

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on July 29, 2010 in Austin, Texas. The meeting was called to order by Chair Delisi. The meeting opened at 9:09 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Deirdre Delisi	Chair
Ted Houghton	Commissioner
Ned Holmes	Commissioner
Fed Underwood	Commissioner
Bill Meadows	Commissioner

**Administrative Staff:**

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 4:11 p.m. on July 21, 2010, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**ITEM 1. Approval of Minutes of the June 23, 2010 workshop and June 24, 2010 regular meeting and July 2, 2010 special meeting of the Texas Transportation Commission**

Commissioner Houghton made a motion, which was seconded, and the commission approved the minutes of the June 23, 2010 workshop and June 24, 2010 regular meeting and July 2, 2010 special meeting of the Texas Transportation Commission by a 3-0 vote. (Commissioner Meadows and Commissioner Holmes recused themselves from the vote because they were absent from the June 23 and June 24 meetings).

**ITEM 2. RESOLUTION**

**Resolution to extend sympathy to the relatives of Tony C. Overhultz, an employee of the Atlanta District, who died while performing his duties with the Texas Department of Transportation**

This item was presented by Executive Director Amadeo Saenz. The commission received comments from Atlanta District Engineer Bob Ratcliff.

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

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton.

112336  
AVN

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

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. The department recommends the award of federal and state grant funds for the improvements.

On Thursday, June 17, 2010, 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 projects described in Exhibit A at an estimated cost of \$1,703,879.

Note: Exhibit A on file with minute order clerk.

**ITEM 4. PUBLIC TRANSPORTATION****Various Counties – Award federal funds and transportation development credits to urban and rural transit operators for the replacement of public transportation vehicles (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason:

112337  
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant programs in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

Project savings realized under previous awards by the commission have resulted in \$351,952 in unobligated funds.

The commission desires to award \$351,952 to the transit agencies listed in Exhibit A. Should further funds become available in this program as a result of project savings or deobligations, these funds may be available to the transit agencies also listed on the respective contingency list identified in Exhibit A.

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 awards as described in Exhibit A, submit the necessary state application amendments to the Federal Transit Administration and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

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

**a. Final Adoption**

**Chapter 15 – Transportation Planning and Programming (MO)**

**Amendments to §15.55, Construction Cost Participation (Federal, State, and Local Participation)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton:

112338  
AEO

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §15.55 relating to construction cost participation 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 §15.55 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.

**b. Proposed Adoption****(to be published in the Texas Register for public comment)****(1) Chapter 1 – Management (MO)****Repeal of §§1.21-1.33 and New §§1.21 - 1.38 (Procedures in Contested Cases)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Rich O’Connell:

112339  
OGC

The Texas Transportation Commission (commission) finds it necessary to propose repeal of §§1.21 - 1.33 and new §§1.21 - 1.38, all relating to procedures in contested cases 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 §§1.21 - 1.33 and new §§1.21 - 1.38 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 –Grant and Contract Management (MO)****Amendments to §9.30, Purpose, and §9.31 Definitions, Repeal of §9.32, Provider Services Policy, and Amendments to §9.33 Notice of Intent and Letter of Interest, §9.34, Short List Determination, §9.35, Short List Meeting, Proposals, and Evaluation, §9.36, Short List Interviews and Evaluation, §9.37, Selection, §9.38, Contract Management, §9.39, Selection and Contract Types, §9.41, Precertification, §9.42, Administrative Qualification, and §9.43, Precertification Requirements (Contracting for Architectural, Engineering, and Surveying Services)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5– 0. This item was presented by Design Consultant Contract Office Section Director Camille Thomason:

112340  
DES

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.30 and §9.31, the repeal of §9.32, and amendments to §§9.33-9.39 and §§9.41-9.43 all relating to Contracting for Architectural, Engineering, and Surveying Services to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.30 and §9.31, the repeal of §9.32, and amendments to §§9.33-9.39 and §§9.41-9.43 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 21 –Right of Way (MO)**

Repeal of Subchapter I, Regulation of Signs along Interstate and Primary Highways and Subchapter K, Control of Signs along Rural Roads; and New Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.141-21.202, New Subchapter J, Regulation of Electronic Signs, §§21.251-21.261, New Subchapter K, Control of Signs along Rural Roads, §§21.401-21.446, and New Subchapter Q, Regulation of Directional Signs §§21.941-21.947

This item was deferred.

**ITEM 6. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

Approve changes to the lists of mobility, preventive maintenance and rehabilitation, public transit, and transportation enhancement projects previously approved for funding from Texas' portion of the ARRA (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Deputy Executive Director for Engineering Operations John Barton:

112341  
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 approximately \$2.25 billion.

Texas' share of transit funds is estimated at \$372 million. The Texas Transportation Commission (commission) has been designated by the governor as the administering agency for the Federal Transit Administration (FTA) program under 49 USC §5311, and has the authority to award approximately \$50 million in nonurbanized (rural) transit funds.

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 identify and prioritize projects that potentially qualify for funding.

In Minute Order 111734, dated March 5, 2009, the 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, 111808, dated May 28, 2009, 112044, dated November 19, 2009, 112073, dated December 17, 2009, 112115, dated January 28, 2010, 112232, dated April 29, 2010, and 112276, dated May 27, 2010, the commission made revisions to the previously approved list of mobility projects. In Minute Order 111910, dated August 27, 2009, the commission approved a list of additional mobility projects to be funded to the extent funds become available as a result of letting underruns. In Minute Order 111969, dated September 24, 2009, the commission approved a list of substitute mobility projects to be funded in the event that any previously approved mobility projects were unable to meet ARRA deadlines.

In Minute Order 111716, dated February 26, 2009, the commission approved the funding of approximately \$33 million in public transit projects. In Minute Orders 111778, dated April 30, 2009, and 111920, dated August 27, 2009, the commission approved the funding of additional public transit projects. In Minute Order 112115, dated January 28, 2010, the commission approved a list of public transit projects with revised funding.

A revised list of mobility projects has been developed and is set forth in Exhibit A. An additional mobility project has been added due to continued letting underruns. No previously approved mobility projects are affected by the selection of this additional project.

The department has developed a proposed list of transit projects with revised funding, which is set forth in Exhibit B. These revisions reflect fleet awards, facilities awards, IT equipment awards and other capital awards. There is no net change in the total transit funding program. No other previously approved public transit projects are affected.

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

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

IT IS FURTHER ORDERED that Exhibit A in Minute Order 112276 is rescinded and replaced with Exhibit A to this minute order.

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 transit agreements for the activities described in Exhibit B, 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 projects set forth in Exhibits A and B separately from other ongoing projects and place information regarding the status of these projects on the department's website.

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

**ITEM 7. TRANSPORTATION ENHANCEMENT PROGRAM**

**Select transportation enhancement projects submitted under the October 9, 2009 program call (MO)**

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Deputy Executive Director for Engineering Operations John Barton:

112342  
AEO

Title 23, United States Code, § 133(d)(2), § 160(e)(2) and § 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires 10 percent of certain funds apportioned to a state pursuant to 23 U.S.C § 104(b)(3) be used for transportation enhancement activities.

Pursuant to 43 Texas Administrative Code (TAC) § 11.203, a call for nomination of candidate projects, opening October 9, 2009, and closing December 11, 2009, was published in the Texas Register on October 9, 2009.

Nominations were received by the Texas Department of Transportation (department) and were evaluated for eligibility and technical standards pursuant to 43 TAC §§ 11.200 through 11.205.

In selecting the projects shown in Exhibit A, the Texas Transportation Commission (commission) pursuant to 43 TAC § 11.204, considered:

- A) the list of all eligible candidate projects and evaluations provided by the Transportation Enhancement Project Evaluation Committee, and department staff, together with any comments or recommendations from the committee and staff;
- B) other issues relevant for consideration of any candidate project for funding, including:
  - i. policy matters;
  - ii. evidence of support and opposition for the candidate project;
  - iii. evidence of commitment of project nominators to provide more than the minimum required non-federal share of allowable project costs and their ability to do so;
  - iv. an evaluation of proposed projects indicating the extent to which each project will meet acceptable standards as established by applicable law and by accepted professional practices;
  - v. the views, comments, and/or certifications, if any, of a Metropolitan Planning Organization or a governing body of a city or county; and
  - vi. other project specific information as appropriate.
- C) the potential benefit to the state of the candidate project; and
- D) contribution of candidate projects to the safe, effective and efficient movement of people and goods.

IT IS THEREFORE ORDERED that, based upon the rationale that the projects shown in Exhibit A are eligible projects that contribute to the safe, effective and efficient movement of people and goods, have a benefit to the transportation system of the state and demonstrate other relevant factors, the executive director is hereby authorized to proceed in the most feasible and economical manner with any necessary agreements required for the development and construction of the projects shown in Exhibit A, with programming to be in Category 9 of the 2010 UTP at the amounts shown in Exhibit A.

IT IS, HOWEVER, UNDERSTOOD THAT:

1. Only the items and their associated cost determined eligible for Statewide Transportation Enhancement Program funds as identified by SAFETEA-LU and 23 TAC §§ 11.200 through 11.205 and verified by project development will be eligible for the Statewide Transportation Enhancement Program.
2. All administration, development, engineering and contingencies, design and construction costs incurred by the department will be charged to each respective project.
3. For each project shown in Exhibit A and verified as eligible for project development, the federal funds as shown in Exhibit A must be locally matched by a minimum of 20 percent.
4. Prior to authorizing any funds or the performance of any work for the projects selected by the commission, the projects must be added to the Transportation Improvement Plan by the appropriate metropolitan planning organizations and added to the State Transportation Improvement Plan (STIP) by the department.
5. If the project nominator withdraws support for an approved project, the federal funds committed by the commission for that project will revert to the program and the department may seek reimbursement of any expended federal funds.
6. Acquisition by the department of any land or interest in land or of property or property rights of any kind or character required for development of a transportation enhancement project by any entity shall be subject to the authority and limitations of Texas Transportation Code, Chapter 203, Subchapter D, consistent with the department's prescribed acquisition policies and procedures. Projects which will require the acquisition of property through the exercise of eminent domain are not eligible for participation in the program.
7. Whether proposed as an independent project or as an element of a larger transportation project, the candidate project must be limited to a logical unit of work and must be capable of being implemented and completed within a reasonable time, as determined by the department in consultation with the nominating entity. In the absence of information suggesting that a shorter or longer period is appropriate, three years or less from the date of inclusion in

the STIP will be presumed to be a reasonable time. The executive director may eliminate a project from the program upon a determination that federal funding may be lost due to the project not being implemented and completed within a reasonable amount of time; the nominating entity fails to satisfy the requirements of 43 TAC §§ 11.200 through 11.205; the implementation of the project would involve significant deviation from the activities as proposed in the nomination form; the nominating entity withdraws participation in the candidate project; or a local agreement is not executed within one year after the project is selected by the commission.

IT IS FURTHER ORDERED that prior to authorizing any funds or the performance of any work for projects selected, a local agreement, as defined in 43 TAC §11.201, must be executed between the department and the appropriate local entity. Should the local agreement fail to be executed within one year after the project is selected by the commission, the project will be rejected and the funding amount returned to the program. The commission may then select another project for funding from among those projects submitted in the October 2009 program call.

IT IS FURTHER ORDERED that, should additional funding become available, the commission may select additional eligible projects for funding from among those projects submitted in the October 2009 program call.

Note: The commission received comments from City of Temple Grant Manager Ashley Williams; City of Brownsville Director of Aviation Larry Brown; City of Brownsville David Houston; City of Brownsville Chris Houston; City of Houston Planning Department Assistant Director Michael Kramer; Houston-Galveston Region President Barry Goodman; Greater Houston Partnership Policy Advisor Deborah January-Bevers; Uptown District President John Breeding; Upper Kirby District Executive Director Jamie Brewster; Greater Southeast Management District Executive Director Jason McLemore; OST/Almeda Corridor Redevelopment Authority Theola Petteway; Hermann Park Conservancy Committee Member James Robertson; Hermann Park Conservancy Sanford Criner; Greater East End Management District Program Director Hedy Wolpa; Energy Corridor District General Manager Clark Martinson; Fort Bend County Commissioner Richard Morrison; Fort Bend County Commissioner Andy Meyers; and Greater Sharpstown Management District Principal Karen Rogers.

## **ITEM 8. TRAFFIC OPERATIONS**

### **Approve funding for the 2011 Highway Safety Plan (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Traffic Operations Division Director Carol Rawson:

112343  
TRF

The Texas Traffic Safety Act of 1967 (H.B. 353, 60<sup>th</sup> Legislature) and the United States Code, Title 23, Section 402, require a highway safety program designed to reduce traffic crashes and deaths, injuries and property damage.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) also appropriated various traffic safety incentive programs to the states.

The Texas Department of Transportation has, in compliance with these requirements, developed the FY 2011 Highway Safety Plan (HSP).

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the HSP is approved and the executive director is directed to enter into any necessary agreements and proceed in the most feasible and economical manner with program development at an estimated total cost of \$96,525,018.69 as shown in Exhibit A. The estimated cost for this program is contingent upon the appropriation of funds by the U.S. Congress and could increase or decrease from the requested amount.

IT IS FURTHER ORDERED that, should additional federal funds become available, the director of the Traffic Operations Division is authorized to approve an increase in the HSP up to 10 percent of the total approved budget and the executive director or the director's designee is authorized to approve an increase in the HSP up to 50 percent of the total approved budget, or to the extent of the additional federal funds.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 9. TRANSPORTATION PLANNING**

**a. All Counties – Award transportation development credits (TDCs) to provide the non-federal match of federal metropolitan planning funds and statewide planning and research funds (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Holmes was not present for the vote). This item was presented by Transportation Planning and Programming Division Director Jim Randall:

112344  
TPP

Title 23 U.S.C. §134 establishes a metropolitan planning program for each state. The 25 participating metropolitan planning organizations (MPOs) in Texas receive federal metropolitan planning funds to carry out the provisions of the metropolitan planning program. The federal funds must be matched by non-federal share funds.

Title 23 U.S.C. §505 reserves a portion of federal apportionments for activities related to statewide planning and research activities. The federal funds must be matched by non-federal share funds.

Title 23 U.S.C. §120(j), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59 (2005), permits a state to use certain toll revenue expenditures, called transportation development credits, as a credit toward the non-federal share of certain programs authorized by Title 23 U.S.C. and Chapter 53 of Title 49 U.S.C.

In the past, the Texas Department of Transportation (department) provided the non-federal share match for the metropolitan planning program allowing MPOs to receive federal funds without having to provide a local match. In addition, the department also

provided the non-federal share match for the Statewide Planning and Research (SPR) Work Program. Due to current financial constraints, the department desires to substitute the non-federal match with transportation development credits. It is estimated that \$5.6 million in transportation development credits is required to provide for the non-federal match of unexpended metropolitan planning program reimbursements and \$9.5 million in transportation development credits is required for the SPR Work Program through Fiscal Year 2011.

Title 43, Texas Administrative Code, §5.73 establishes a process by which transportation development credits may be awarded at the discretion of the Texas Transportation Commission (commission). In accordance with §5.73(b), the commission will consider the expressed opinion, if any, of MPOs regarding projects within their boundaries.

The commission finds that distribution of transportation development credits to provide for the non-federal share match of metropolitan planning and SPR funds serves to meet the department's needs after considering the potential of this award to expand the availability of funding for transportation projects, reduce congestion, expand economic opportunity, enhance safety, improve air quality, and increase the value of transportation assets.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to utilize transportation development credits in support of the metropolitan planning program and the SPR Work Program in an amount not to exceed \$15.1 million.

**b. Maverick County – Approve the transfer of Border colonias Access Program funds from a previously selected colonia project to another eligible colonia project (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Holmes was not present for the vote). This item was presented by Transportation Planning and Programming Division Director Jim Randall:

112345  
TPP

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

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

Title 43, Texas Administrative Code, §15.105(10), provides that a county may use unexpended funds from a project on any other commission-selected county colonia project. Maverick County (county) has requested approval to transfer \$198,000.00 of the non-competitive funds awarded to the county by Minute Order 111442 from the Hopedale Colonia project to the Fabrica Townsite Colonia project.

IT IS THEREFORE ORDERED by the commission that the county's request to transfer \$198,000 of the non-competitive funds awarded to the county by Minute Order 111442 from the Hopedale Colonia project to the Fabrica Townsite Colonia project is approved.

IT IS FURTHER ORDERED that the authorized balance for the Hopedale Colonia project is reduced to \$216,179.00 after the transfer to the Fabrica Townsite Colonia project.

#### **ITEM 10. REGIONAL MOBILITY AUTHORITY**

**a. El Paso County** – Authorize the Camino Real Regional Mobility Authority to make improvements to the state highway system in connection with a non-toll project to construct direct connectors to the Loop 375 intersection at FM 659, and authorize the executive director to enter into a project development agreement with the Camino Real Regional Mobility Authority (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 3 – 0 (Commissioner Holmes and Underwood were not present for the vote). This item was presented by Texas Turnpike Authority Division Director Mark Tomlinson:

112346  
TTA

In Minute Order 110573, dated June 29, 2006, the Texas Transportation Commission (commission) authorized the creation of the Camino Real Regional Mobility Authority (CRRMA), for the City of El Paso, Texas (city).

The Texas Department of Transportation (department) and the CRRMA, in coordination with the city and the El Paso Metropolitan Planning Organization (EPMPO), developed the 2008 Comprehensive Mobility Plan (plan) that provides for the funding and development of certain transportation system improvements within the jurisdictional limits of the CRRMA, including the addition of direct connectors at the intersection of Loop 375 at FM 659 from 0.61 miles northeast of Loop 375 on FM 659, to 0.63 miles south of FM 659 on Loop 375 (Loop 375 and FM 659 interchange project). The plan was approved by the EPMPO on July 25, 2008 and a Memorandum of Understanding to implement the plan was executed by the department, the city, the EPMPO, and the CRRMA.

Transportation Code, §370.033(f) authorizes a regional mobility authority to develop a project within its boundaries on behalf of the department. On July 16, 2010, the CRRMA submitted a request to allow the CRRMA to develop and construct direct connectors for the Loop 375 and FM 659 interchange project. The CRRMA is required to comply with applicable federal, state, and department requirements in making such improvements.

The CRRMA proposes to use revenue from a city transportation reinvestment zone to finance through a combination of bonds and loans, including a possible state infrastructure bank loan, a majority of the Loop 375 and FM 659 interchange project development and construction costs. The commission finds that monies are available under Category 2, Metropolitan Area (TMA) Corridor Projects, of the 2010 Unified Transportation Program, approved by Minute Order 112237, dated April 29, 2010, for partial funding of development and construction and possible pass-through toll financing on behalf of the CRRMA for a portion of the Loop 375 and FM 659 interchange project. This order recognizes that the CRRMA may apply for a related state infrastructure bank loan and pass-through toll financing, but does not constitute approval of those future applications.

The commission further finds that the CRRMA is fully capable of awarding and managing the 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 CRRMA's improvement of the state highway system will provide for the expeditious completion of a critically needed project within the Loop 375 and FM 659 corridors that will relieve traffic congestion on the existing state highway system and improve mobility in El Paso County.

IT IS THEREFORE ORDERED by the commission that pursuant to Transportation Code, §370.033(f), the Camino Real Regional Mobility Authority is authorized to develop and construct improvements to the state highway system in connection with the design and construction of the Loop 375 and FM 659 interchange project, and the executive director is authorized to enter into a project development agreement with the Camino Real Regional Mobility Authority that provides for such improvements to the state highway system.

**b. Travis and Hays Counties – Consider the preliminary approval of a request for financial assistance from the Central Texas Regional Mobility Authority to pay for certain costs relating to the development of the following projects: (1) Loop 1 Managed Lanes Project, from north of Parmer Lane to south of Lady Bird Lake, (2) the 290 East, Segments 1A, 2 & 3 Project, from east of US 183 to east of State Highway 130 (Manor Expressway), (3) the US 183 South Toll Project, from Springdale Road to Patton Avenue, (4) a project to improve US 290 West from Joe Tanner Lane to Circle Drive and US 71 West from US 290 West to Silvermine Drive (290 West/71 West Project), and (5) the SH 45 Southwest Toll Project, from Loop 1 South to FM 1626 (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Underwood was not present for the vote). This item was presented by Finance Division Director Brian Ragland:

112347  
FIN

The Texas Department of Transportation (department) and the Central Texas Regional Mobility Authority (CTRMA) developed a “CTRMA/TxDOT Regional Implementation Program” that provides for the funding and development of certain transportation system improvements within the jurisdictional limits of the CTRMA.

On October 8, 2007, the Capital Area Metropolitan Planning Organization (CAMPO) Transportation Policy Board approved amendments to CAMPO's 2030 Transportation Plan (Plan) and the FY 2008-FY 2011 Transportation Improvement Program (TIP), amending previous authorizations for the development of certain highway projects of the department that are located within the boundaries of CAMPO as toll projects.

These projects are included in Travis and Hays counties: (1) Loop 1 Managed Lanes Project, from north of Parmer Lane to south of Lady Bird Lake (Loop 1 Project), (2) the 290 East, Segments 1A, 2 & 3 Project, from east of US 183 to east of State Highway 130 (Manor Expressway), (3) the US 183 South Toll Project, from Springdale Road to Patton Avenue (183 South Project), (4) a project to improve US 290 West from Joe Tanner Lane to Circle Drive and US 71 West from US 290 West to Silvermine Drive (290 West/71 West Project), and (5) the SH 45 Southwest Toll Project, from Loop 1 South to FM 1626 (SH 45 SW Project). The projects are located within the boundaries of the CTRMA, and are subject to the market valuation and primacy requirements of Transportation Code, §228.0111.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §§27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Section 27.53 of the toll equity rules, the CTRMA has submitted a request for financial assistance in the amount of \$27 million to pay for certain costs relating to the development of the Loop 1 Project (approximately \$5.4 million), Manor Expressway (approximately \$2.2 million), 183 South Project (approximately \$4.4 million), 290 West/71 West Project (approximately \$7.6 million), and SH 45 SW Project (approximately \$7.4 million). The request is for the financial assistance to be in the form of a grant.

The CTRMA has indicated the financial assistance will be used for development costs associated with the proposed projects. Specific uses will include, but are not limited to, preparation of environmental documents, traffic and revenue estimates, preliminary engineering studies, general engineering support, procurement support, legal support, railroad coordination, and department coordination. None of the requested funds will be used for construction.

43 TAC §27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by 43 TAC §27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; (2) the department already possesses information or data in a format

that may be substituted for the required information or data; or (3) the past performance of the requestor on previous projects developed in collaboration with the department indicates that the requestor will adequately and prudently address the issues and impacts described in the requested information or data.

Information and data required by 43 TAC §27.53(b) is either contained in the request for financing or is already in the department's possession. Supplemental information and data required by 43 TAC §27.53(c) is contained in the request for financial assistance and is already in the department's possession, or is waived under 43 TAC §27.53(d).

The CTRMA has committed that the projects will comply with all applicable environmental laws, and has committed that the CTRMA will assume all liability and responsibility for identifying and securing all federal and state environmental permits, issues, and approvals necessary for the development of the projects.

The completion of the projects will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, decreasing air pollution, providing reliable travel speeds for users and improved access for emergency response, and enhancing operational efficiency and quality of life in the project corridors and the regional transportation system. The projects are consistent with the approved Texas Transportation Plan and the Metropolitan Transportation Plan of the Capital Area Metropolitan Planning Organization.

The CTRMA has indicated that they will fund a portion of the costs of developing the projects through revenue bond sales and loans. Along with the requested financial assistance, the projects have the potential to expand the availability of funding for transportation projects or reduce direct state costs. The financial assistance will enhance the ability of the projects to go forward as toll facilities, improving the efficiency of the state transportation system. Without the financial assistance, the timeline to complete the projects and realize the benefits described above could be indefinitely delayed.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Central Texas Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$27 million, in the form of equity, to be used for the purposes described herein, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

c. **Travis County** – Consider the preliminary approval of a request for financial assistance from the Central Texas Regional Mobility Authority to pay for the costs of constructing Segments 1A, 2, and 3 of the Manor Expressway, a 6.2 mile toll project located in Travis County along the existing US 290 facility from east of US 183 to east of State Highway 130, to include the costs of utility relocation and right of way acquisition (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Underwood was not present for the vote). This item was presented by Finance Division Director Brian Ragland:

112348  
FIN

The Texas Department of Transportation (department) and the Central Texas Regional Mobility Authority (CTRMA) developed a CTRMA/TxDOT Regional Implementation Program that provides for the funding and development of certain transportation system improvements within the jurisdictional limits of the CTRMA.

On October 8, 2007, the Capital Area Metropolitan Planning Organization (CAMPO) Transportation Policy Board approved amendments to CAMPO's 2030 Transportation Plan (Plan) and the FY 2008-FY 2011 Transportation Improvement Program (TIP), amending previous authorizations for the development of certain highway projects of the department that are located within the boundaries of CAMPO as toll projects, including the Manor Expressway, a 6.2-mile toll project to improve US 290 from US 183 to east of SH 130 (Manor Expressway). On May 24, 2010, CAMPO approved the 2035 Transportation Plan. The Manor Expressway is included in this plan.

Pursuant to Transportation Code, §228.0111, the CTRMA has exercised its option to develop, construct, and operate the Manor Expressway, including the cost of utility relocations and ROW acquisition. The existing US 290 would be reconstructed and expanded to provide, on the highway and adjacent facilities, an equivalent or greater number of nontolled lanes than currently exist. The nontolled portion of the project would remain on the state highway system as US 290.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §§27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with 43 TAC §27.53 of the toll equity rules, the CTRMA has submitted a request for financing in the amount of \$126.7 million to pay for the costs of constructing Segments 1A, 2, and 3 of the Manor Expressway, from east of US 183 to east of SH 130, including the costs of right of way acquisition and utility relocation. The request is for the financial assistance to be in the form of a grant.

43 TAC §27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by 43 TAC §27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; (2) the department already possesses information or data in a format

that may be substituted for the required information or data; or (3) the past performance of the requestor on previous projects developed in collaboration with the department indicates that the requestor will adequately and prudently address the issues and impacts described in the requested information or data.

Information and data required by Section 27.53(b) is either contained in the request for financing or is already in the department's possession. Supplemental information and data required by 43 TAC §27.53(c) is contained in the request for financial assistance, is already in the department's possession, or is waived under Section 27.53(d).

The CTRMA has committed that the project will comply with all applicable environmental laws, and has committed that the CTRMA will assume responsibility for identifying and securing all federal and state environmental permits, issues, and approvals necessary for the development of the project.

The completion of the project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, decreasing air pollution, and enhancing operational efficiency and quality of life in the project corridor and the regional transportation system.

The project is consistent with the approved Texas Transportation Plan and the Metropolitan Transportation Plan of the Capital Area Metropolitan Planning Organization.

The CTRMA has indicated that they will fund a portion of the costs of developing the proposed project through revenue bond sales and loans. Along with the requested financial assistance, the project has the potential to expand the availability of funding for transportation projects or reduce direct state costs. The financial assistance will enhance the ability of the project to go forward as a toll facility, improving the efficiency of the state transportation system. Without the financial assistance, the timeline to complete the project and realize the benefits described above could be indefinitely delayed.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Central Texas Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$126.7 million, in the form of equity, to be used for the purposes described herein, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

**d. El Paso County – Consider the final approval of a request for financial assistance from the Camino Real Regional Mobility Authority (CRRMA) to pay the costs of constructing a controlled-access facility consisting of two general purpose lanes reconstructed in each direction and one new tolled-managed lane in each direction on Loop 375, from US 54 to Zaragoza Road in El Paso County, and authorize the CRRMA to make improvements to the state highway system in connection with the project (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112349  
FIN

The Texas Department of Transportation (department) and the Camino Real Regional Mobility Authority (CRRMA) have been proceeding with the preliminary development of the Loop 375 Cesar Chavez – Border Highway Project, a toll project from US 54 to Zaragoza Road (Cesar Chavez Project) in El Paso County.

The Cesar Chavez Project is located within the boundaries of the CRRMA, and is subject to the market valuation and primacy requirements of Transportation Code, §228.0111. The Cesar Chavez Project is one segment of a proposed regional network of toll facilities that are part of the 2008 Comprehensive Mobility Plan for the El Paso area (2008 CMP). The 2008 CMP contemplates that the Cesar Chavez Project will be developed by the CRRMA.

The department and the CRRMA are negotiating an agreement on the terms and conditions applicable to the development, construction, and operation of the Cesar Chavez Project, and the waiver of the development of a market valuation of the Cesar Chavez Project. Approval of the agreement by the Board of Directors of the CRRMA (Board) and a determination by the El Paso Metropolitan Planning Organization that the Cesar Chavez Project be developed under the agreed terms and conditions are required before the Board considers the exercise of the CRRMA's option to develop, construct, and operate the Cesar Chavez Project pursuant to Transportation Code, §228.0111(g) and other applicable law.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

On July 21, 2010, the CRRMA submitted a formal request to develop the Cesar Chavez Project, to be a part of the state highway system. Transportation Code, §370.301(e) provides that a turnpike project developed by a regional mobility authority may not be part of the state highway system unless otherwise agreed to by the authority and TxDOT.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §§27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Sections 27.53 and 27.54(a) of the toll equity rules, the commission, in Minute Order 112274, dated May 27, 2010, granted preliminary approval of financial assistance in the amount of \$80.25 million, in the form of a grant, to pay for the costs of the procurement, design, and construction of the Cesar Chavez Project, including the costs of engineering, environmental, legal, financial, public outreach, and related direct and indirect services and costs associated with the development of the project.

In accordance with Section 27.54 of the toll equity rules, negotiations have been conducted and a financial assistance agreement that complies with Section 27.55 of those rules has been developed.

The department previously conducted environmental studies and analyses of the Cesar Chavez Project, and a Finding of No Significant Impact has been issued for the project by the Federal Highway Administration.

The CRRMA has committed to implementing the Cesar Chavez Project in compliance with all applicable local, state and federal environmental laws, regulations and requirements, and has committed to implement all environmental permits, issues, and commitments (EPIC).

The completion of the Cesar Chavez Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, decreasing air pollution, and enhancing quality of life in the corridor.

The Cesar Chavez Project is consistent with the approved Statewide Transportation Plan and is included as a toll project in the approved metropolitan transportation plan (MTP) of the El Paso Metropolitan Planning Organization (MPO), and in the MPO's transportation improvement program and the Statewide Transportation Improvement Program. Both the MTP and the TIP were found to conform to the State Implementation Plan.

The Cesar Chavez Project will expand the availability of funding for transportation projects or reduce direct state costs. The financial assistance will reduce the amount of funding required from local governments and will realize the benefits described above. This financial assistance will enhance the ability of the Cesar Chavez Project to go forward as a toll facility, improving the efficiency of the state transportation system. Without the financial assistance, the timeline to complete the Cesar Chavez Project and realize the benefits could be indefinitely delayed.

Based on the above information, the commission has determined that providing financial assistance will prudently provide for the protection of public funds, and that, given the level of project development to date, the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate adverse environmental impacts.

The commission further finds that the CRRMA is fully capable of awarding and managing the 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 CRRMA's improvement of the state highway system will provide for the expeditious completion of a critically needed project within the Loop 375 corridor that will relieve traffic congestion on the existing state highway system and improve mobility in El Paso County.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Camino Real Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54 and, in accordance with those provisions, the

commission grants final approval of the request for financing in the amount of \$80.25 million, in the form of equity, to be used for the purposes described herein, and authorizes the executive director to enter into a financial assistance agreement with the Camino Real Regional Mobility Authority.

IT IS FURTHER ORDERED by the commission that the Camino Real Regional Mobility Authority is authorized to develop and construct improvements to the state highway system in connection with the design and construction of the Cesar Chavez Project, and the executive director is authorized to enter into a project development agreement with the Camino Real Regional Mobility Authority that provides for such improvements to the state highway system.

Note: The commission received comments from Camino Real Regional Mobility Authority Executive Director Raymond Telles; Locke, Lord, Bissell & Liddell Partner; Brian Cassidy; and Central Texas Regional Mobility Authority Executive Director Mike Heiligensten.

## **11. UNIFIED TRANSPORTATION PROGRAM**

### **a. Amend FY 2010 allocations in Category 5 (congestion mitigation and air quality improvement) and Category 7 (metropolitan mobility/rehabilitation) in the Unified Transportation Program (MO)**

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Houghton was not present for the vote). This item was presented by Finance Division Director Brian Ragland:

112350  
FIN

The 2010 UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is an 11-year plan that authorizes project planning and development, and is submitted to the Texas Transportation Commission (commission) for approval.

The 2010 UTP was approved by the commission on April 29, 2010, in Minute Order 112237.

At the request of the North Central Texas Council of Governments Regional Transportation Council, the Houston-Galveston Area Council and the Dallas, Fort Worth and Houston districts, the department recommends that the 2010 UTP be amended by reallocating FY 2010 funds in the categories shown in Exhibits A and B.

IT IS THEREFORE ORDERED by the commission that the proposed reallocations are approved and the 2010 UTP is amended as shown in Exhibits A and B.

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

### **b. Adjust FY 2010 and 2011 Obligation Limit Funding Levels in the Unified Transportation Program (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112351  
FIN

The 2010 UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is an 11-year plan that authorizes project planning and development, and is submitted to the Texas Transportation Commission (commission) for approval.

The 2010 UTP was approved by the commission on April 29, 2010, in Minute Order 112237.

To adjust for overruns and underruns in FY 2010 funding levels by district and by funding category and to optimize construction and maintenance project lettings, it is necessary to adjust FY 2010 funding levels as shown in Exhibit A. The adjustments are reconciled and reversed in FY 2011.

To more effectively manage funds within the specific funding categories and districts while maintaining financial constraint, it is necessary for the executive director or his designee to approve and manage transfers between funding categories and districts in FY 2011 as necessary to optimize lettings. At the end of FY 2011, these transfers will be reconciled and a summary report provided to the commission.

IT IS THEREFORE ORDERED by the commission that the adjusted funding levels set forth in Exhibit A are approved.

IT IS FURTHER ORDERED that the executive director, or his designee, is authorized to approve and manage transfers between districts and funding categories in FY 2011 as necessary and within the financial constraints of the cash forecast and the UTP. At the end of FY 2011 these transfers will be reconciled and a summary report provided to the commission.

IT IS FURTHER ORDERED that all applicable transfers between funding categories and districts be reversed or paid back at the earliest opportunity as agreed upon by both the lending and borrowing districts.

Note: Exhibit A on file with minute order clerk.

**ITEM 12. GREEN RIBBON PROGRAM**

Amend the FY 2010 Green Ribbon Landscape Improvement Program, an initiative to enhance the appearance of public highways (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112352  
FIN

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.

The 2010 Green Ribbon Landscape Improvement Program and allocations to the department's affected districts were approved by the Texas Transportation Commission (commission) by Minute Order 111981, dated September 24, 2009.

Due to the shifting of county lines between Denton and Tarrant Counties on the FM 2499 corridor, the department recommends that the previous allocations to the Dallas and Fort Worth districts be revised by permanently transferring \$64,429 from the Dallas District to the Fort Worth District. As a result of this transfer, the total amount allocated to the Dallas District is \$2,783,771 and the total amount allocated to the Fort Worth District is \$416,349.

IT IS THEREFORE ORDERED by the commission that the 2010 Green Ribbon Landscape Improvement Program is amended by permanently transferring \$64,429 from the Dallas District to the Fort Worth District and the new allocations are hereby approved.

### **ITEM 13. STATE INFRASTRUCTURE BANK**

#### **Preliminary Approval**

**Parker County – City of Weatherford – Consider granting preliminary approval of an application from the City of Weatherford to borrow \$650,000 from the State Infrastructure Bank to pay for water and sewer line relocation costs resulting from reconstruction of SH 171 from I-20 to FM 1884 in Parker County (MO)**

Commissioner Meadows made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112353  
FIN

The City of Weatherford (city) submitted an application for financial assistance from the State Infrastructure Bank (SIB) in the amount of \$650,000 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 water and sewer line relocation costs resulting from reconstruction of SH 171 from I-20 to FM 1884 in Parker County (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 project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its utility 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 2008-2011 NCTCOG Transportation Improvement Program, will be listed in the upcoming 2011-2014 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of the 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 Weatherford meets the requirements of the rules, and in accordance with the rules and applicable law, the commission grants preliminary approval of the application to borrow \$650,000 from the SIB, and directs the executive director to commence negotiations and other actions authorized and required by its rule

#### **ITEM 14. TRANSPORTATION PLANNING AND FINANCE**

Adopt the FY 2011-2012 draft two-year letting schedule for highway maintenance and construction contracts, including dollar amounts allocated to each district and certain statewide programs (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112354  
FIN

The Texas Department of Transportation (department) has developed a proposed Fiscal Year 2011-2012 Letting Schedule for highway maintenance and construction projects that are anticipated to be ready to proceed to contract letting through August 2012.

These projects were identified during the department's planning process, with input from members of the general public, local transportation partners, metropolitan planning organizations, the Texas Transportation Commission (commission), members of the Texas Legislature, and department staff. Projects included in the schedule have progressed through the development process and each district has identified the projects that have the greatest likelihood of moving forward to bid opening and contract award in the month identified in the schedule.

The proposed letting schedule identifies the location of each project, including roadway designation and limits, the current engineer's construction estimate, funding sources, and the month the project will move toward contract letting. Funding for these projects will be based on financial forecasts provided by the department's Chief Financial Officer. Financial conditions may result in more or less revenue received by the department or an increase or decrease in expenditures by the department. Other conditions that affect the forecast include bids on projects being higher or lower than project estimates and increasing or decreasing costs associated with change orders or quantity overruns on existing contracts. In addition, it may be necessary to add or delete projects due to project development issues associated with environmental clearance or right of way acquisition as well as changes in priorities at the local or statewide level.

The department recommends approval of the proposed Fiscal Year 2011-2012 Letting Schedule as set forth in Exhibit A. Following approval, the schedule will be available for public inspection on the department's web site.

IT IS THEREFORE ORDERED by the commission that the Fiscal Year 2011-2012 Letting Schedule set forth in Exhibit A is approved.

IT IS FURTHER ORDERED that the executive director, or his designee, is authorized to revise the Fiscal Year 2011-2012 Letting Schedule as necessary in order to effectively and efficiently manage the department's resources and ensure that projects proceed to contract letting and award in an appropriate manner.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 15. OBLIGATION LIMIT REPORT**

Status report on the FY 2010 Obligation Limit, the actual obligations utilized through the current month, proposed remaining highway maintenance and construction contract letting for the fiscal year and an update on motor fuel tax receipts.

This item was presented by Finance Division Director Brian Ragland.

#### **ITEM 16. 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, which was seconded and the commission approved the following minute order by a vote of 5– 0 rejecting Project No. 6208-10-001 in Hidalgo County. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112355  
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 July 8 and 9, 2010.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

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

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5– 0 rejecting Project No. IM0351 (082) in La Salle County. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112356  
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 July 8 and 9, 2010.

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 Texas Transportation Commission (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.

### **ITEM 17. ROUTINE MINUTE ORDERS**

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute orders by a vote of 5 – 0. This item was presented by Executive Director Amadeo Saenz:

#### **a. Donations to the Department**

**(1) Fort Worth District – Acknowledge a donation from the Precast/Prestressed Concrete Institute (PCI) for a department employee's travel expenses to attend PCI's annual convention in Washington, D.C., May 29-June 2, 2010 (MO)**

112357  
GSD

This minute order acknowledges a donation of approximately \$914.98 from the Precast/Prestressed Concrete Institute (PCI) for a Fort Worth District employee's travel expenses to attend PCI's Annual Convention and Bridge Conference in Washington, D.C., May 29 - June 2, 2010.

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 approximately \$914.98 from PCI is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

**(2) Houston District – Consider a cash donation from Cencor Realty Services, Inc. to facilitate the review of various documents required for the construction of two deceleration lanes at the SH 288 Northbound frontage road immediately North of FM 518 (MO)**

112358  
GSD

This minute order considers a cash donation of \$5,000 to the Texas Department of Transportation (department) from Cencor Realty Services, Inc. to facilitate the review of various documents required for the construction of two deceleration lanes at the SH 288 northbound frontage road immediately north of FM 518.

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 Cencor Realty Services, Inc. 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)**

112359  
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

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Comal	US 281	18	0253-03-065	18
Denton	FM 2181	3	2054-02-018	113
Denton	FM 2181	2	2054-02-018	4
Denton	FM 2181	13	2054-02-018	40
Denton	FM 2181	4	2054-02-018	141
Denton	FM 2181	1	2054-02-018	3
Denton	FM 2181	9	2054-02-018	11
Denton	FM 2181	8	2054-02-018	30
Denton	FM 2181	10	2054-02-018	51
Denton	FM 2181	7	2054-02-018	44
Denton	FM 2181	12	2054-02-018	31
Denton	FM 2181	14	2054-02-018	39
Denton	FM 2181	16	2054-02-018	41
Denton	FM 2181	5	2054-02-018	120
Denton	FM 2181	19	2054-02-018	52
Denton	FM 2181	15	2054-02-018	32
Denton	FM 407	6	1950-01-034	9
Harris	US 59	11	0027-13-142	335E
Nueces	FM 2444	17	2343-01-034	35

## CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Bell	IH 35	A	0015-06-082	67AC
Bell	IH 35	T	0015-06-082	50AC
El Paso	IH 10	X	2121-04-078	15A
El Paso	IH 10	AA	2121-04-078	15D
El Paso	IH 10	BB	2121-04-078	15F
El Paso	IH 10	DD	2121-04-078	5A
El Paso	IH 10	EE	2121-04-078	5B
El Paso	IH 10	FF	2121-04-078	5C
El Paso	IH 10	GG	2121-04-078	5D
El Paso	IH 10	HH	2121-04-078	20A
El Paso	IH 10	II	2121-04-078	20B
El Paso	IH 10	JJ	2121-04-078	20C
El Paso	IH 10	KK	2121-04-078	20D
El Paso	IH 10	Y	2121-04-078	15B
El Paso	IH 10	Z	2121-04-078	15C
Harris	IH 45	CC	0500-03-462	206
Harris	IH 45	J	0500-03-462	209
Harris	IH 45	I	0500-03-546	208

## CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
McLennan	IH 35	W	0014-08-082	17,17E
Rockwall	IH 30	R	0009-12-076	10
Rockwall	IH 30	S	0009-12-076	9
Tarrant	SH 114	M	0353-03-088	32A
Tarrant	SH 114	B	0353-03-088	55
Tarrant	SH 114	D	0353-03-088	54
Tarrant	SH 114	C	0353-03-088	56, 56E
Tarrant	SH 114	E	0353-03-088	22
Tarrant	SH 114	F	0353-03-088	57, 57E
Tarrant	SH 114	G	0353-03-088	14
Tarrant	SH 114	H	0353-03-088	99
Tarrant	SH 114	L	0353-03-088	32B
Tarrant	SH 114	N	0353-03-088	32C
Tarrant	SH 114	O	0353-03-088	94
Tarrant	SH 114	P	0353-03-088	98
Tarrant	SH 114	Q	0353-03-088	111
Tarrant	SH 114	U	0353-03-088	17
Tarrant	SH 114	V	0353-03-088	113
Tarrant	SH 114	K	0353-03-088	26

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

**c. Finance**

**(1) Accept the quarterly cash report (MO)**

112360  
FIN

Texas Transportation Code, §201.107 requires the Texas Transportation Commission (commission) to prepare a quarterly statement containing an itemized list of all the money received by the Texas Department of Transportation (department) and the source of the money and of all money paid by the department and the purpose of the payment. The statement shall be filed in the records of the department and a copy submitted to the Governor. The report must comply with each reporting requirement applicable to financial reporting provided by the General Appropriations Act.

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for the third quarter of Fiscal Year 2010, ending May 31, 2010, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

IT IS THEREFORE ORDERED by the commission that the quarterly cash report attached as Exhibit A is approved.

Note: Exhibit A on file with minute order clerk.

(2) Accept the Quarterly Investment Report (MO)

112361  
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission and the executive director, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, Minute Order 110087, dated May 26, 2005, Minute Order 110145, dated July 28, 2005, Minute Order 110617, dated July 27, 2006, Minute Order 111003, dated July 26, 2007, Minute Order 111490, dated August 28, 2008, and Minute Order 111931, dated August 27, 2009. The commission has designated the department's Chief Financial Officer, Director of Finance and Deputy Director of Finance as investment officers. The Debt Management Director is authorized to act as investment officer in the absence of the Chief Financial Officer, Director of Finance and the Deputy Director of Finance.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending May 31, 2010, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

**d. Load Zones & Postings**

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

**(1) Roadways (MO)**

112362  
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 July 2010, 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)**

112363  
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 Exhibits A and B 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: Exhibits A and B on file with minute order clerk.

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

**(1) El Paso County – SS 601 from US 54 (Patriot Freeway) to SL 375 (Purple Heart Freeway) – Consider the acceptance of a donation of land for a highway improvement project (MO)**

112364  
ROW

In EL PASO COUNTY, on STATE SPUR 601 from US 54 (Patriot Freeway) to SL 375 (Purple Heart Freeway), the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

The City of El Paso, Texas (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property, estimated at \$4,060,746, to the department for construction of a highway improvement project.

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

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

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real

property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

**(2) Hood County – FM 4 at US 377 in Granbury – Consider the sale of surplus right of way to the abutting landowner (MO)**

112365  
ROW

In HOOD COUNTY, on FARM TO MARKET ROAD 4, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 1720, Page 501, Deed Records of Hood County, Texas.

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

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

John Henry Luton, Trustee, or his successor, of the Doris Z. Luton Grantor Trust dated June 19, 2001, is the abutting landowner and has requested that the surplus land be sold to the trustee for \$17,227.

The commission finds \$17,227 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 department 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 John Henry Luton, Trustee, or his successor, of the Doris Z. Luton Grantor Trust dated June 19, 2001, for \$17,277; **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) Hunt County – US Business 69 at Johnson Street in Greenville – Consider the sale of surplus right of way to the abutting landowner (MO)**

112366  
ROW

In HUNT COUNTY, on BUSINESS US 69, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 6942, Page 1750, Official Public Records of Real Property of Bexar 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.

Bobby Gray is the abutting landowner and has requested that the surplus land be sold to him for \$5,832.

The commission finds \$5,832 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Bobby Gray for \$5,832; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(4) Tarrant County – Rosedale Street at Jerome Street in Fort Worth – Consider the sale of surplus right of way to the abutting landowner (MO)

112367  
ROW

In the city of Fort Worth, TARRANT COUNTY, on ROSEDALE STREET, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 14173, Page 409, Deed Records of Bexar County, Texas.

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

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

Fort Worth Midtown LD, LLC, doing business in Texas as Raymond Fort Worth Hotel Land Development, LLC, a Wisconsin limited liability company, is the abutting landowner and has requested that the surplus land be sold to the company for \$21,100.

The commission finds \$21,100 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 department 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 Fort Worth Midtown LD, LLC, doing business in Texas as Raymond Fort Worth Hotel Land Development, LLC, a Wisconsin limited liability company, for \$21,100; 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.

(5) Taylor County – US 84 at FM 604 in Lawn – Consider the quitclaim of surplus right of way to the county (MO)

112368  
ROW

In the town of Lawn, TAYLOR COUNTY, on US 84, the state used certain land for highway purposes for which there is no record title in the name of the state or county.

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 quitclaim of any interest that may have accrued to the state by use of the property.

The county has requested that the surplus land be quitclaimed to the county.

It is the opinion of the commission that it is proper and correct that the state quitclaim its rights and interest in the surplus land to the county.

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 quitclaiming all of the state's rights and interest in the surplus land to Taylor County, Texas.

Note: Exhibit A on file with minute order clerk.

(6) Travis County – FM 973 north of Manor – Consider the removal from the system of three segments of the old highway alignment (MO)

112369  
ROW

In TRAVIS COUNTY, on FARM TO MARKET ROAD 973, the State of Texas used certain land for state highway purposes.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, that three segments on the old alignment of FM 973 be removed from the state highway system and that control, jurisdiction and maintenance be transferred to the county.

IT IS THEREFORE ORDERED by the commission that three segments of FM 973, known as Walton Hill Pass, Schmidt Loop and Suncrest Road, are removed from the state highway system and transferred to the county for control, jurisdiction and maintenance.

Note: Exhibit A on file with minute order clerk.

(7) Wilson County – FM 1346 at FM 775 southwest of La Vernia – Consider the sale of surplus drainage easements (MO)

112370  
ROW

In WILSON COUNTY, on FARM TO MARKET ROAD 1346, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 500, Page 783, Deed Records of Wilson County, Texas.

Portions of the easement (surplus easements), described in Exhibits A and B, are 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 easements.

Edmund S. Kosub, Jr., and Kathy J. Crisp-Kosub are the underlying fee owners of Tract 1, described in Exhibit A, and have requested that the surplus easement be sold for \$7,699.

Sergio Hernandez and Juana Hernandez and Juan M. Vasquez are the underlying fee owners of Tract 2, described in Exhibit B, and have requested that the surplus easement be sold for \$53.

The commission finds \$7,699 and \$53 to be a fair and reasonable value for the state's rights and interest in the surplus easements.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easements are no longer needed for a state highway purpose and that the values of the surplus easements are less than \$10,000 and authorizes the executive director to execute proper instruments partially releasing all of the state's rights and interest in Tract 1 to Edmund S. Kosub, Jr., and Kathy J. Crisp-Kosub for \$7,699, and in Tract 2 to Sergio Hernandez and Juana Hernandez and Juan M. Vasquez for \$53.

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

**(8) Wilson County – US 87 and FM 1346 in La Vernia – Consider the sale of surplus right of way and surplus easement and the quitclaim of land to which there is no record title (MO)**

112371  
ROW

In the city of La Vernia, WILSON COUNTY, on US 87 and FARM TO MARKET ROAD 1346, the State of Texas acquired certain land and easement interests by instruments recorded in Volume 3, Page 387, of the Civil Minutes, and Volume 256, Page 269, and Volume 1041, Page 330, of the Deed Records, Wilson County, Texas, and the state used certain land to which there is no record title.

Portions of the land (surplus land), described in Exhibit A, the easement (surplus easement), described in Exhibit B, and the surplus no-title land, described in Exhibit C, are no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to the abutting landowner and the sale of surplus easements to the owner of the fee in the property. The commission also may recommend, if there is no record title to the property, the quitclaim of any interest that might have accrued to the state by use of the property to the abutting property owners at the request of the city.

HEB Grocery Company, LP, a Texas limited partnership (HEB), is the abutting landowner to the surplus land and surplus no-title land and is the underlying fee owner of the surplus easement, and has requested that the surplus land and surplus easement be sold to HEB for \$99,388.

The city has requested that the surplus no-title land be quitclaimed to HEB.

The commission finds \$99,388 to be a fair and reasonable value for the state's rights, title and interest in the surplus land and surplus easement.

NOW, THEREFORE, the commission finds that the surplus land, surplus no-title land and easement are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute proper instruments conveying the state's rights, title and interest in the surplus land and partially releasing the state's rights and interest in the surplus easement for \$99,388, and quitclaiming the state's rights and interest in the surplus no-title land to HEB Grocery Company, LP, a Texas limited partnership; 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: Exhibits A through C 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)**

112372  
TRF

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

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

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

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

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

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

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

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

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

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

**18. Executive Session** Pursuant to Government Code, Chapter 551, **Section 551**

a. **Section 551.071** – Consultation with and advice from legal counsel regarding any item on this agenda

The commission did not meet in executive session.

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

APPROVED:

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Deirdre Delisi, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on July 29, 2010, in Austin, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation