it is determined that the pass-through toll proposals set forth in Exhibit A represent the best value to the state for a total of approximately \$300 million in authorized funds.

Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the proposals: (1) must be included in the department's UTP, thereby identifying committed funding for the project; (2) prior to construction, 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 by the commission that the pass-through toll proposals submitted under the current pass-through toll program call and set forth in Exhibit A are hereby selected as providing the best value to the state.

IT IS FURTHER ORDERED that the executive director or designee is authorized to negotiate the financial terms of potential pass-through toll agreements for each of the selected pass-through toll proposals from public entities as set forth in Exhibit A. If negotiations are successful, the executive director shall submit to the commission a summary of the final terms of each agreement so that the commission may consider final approval of the agreement under §5.57 of its rules. If the financial terms of a pass-through toll agreement for one or more of the selected pass-through toll proposals set forth in Exhibit A cannot be successfully negotiated with the proposer(s) by October 23, 2009, the unsuccessful proposal or proposals will be rejected and the commission may, in accordance with §5.55 of the rules and the criteria set forth in Minute Order 111710, consider selection of additional proposals that were timely submitted under the program call.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Fort Bend County Commissioner Andy Meyers; and Fulshear Planning Commission Chair Thomas Kuykendall.

ITEM 13. TOLL ROAD PROJECTS (continued)

b. Travis County – Establish the toll rates on new ramps on SH 130 located approximately two miles north of US 290 at Cameron Road that will serve the Bird’s Nest Airport (MO)

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

111978
TTA

Title 43, Texas Administrative Code, §27.82(d) provides that the Texas Transportation Commission (commission) will establish toll rates for the use of a toll project on the state highway system. In setting toll rates, the commission considers: (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report; and (2) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

SH 130 is a four-lane controlled-access toll road extending 49 miles from I-35 north of Georgetown to US 183 south of the Austin-Bergstrom Airport, and is an element of the Central Texas Turnpike System 2002 Project. The Texas Department of Transportation (department) plans to construct a new ramp pair located approximately two miles north of US 290 that will serve the regional airport known as Bird’s Nest Airport as well as local traffic on Cameron Road. This ramp pair will be an all-electronic, open-road toll facility that will collect tolls through the TxTag system or pay-by-mail.

The department has changed the toll facilities that were part of the turnpike plans included in the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast, dated as of July 22, 2002, to provide for the new ramp pair. The results of the toll rate analysis for the new ramp pair provides toll rates at each tolling point as set forth in Exhibit A.

In accordance with Section 501 of the Indenture of Trust for the Central Texas Turnpike System 2002 Project, the Traffic Consultant has provided a certification that the adoption of the proposed changes in the toll rates for the 2002 Project, as well as any changes in the design of overall traffic patterns and turnpike plans from that included in the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast dated as of July 22, 2002, will not adversely affect the ability of the commission to comply with its rate covenants in Section 501 of the Indenture.

Under Section 17(r) of the TIFIA Master Secured Loan Agreement for the 2002 Project, the commission may not amend or supplement the Central Texas Turnpike System 2002 Project Traffic and Revenue Forecast without the prior written consent of the U.S. Department of Transportation.

IT IS THEREFORE ORDERED by the commission that, subject to the approval of the U.S. Department of Transportation, the department is authorized to charge tolls on the new ramp pair at Cameron Road in the amounts stated in Exhibit A.

Note: Exhibit A on file with minute order clerk.

c. Travis and Williamson Counties – Accept the Report of Actual Traffic and Revenue for the Central Texas Turnpike System (CTTS) as of August 31, 2009 (MO)

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

111979
TTA

Transportation Code, Chapter 228 and other applicable law authorizes the Texas Transportation Commission (commission) to issue toll revenue bonds, bond anticipation notes, and other obligations to finance turnpike projects on the state highway system, and to enter into trust agreements and indentures of trust governing matters relating to the issuance of such obligations.

The commission has previously issued \$2,199,993,781.80 in obligations to finance a portion of the costs of the Central Texas Turnpike System (System), a turnpike project composed initially of the SH 130, SH 45, and Loop 1 project elements (2002 Project), pursuant to an Indenture of Trust and four supplemental indentures. The Indenture of Trust dated July 15, 2002 (Indenture), prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Section 501(c) of the Indenture covenants that for the first five full years of operation of the 2002 Project, the commission will provide to the Trustee a report showing the traffic and revenue of the system for the previous quarter.

Pursuant to Minute Order 111081, dated September 27, 2007, the 2002 Project was declared Substantially Complete as defined within the Indenture.

A report of actual traffic and revenue for the required period, attached as Exhibit A, has been prepared in accordance with Section 501(c) of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the report of actual traffic and revenue attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

d. Various Counties – Authorize the North Texas Tollway Authority (NTTA) to make improvements to the state highway system in connection with the proposed construction of improvements to SH 360 from Green Oaks Boulevard to US 287 and to SH 170 from SH 114 to I-35W, by conducting advance planning and environmental work, including public involvement activities and the development of toll feasibility studies, schematics, and environmental documents, and authorize the executive director to enter into project agreements with the NTTA (MO)

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

111980
TTA

The Texas Department of Transportation (department) and the North Texas Tollway Authority (NTTA) have been proceeding with project activities associated with the proposed construction of improvements to SH 360 from Green Oaks Boulevard to US 287 and to SH 170 from SH 114 to I-35W.

Transportation Code, §201.113(a) authorizes the Texas Transportation Commission (commission) to enter into an agreement with a regional tollway authority under which the regional tollway authority makes improvements to the state highway system. The commission's rules at Title 43, Texas Administrative Code, §27.44 prescribe requirements for commission approval of a regional tollway authority's request to make improvements to the state highway system.

The NTTA has submitted a request to allow the NTTA to perform work constituting improvements to a segment of the state highway system in connection with the proposed construction of improvements to SH 360 and SH 170, by conducting advance planning and environmental work, including public involvement activities and the development of toll feasibility studies, and the preparation of schematics and environmental documents. The NTTA has committed to comply with applicable federal, state, and department requirements in performing such work.

The commission finds that the NTTA is fully capable of awarding and managing a construction contract for the improvement of the state highway system in a cost effective and timely manner, consistent with applicable federal and state laws and regulations, and finds that the NTTA's improvement of the state highway system will provide for the expeditious completion of critically needed projects within the SH 360 and SH 170 corridors that will relieve traffic congestion on the existing state highway system and improve mobility in Tarrant, Denton, Johnson, and Ellis counties.

IT IS THEREFORE ORDERED by the commission that pursuant to Transportation Code, §201.113 and 43 TAC §27.44, the NTTA is authorized to perform work associated with the proposed construction of improvements to SH 360 from Green Oaks Boulevard to US 287 and to SH 170 from SH 114 to I-35W, and the executive director is authorized to enter into project agreements with the NTTA that provides for such improvements to the state highway system.

ITEM 15. GREEN RIBBON PROGRAM

Approve the allocation of funds for the Green Ribbon Program, an initiative to enhance the appearance of public highways (MO)

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

111981
AEO

Rider 20 in the Texas Department of Transportation's (department) bill pattern in Article VII of the General Appropriations Act for the 2010-2011 biennium directs the department to expand the Green Ribbon Project, a public-private partnership initiative to enhance the appearance of public highways, to other areas of the state.

The rider mandates that each time a highway improvement contract is let in an air-quality nonattainment or near-nonattainment area, the department shall allocate to the district or districts in which the project is located an amount equal to not less than one-half-of-one percent and not to exceed one percent of the amount to be spent under the contract for construction, maintenance, or improvement of the highway. The district shall spend not less than one half of the allocation for landscaping and other enhancements included in the Green Ribbon program as improvements associated with the project that was the subject of the contract. The district may spend the allocated money that is not used for landscaping improvements associated with the project that was the subject of the contract for landscaping improvements associated with another highway or highway segment located in the district.

For purposes of this rider, landscape improvements means planting of indigenous or adapted trees and other plants that are suitable for the climate in which they will be located, and preparing the soil and installing irrigation systems to promote the growth of the trees and plants. To the extent possible, trees and plants will be used that tend to help mitigate the effects of air pollution.

The proposed allocation of funds to the department's affected districts is shown in Exhibit A.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the allocation of funds set forth in Exhibit A is hereby approved and the executive director is authorized to proceed in the most feasible and economical manner with the implementation of FY 2010 Green Ribbon Landscape Improvement Program.

Note: Exhibit A on file with minute order clerk.

ITEM 16. TRANSPORTATION PLANNING

a. Adopt the FY 2010 12-month letting schedule for highway maintenance and construction contracts, including dollar amounts allocated to each district and certain statewide programs (MO)

This item was deferred.

b. Cameron County – A Amend the 2007 UTP to transfer authorization of \$13 million Category 6, Railroad Grade Separation Funds, from projects located at FM 3248, FM 802, and US 281 to the Brownsville West Railroad Relocation Project, and supplement and amend requirements established in Minute Order 110690 concerning the Brownsville West Railroad Relocation Project (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:

111982
FIN

CAMERON COUNTY (county) has proposed the Brownsville West Rail Relocation Project to relocate a rail line that runs through downtown Brownsville, moving the line to a less densely populated location.

The commission by Minute Order (MO) 110690 authorized the executive director to approve the expenditure of up to \$13 million for the rail relocation project, and to cancel existing approvals for three rail grade separation projects on the existing rail line in downtown Brownsville. The order was contingent on the county accepting the terms of the order, and then the county completing three matters described in the order. The county accepted the terms of the order on February 13, 2007, and so according to the terms of the order the county is required to complete the three matters by February 13, 2010.

The rail relocation project would eliminate the need for three previously-approved projects for rail grade separations at FM 3248, FM 802, and US 281, which were authorized in MO 110479.

The Cameron County Regional Mobility Authority (CCRMA) was formed since the passage of MO 110690 and has assumed the responsibilities to develop the West Parkway, a roadway project in Brownsville, Cameron County, using the rail right of way to be vacated upon completion of the Brownsville West Rail Relocation Project.

IT IS THEREFORE ORDERED by the commission that the deadline in MO 110690 is changed to correspond with the deadline in this order; the county must deliver the agreements and provide the notification required under MO 110690 by March 1, 2010, or MO 110690 and this order will be automatically cancelled.

IT IS FURTHER ORDERED by the commission that the 2007 UTP be amended to authorize the additional project selection of the Brownsville West Railroad Relocation Project, for up to \$13 million in Category 6, Federal Railroad Grade Separation Program, but shall not be authorized for letting until the agreements and notifications required by MO 110690 have been delivered to the department.

IT IS FURTHER ORDERED by the commission that the 2007 UTP Category 6, Federal Railroad Grade Separation Program projects at FM 3248, FM 802 and US 281 are cancelled.

ITEM 17. OPTION TO PURCHASE

Denton County – Authorize the negotiation of options to purchase for the advance acquisition of right of way for highway expansion along I-35 from the south end of Garden Ridge Blvd. to the north end of Lake Lewisville bridge, and from the north end of Lake Lewisville bridge to FM 2181 south in Corinth (MO)

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:

111983
ROW

In DENTON COUNTY, a project has been proposed to improve INTERSTATE 35 from the south end of Garden Ridge Blvd. to the north end of Lake Lewisville bridge, and from the north end of Lake Lewisville bridge to FM 2181 south in Corinth, approximately 3.9 miles.

The Texas Transportation Commission (commission) finds that use of options to acquire property in connection with the I-35 project may reduce the time required for acquisition of right of way and can be economically beneficial to the state by either establishing the purchase price at current market value as of the date of the option contract or establishing a methodology for determining a purchase price at the time the option is exercised without the necessity for condemnation, and/or agreeing to restrictions on the owner's future development and improvement of the property. Successful negotiation of options for this project will help preserve the transportation corridor and benefit both the public and land owners along the proposed route.

Although construction of the project is not yet authorized, preserving the transportation corridor for completion of the I-35 project is essential and urgent, as there is significant risk of impending commercial, industrial and residential development.

Transportation Code, §201.103 authorizes the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads as well as toll projects. Transportation Code, §§203.051 and 203.052 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway or toll project, including property necessary or convenient to protect a state highway or toll project or to accomplish any other purpose related to the project location, construction, improvement, maintenance, beautification, preservation, or operation.

Transportation Code, §202.112 authorizes the commission to purchase an option to acquire property for possible use in, or in connection with, a transportation facility before a final decision has been made as to whether the transportation facility will be located on that property.

IT IS THEREFORE ORDERED by the commission that the Dallas district engineer is authorized to negotiate with property owners along the proposed reconstruction of I-35 and execute option contracts for the purchase of property of a size and in a location as is reasonably related to the possible future design and alignment of such transportation facility, to expend funds for option fee payments, surveys, title examinations, appraisals and other expenses reasonably necessary to purchase the options, and to exercise the options and expend funds for acquisition of the properties.

ITEM 18. OBLIGATION LIMIT REPORT

Status report on the FY 2010 Obligation Limit and report on the actual September 2009 and proposed October 2009 highway maintenance and construction contract letting.

This item was presented by Chief Financial Officer James Bass.

ITEM 19. CONTRACTS**a. Award or Reject Highway Improvement Contracts**

(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)

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

111984
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 September 9 and 10, 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 Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order as recommended by staff and presented by Construction Section Director Ken Barnett:

111985
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 September 9 & 10, 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.

b. Establish statewide annual participation goals for the Historically Underutilized Business Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Assistant Executive Director for Support Operations Edward Serna:

111986
ASO

The Historically Underutilized Business (HUB) Program was developed by the Texas Department of Transportation (department), under authority of Transportation Code, §201.702, and intended to be consistent where practicable with both Government Code, Chapter 2161, and the department's Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) programs.

Title 43, Texas Administrative Code, §9.54, requires the Texas Transportation Commission (commission) to establish annual goals for HUB participation in state and locally funded contracts (other than highway construction and maintenance contracts). The goals are set based on a percentage of the total costs of these contracts, the most current state disparity study described in Government Code §2162.002(c), and availability of HUBs. Accordingly, the current annual goals are as follows: 26.1 percent for building construction contracts; 57.2 percent for special trade contracts; 20 percent for professional services contracts; 33 percent for other service contracts and 12.6 percent for commodity purchases.

IT IS THEREFORE ORDERED that the HUB goals stated in this order are effective for Fiscal Year 2010.

c. Establish statewide annual participation goals for the Small Business Enterprise Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order as recommended by staff and presented by Assistant Executive Director for Support Operations Edward Serna:

111987
ASO

In accordance with Title 43, Texas Administrative Code, §9.55, the Texas Transportation Commission (commission) will establish a statewide annual Small Business Enterprise (SBE) goal. The Texas Department of Transportation (department), under its authority in Transportation Code, §201.702, to develop programs for disadvantaged businesses, chose to develop the Small Business Enterprise (SBE) Program to assist disadvantaged businesses in the specialized fields of highway construction and maintenance. The program is open to all small businesses that meet the required size limitation. The SBE Program was designed to mirror the Disadvantaged Business Enterprise (DBE) and Historically Underutilized Business (HUB) programs whenever practicable so that those members of the affected industry will not be confronted with different rules based on the funding source.

Pursuant to Title 43, Texas Administrative Code, §9.55, the commission, in a procedure similar to that required by the federal DBE Program and roughly equivalent to the HUB goal setting procedures, will establish annual SBE goals based on the availability of SBE firms. The annual goals represent SBE participation in contracts and purchases determined by a percentage of the total cost of highway construction and highway maintenance projects funded with state and local funds.

To determine the availability of SBEs, the department compared the small businesses certified as SBEs against the available contractors. This comparison indicated

that SBEs comprise 6.5 percent of all contractors. The percentage of ready, willing and able SBE participants was 4.8 percent. An assessment on last year's prime and sub contracts indicates that SBEs attained less a 4.2 percent participation. To further encourage the development of small businesses, the department adjusted the attainability of SBEs for an SBE goal of 4.5 percent which is an average of these two numbers. The methodology is attached as Exhibit A.

IT IS THEREFORE ORDERED that the SBE goal of 4.5 percent is effective for FY 2010.

Note: Exhibit A on file with minute order clerk.

ITEM 20. ROUTINE MINUTE ORDERS

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

a. Donations to the Department

(1) Houston District – Consider a cash donation from Gateway Medical Properties to reimburse the department for its expenses associated with the review and processing of the various documents required for the construction of the deceleration lane located at SH 288 from North MacGregor Way to Riverside Drive (MO)

111988
OCC

This minute order considers a cash donation of \$5,000 to the Texas Department of Transportation (department) from Gateway Medical Properties to reimburse the department for its expenses associated with the review and processing of the various documents required for the construction of the deceleration lane located at SH 288 from North MacGregor Way to Riverside Drive.

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 \$5,000 by Gateway Medical Properties is accepted. 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) Public Transportation Division – Consider a donation from the American Association of Retired People (AARP) for reimbursement of a department employee's travel expenses to participate at the AARP Conference being held in Washington, D.C. on October 13-14, 2009 (MO)

111989
OCC

This minute order considers a donation of \$952 from the American Association of Retired People (AARP) for a Texas Department of Transportation (department) employee's travel expenses to participate at the AARP Conference being held in Washington, D.C., on October 13-14, 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, personality, 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 will further 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.

IT IS THEREFORE ORDERED by the commission that the donation of \$952 from the AARP is accepted. 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.

(3) San Antonio District – Consider a donation from AT&T Texas to provide funding for the cost of the installation of false curb insets (MO)

111990
OCC

This minute order considers a donation to the Texas Department of Transportation (department) from AT&T Texas for approximately \$5,064.54 to fund the installation of false curb insets. The donation will be used for the installation of false curb insets over AT&T phone duct manholes that lay at the face of the proposed curb along FM 1535 in Bexar County.

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 acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for approximately \$5,064.54 from AT&T Texas is accepted. 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.

(4) Travel Information Division – Consider a donation from the City of San Augustine of a leasehold real property interest in the Camino Real de los Tejas Tourist Information Center Facility property (MO)

111991
OCC

This minute order considers a donation of approximately \$7,200 worth of real property interest from the City of San Augustine.

Acceptance of this donation will satisfy the requirements of Rider 24 in the Appropriations Bill of the 79th Legislature, Regular Session, 2005, allowing the Texas Department of Transportation (department) to operate the Camino Real de los Tejas Tourist Information Center Facility in the Lufkin District.

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 will further 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 approximately \$7,200 in a leasehold real property interest by the City of San Augustine is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(5) Waco District – Consider a donation from Texas Conference Association of Seventh-day Adventists of preliminary engineering services; complete plans, specifications, and estimates; and construction funds (MO)

111992
OCC

This minute order considers a donation to the Texas Department of Transportation (department) from the Texas Conference Association of Seventh-day Adventists for approximately \$395,500 worth of preliminary engineering services, complete plans, specifications, and estimates; and construction funds. The donation will be used to replace an existing corrugated metal pipe with a concrete box culvert cross drainage structure along FM 2841 in Bosque County.

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 for approximately \$395,500 from the Texas Conference Association of Seventh-day Adventists is accepted. 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)

111993
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
Bell	FM 437	5	0590-04-037	4
Bell	FM 437	6	0590-04-037	21
Brazos	FM 1179	11	1316-01-047	2
Burnet	US 281	1	0252-02-049	1
Burnet	US 281	17	0252-02-049	6
Burnet	US 281	16	0252-02-049	7
Cass	SH 77	8	0278-01-052	8
Cass	SH 77	7	0278-01-052	24
Collin	FM 545	12	1012-02-031	11
Comal	SH 46	10	0215-02-050	9
Denton	FM 423	4	1567-02-030	77
Denton	FM 423	2	1567-02-030	34
Denton	FM 423	18	1567-02-030	35
Denton	FM 423	9	1567-02-030	84
Robertson	SH 6	19	0049-06-070	43
Tarrant	SH 26	3	0363-01-123	100 & 100E
Travis	RM 2769	13	2718-01-011	8
Travis	RM 2769	14	2718-01-011	9
Zapata	US 83	15	0038-03-029	2

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
El Paso	IH 10	H	2121-04-078	15
El Paso	IH 10	A	2121-04-078	5
Guadalupe	SH 130	K	3583-02-002	802
Maverick	SL 480	G	0299-14-019	8

CONTROLLED ACCESS (continued)

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Montgomery	IH 45	I	0675-08-089	20 (leasehold interest)
Montgomery	IH 45	J	0675-08-089	129 (leasehold interest)
Montgomery	IH 45	D	0675-08-089	156B
Shelby	SL 500	F	3315-01-017	20
Shelby	SL 500	E	3315-01-017	8
Shelby	SL 500	C	3315-01-017	1
Shelby	SL 500	B	3315-01-017	2 & 2AC

Note: Exhibits 1 through 19 and A through K on file with minute order clerk.

c. Highway Designation

Hunt County – Redesignate multiple segments of state highways in and around the City of Commerce (MO)

111994
TPP

In HUNT COUNTY, local officials have requested the redesignation of multiple segments of state highways in and around the city of Commerce.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that four segments of state highways be redesignated. To facilitate the flow of traffic, promote public safety, and maintain the integrity of the state highway system, the State Highway 50 designation will be removed from a segment of the concurrently designated SH 24/SH 50 and redesignated as STATE HIGHWAY 24 from the intersection of SH 50 and SH 224 southward to Interstate 30; existing SH 11 from SH 24/SH 50 to SL 178 will be redesignated as BUSINESS STATE HIGHWAY 11-H; existing SH 24/SH 50 from SH 11 to SL 178 will be redesignated as STATE HIGHWAY 24/STATE HIGHWAY 11; and existing SL 178 from SH 24/SH 50 to SH 11 will be redesignated as STATE HIGHWAY 11/STATE LOOP 178. The locations and intersections of these state highway segments with existing designations are depicted in Exhibit A.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. A segment of the existing SH 24/SH 50 be redesignated as SH 24, starting from the intersection of SH 50 and SH 224, southward to I-30, a distance of approximately 12.24 miles.
2. A segment of the existing SH 11 be redesignated as Business SH 11-H, starting from the formerly designated SH 24/SH 50, southeastward to SL 178, a distance of approximately 2.7 miles.
3. A segment of the existing SH 24/SH 50 be redesignated as SH 24/SH 11, starting from SH 11, southward to SL 178, a distance of approximately 1.72 miles.
4. A segment of the existing SL 178 be redesignated as SH 11/SL 178, starting from the formerly designated SH 24/SH 50, eastward to the newly designated Business SH 11-H (formerly SH 11), a distance of approximately 1.65 miles.

d. Load Zones & Postings**Various Counties – Revise load restrictions on the state highway system:****(1) Roadways (MO)**111995
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 September 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)111996
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) Coryell County – US 190 from Lampasas/Coryell County line to east of Copperas Cove city limits – Consider the acceptance of a donation of land for a highway improvement project (2 MOs)

111997
ROW

In CORYELL COUNTY, on US 190 from the Lampasas/Coryell county line to east of the Copperas Cove city limit, 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.

Copperas Cove Economic Development Corporation (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$4,077, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or 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.

111998
ROW

In CORYELL COUNTY, on US 190 from the Lampasas/Coryell county line to east of the Copperas Cove city limit, 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.

Copperas Cove Economic Development Corporation (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$2,858, to the department for construction of a highway improvement project.

The owner is not subject to department regulations or oversight, or 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.

(2) Lubbock County – US 62/82 at Boston Avenue in Lubbock – Consider the sale of surplus right of way to the city (MO)

111999
ROW

In the city of Lubbock, LUBBOCK COUNTY, on US 62/82, the State of Texas acquired certain land for state highway purposes by instrument recorded in Volume 6729, Page 1, Real Property 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 a governmental entity with the authority of condemn the property.

The City of Lubbock is a governmental entity with the authority to condemn the property and has requested that the surplus land be sold to the city for \$354,150.

The commission finds \$354,150 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 the City of Lubbock, Texas, for \$354,150; 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.

(3) Reeves County – I-20, south side at Starley Drive in Pecos – Consider the sale of surplus access rights to the abutting landowner (MO)

112000
ROW

In REEVES COUNTY, on INTERSTATE 20, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 230, Pages 454 and 456, Deed Records of Reeves 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.

HKA Corporation, owner of a 15.54-acre tract of land conveyed by deed recorded in Book 786, Page 735, Official Public Records, Reeves County, Texas (HKA 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 HKA for \$54,390.

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 \$54,390.

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 HKA Corporation for a cash consideration of \$54,390.

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

Note: Exhibit A on file with minute order clerk.

(4) Rockwall County – FM 549 in Rockwall – Consider removal of a segment of highway from the state highway system and transfer of control, jurisdiction and maintenance to the city, redesignation of a segment of the highway and transfer and quitclaim of surplus right of way to the city (MO)

112001
ROW

In the city of Rockwall, ROCKWALL COUNTY, on FARM TO MARKET ROAD 549, the State of Texas acquired certain land and easements by instruments recorded in Volume 75, Page 383, and Volume 42, Pages 369, 320, 352, 316, 495, and 563, Deed Records of Rockwall County, Texas, and the state used certain land for highway purposes to which there is no record title.

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

Pursuant to Texas Transportation Code, §§201.103 and 221.001, and as shown in Exhibit B, the executive director has recommended that a segment of FM 549 be removed from the state highway system and transferred to the City of Rockwall (city) for control, jurisdiction and maintenance and that the segment of FM 549 from I-30 north to FM 522 be redesignated on the state highway system as FM 3549.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land to which the state holds title has been determined to be \$693,493, and the state's costs for maintenance and resurfacing the surplus land over the next 20 years is estimated to be \$1.11 million.

The city has requested that the surplus land be transferred to the city in consideration of the savings to the state of future maintenance costs, since the future maintenance costs exceed the value of the surplus land.

The commission finds \$693,493 to be a fair and reasonable value of the state's rights, title and interest in the surplus land and recommends that the state transfer the surplus land to the city.

IT IS THEREFORE ORDERED by the commission that:

1. A segment of FM 549 is removed from the state highway system and transferred to the city for control, jurisdiction and maintenance from I-30 southward to the intersection of SH 276, a distance of approximately 0.9 mile.
2. A segment of FM 549 is redesignated on the state highway system as FM 3549 from I-30 northward to the intersection of FM 552, a distance of approximately 3.47 miles.

FURTHER, 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 transferring all of the state's rights, title and interest in the surplus land in which the state holds title to the City of Rockwall, Texas, in consideration of the savings to the state of future maintenance costs, and quitclaiming the state's interest in the surplus land to which there is no record title to the City of Rockwall, Texas; 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.

f. Speed Zones

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

112002
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 speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

The department, in consultation with the Texas Commission on Environmental Quality, has also determined that the environmental speed limit on the segment of STATE HIGHWAY 249 established by Minute Order 109064, dated October 31, 2002, and listed in Exhibit D, is no longer necessary.

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 portions of minute orders establishing speed zones shown on the attached Exhibits C and D are canceled.

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

21. Executive Session Pursuant to Government Code, Chapter 551, **Section 551**
Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda

Note: The commission did not meet in executive session.

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.

The regular meeting of the Texas Transportation Commission adjourned at 11:52 a.m.

APPROVED:

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 September 24, 2009, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation