

TEXAS DEPARTMENT OF TRANSPORTATION

COMMISSION MEETING

Thursday, August 26, 2010
Ric Williamson Hearing Room
Dewitt Greer Building
125 East 11th Street
Austin, Texas

COMMISSION MEMBERS:

Deirdre Delisi, Chair
Ted Houghton
Ned S. Holmes
Fred Underwood
William Meadows

STAFF:

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

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
9:00 A.M. CONVENE MEETING	9
1. Approval of Minutes of the July 28, 2010 workshop, and the July 29, 2010 regular meeting of the Texas Transportation Commission	13
2. Resolutions Present resolutions to recognize Chief Minute Order Clerk Dee Hernandez, Executive Assistant Shirley Macik, and San Angelo District Engineer Walter McCullough, upon retirement from the department.	14
3. Aviation	
a. Various Counties - Award federal and state grant funding for airport improvement projects at various locations (MO)	41
b. Approve the Routine Airport Maintenance Program (MO)	42
c. Approve Aviation Capital Improvement Program (MO)	42
4. Public Transportation	
a. Various Counties - Award federal and state matching funds to designated lead agencies to support continuation of coordinated regional public transportation planning for fiscal year 2011 (MO)	44
b. Various Counties - Award federal §5316, Job Access and Reverse Commute grant program funds and Transportation Development Credits to Texoma Area Paratransit System, Inc (MO)	45
5. Various Counties - Authorize the expenditure of an \$8.7 million appropriation by the 81st Texas Legislature from the General Appropriations Act for passenger rail studies between Austin and San Antonio (MO)	46
6. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:	
a. Final Adoption	
(1) Chapter 1 - Management and Chapter 15 - Financing and Construction of Transportation Projects (MO) New §1.86, Corridor Advisory	48

Committees, and §1.87, Corridor Segment Advisory Committees (Advisory Committees); and Repeal of §15.9, Corridor Advisory Committees and §15.10, Corridor Segment Advisory Committees (Transportation Planning)

- (2) **Chapter 13 - Materials Quality and Chapter 15 - Financing and Construction of Transportation Projects** (MO) 49
 New §13.7, New Product Evaluation (Materials Quality) and Repeal of §15.13, New Product Evaluation (Research and Planning Contracts)
- (3) **Chapter 15 - Financing and Construction of Transportation Projects** (MO) 25
 Repeal of §§15.1-15.8; Subchapter C, Distribution and Availability of Data, §15.21, Distribution and Availability; and Subchapter D, Texas Highway Trunk System, §§15.40-15.42
- (4) **Chapter 16 - Planning and Development of Transportation Projects** (MO) 25
 New Chapter 16, New Subchapter A, General Provisions, §§16.1 - 16.4; New Subchapter B, Transportation Planning, §§16.51 - 16.56; New Subchapter C, Transportation Programs, §§16.101-16.105; New Subchapter D, Transportation Funding, §§16.151-16.160; and New Subchapter E, Project and Performance Reporting, §§16.201-16.205
- (5) **Chapter 21 - Right of Way** (MO) 50
 Amendments to §21.37, Design (Utility Accommodation)
- (6) **Chapter 27 - Toll Projects** (MO) 51
 Amendments to §27.82, Toll Operations (Operation of Department Toll Projects)
(Deferred)
- b. **Proposed Adoption (to be published in the Texas Register for public comment)**
- (1) **Chapter 1 - Management** (MO) Repeal of 57
 §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's

Internal Ethics and Compliance Program
(Other Entities' Internal Ethics and
Compliance Procedures)

- (2) **Chapter 9 - Contract and Grant Management** (MO) 55
 Repeal of §§9.100-9.117 and New §9.101, Purpose and Application of Subchapter, §9.102, Definitions, §9.103, Notification of Rules, §9.104, Delivery of Written Notice or Requests to the Department, §9.105, Act of Individual or Entity Imputed to Contractor, §9.106, Compliance Program, §9.107, Grounds for Sanctions, §9.108, Procedure, §9.109, Notice of Sanction, §9.110, Available Sanctions, §9.111, Application of Sanction, §9.112, Appeal of Sanction, §9.113, Indirect Sanction on an Affiliated Entity, §9.114, Lessening or Removal of Sanction, §9.115, List of Debarred or Suspended Contractors (Subchapter G Highway Improvement Contract Sanctions)
- (3) **New Chapter 10 - Ethical Conduct by Entities Doing Business with the Department** (MO) 51
 New Chapter 10, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Precertification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 B 10.206; New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 B10.257
- (4) **Chapter 15 - Financing and Construction of Transportation Projects, Chapter 26 - Regional Mobility Authorities, Chapter 27 - Toll Projects, and Chapter 31 - Public Transportation** (MO) 58

Amendments to §15.92, Miscellaneous Powers and Duties of Corporations (Transportation Corporations), §26.56, Required Internal Ethics and Compliance Program (Miscellaneous Operation Provisions), §27.53, Request (Financial Assistance for Toll Facilities), and §31.39, Required Internal Ethics and Compliance Program (Program Administration)

- | | | |
|-----|---|----|
| 7. | Audit Plan | 60 |
| | Approve the Audit Plan for Fiscal Year 2011 and determine whether adequate resources have been dedicated to the internal audit program (MO) | |
| 8. | Toll Roads | |
| | a. Travis and Williamson Counties | 59 |
| | B Approval of the Central Texas Turnpike System annual operating and management budget (MO) | |
| | b. | 60 |
| | Establish fees to be charged for administering electronic toll collection customer accounts (MO) (Deferred) | |
| 9. | Pass-Through Toll Program | 62 |
| | Authorize the executive director or designee to negotiate and execute a final pass-through toll agreement with each of those entities whose proposals under the February 25, 2010 pass-through toll program call were selected by the commission in Minute Order 112305 on June 24, 2010, as providing the best value to the state and who were successful in negotiating the financial terms of a pass-through toll agreement (MO) | |
| 10. | American Recovery and Reinvestment Act (ARRA) | |
| | a. | 68 |
| | Approve changes to the lists of mobility, preventive maintenance and rehabilitation, public transit, transportation enhancement and aviation projects previously approved for funding from Texas' portion of the ARRA (MO) | |
| | b. | 69 |
| | Approve additional mobility and preventive maintenance and rehabilitation projects to be funded in the event of continued underruns of originally obligated ARRA funds (MO) | |
| 11. | Proposition 12 Bonds | 72 |
| | Approval of a planned debt structure for highway | |

- improvement projects to be funded with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 Bonds) (MO)
12. **Proposition 14 Bonds** 34
Gillespie County B Approval of an additional project to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)
13. **Transportation Planning**
a. **Various Counties** B Appoint members to the Border Trade Advisory Committee (MO) 73
b. **Various Counties** B Appoint one member to the Port Authority Advisory Committee (MO) 74
14. **Right of Way** 75
El Paso County B SL 375 from SH 20 (Mesa Street) to Fonseca Drive - Authorize the negotiation of options to purchase for the advance acquisition of right of way for highway realignment along Loop 375 from SH 20 to Fonseca Drive (MO)
15. **Environmental Restriction** 76
Bowie County B Authorize the executive director to execute a restrictive covenant for the benefit of the U.S. Army Corps of Engineers (USACE) limiting use of a 1.95-acre tract owned by the department in Bowie County, Texas, to an aquatic ecosystem preserve to mitigate an adverse environmental impact that is a direct result of the construction and improvement of I-30 frontage roads near the city of Hooks (MO)
16. **Legislative Appropriations Request** 77
Adopt the department's Legislative Appropriations Request for FY 2012 and 2013 (MO)
17. **Unified Transportation Program** 81
Amend FY 2011 and FY 2014 allocations in Category 7 (metropolitan mobility/rehabilitation) in the Unified Transportation Program (UTP)(MO)
18. **State Infrastructure Bank** 82
Final Approval
Parker County B **City of Weatherford** B Consider granting final 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)
(Deferred)

19. **Finance**
- a. Annual review and approval of the investment policy and investment strategies applicable to all funds of the commission not otherwise required to be invested by the comptroller (MO) 82
- b. Annual review of debt management policy and derivative management policy for financing programs of the department, and authorization for department personnel to execute certain derivative transactions for financing programs of the department (MO) 83
20. **Obligation Limit Report** 84
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; an update on motor fuel tax receipts; and an update on the latest federal rescission notice. (Report)
21. **Property Exchange** 87
Palo into, Somervell and Tarrant Counties B
Request for proposal to exchange real property for improvements at various locations in the Fort Worth District (MO)
22. **Contracts**
- a. Award or Reject Highway Improvement Contracts
- (1) **Highway Maintenance and Department Building Construction** 88
(see attached itemized list) (MO)
- (2) **Highway and Transportation Enhancement Building Construction** 88
(see attached itemized list) (MO)
23. **Routine Minute Orders** 111
- a. **Donations to the Department**
- (1) **Administration Division B** Acknowledge a donation from Infra-Americas, for reimbursement of a department employee's travel expenses for speaking at the Annual US Public Private Partnership (P3) Infrastructure Finance Forum. The meeting was held in New York, New York from June 21-23, 2010 (MO)

- (2) **Bridge Division** B Acknowledge a donation from the American Iron and Steel Institute for a department employee's travel expenses to attend the Bridge Task Force Meeting in Washington, D.C. from August 11 B 13, 2010(MO)
- (3) **Houston District** B Consider a donation from Greenroad Media, Inc., to perform installation and maintenance activities for Landscape Partnership Agreements along various highways throughout the Houston District (MO)
- (4) **Research and Technology Office** B Consider a donation from the Colorado Department of Transportation (CDOT) for department Employee's travel expenses to speak and participate at the CDOT Peer Exchange. The meeting will be held in Denver, Colorado from September 22 B 23, 2010 (MO)
- (5) **Travel Information Division** B Consider a donation from the Texas Travel Industry Association to provide food, beverage, lodging, admission and transportation to area attractions, solicited from various sponsors, to the department during a study tour to educate the department's travel counselors on the North Texas region from October 17-22, 2010 (MO)(Deferred)
- (6) **Yoakum District** B Consider a cash donation from Lavaca Navidad River Authority (LNRA) towards construction of turn lanes on SH 111 near the Lavaca Navidad River Authority Park and Lake Texan State Park (MO)
- b. **Eminent Domain Proceedings**
Various Counties B noncontrolled and controlled access highways (see attached itemized list) (MO)
- c. **Highway Designation**
Shelby County B Extend the designation of SH Loop 500 from SH 7 westward to US 96, north of Center (MO)
- d. **Load Zones & Postings**
Hamilton and Milam Counties B Revise load

restrictions on various bridges on the state highway system (MO)

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

- (1) **Bexar County** B SH Loop 1604 at Bulverde Road in San Antonio B Consider the sale of surplus right of way to the abutting landowner (MO)
- (2) **Denton County** B FM 720, old alignment at E. Eldorado Parkway in Little Elm B Consider the sale of surplus right of way to the Town of Little Elm (MO)
- (3) **Fort Bend County** B FM 1464 from Beechnut south to West Airport Boulevard B Consider designation of a new alignment, removal of the old alignment from the system and transfer of control, jurisdiction and maintenance to the county. The MO will also authorize the transfer to the county of the surplus right of way (MO)
- (4) **Hopkins County** B SH 11 in Sulphur Springs B Consider the designation of a new alignment, removal of the old alignment from the system and transfer of control, jurisdiction and maintenance to the city. The MO will also authorize the transfer to the city of right of way held in the state's name and quitclaim of land to which there is no record title (MO)
- (5) **Hunt County** B US 69 in Greenville B Consider the sale of a surplus maintenance site to Greenville Independent School District (MO)
- (6) **Tarrant County** B FM 1187 at Newt Patterson Road in Fort Worth B Consider a grant of easement to correct an error (MO)
- (7) **Tarrant County** B I-20/I-820 in Fort Worth B Consider the sale of a surplus easement to the underlying fee owner (MO)
- (8) **Tarrant and Denton Counties** B FM 156 in Fort Worth and Haslet near the Fort Worth Alliance Airport B Consider the designation of a new alignment, removal of the old alignment and transfer

of control, jurisdiction and maintenance and transfer of right of way to the City of Fort Worth (MO)

- (9) **Wise County** B US 380 at Chico Avenue in Decatur B Consider the sale of surplus right of way to the abutting landowner (MO)

- f. **Speed Zones Various Counties** B Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

24. **Executive Session** Pursuant to Government Code, Chapter 551 111

- a. **Section 551.071** B Consultation with and advice from legal counsel regarding pending and contemplated litigation, including a briefing by the Office of the Attorney General on Kemp v. Amadeo Saenz, Jr., et al., and Sierra Club v. FHWA and TxDOT.
- c. **Section 551.074** - Discuss the duties of one or more persons who fills a position of Executive Director, Deputy Executive Director, Chief Financial Officer, Assistant Executive Director, General Counsel, Audit Office Director, Director of Government and Public Affairs, and Director of Strategic Policy and Performance Management.

OPEN COMMENT PERIOD (No commenters) 111

ADJOURN 113

P R O C E E D I N G S

1
2 MS. DELISI: Good morning. It is 9:04 a.m.,
3 and I call the regular August 2010 meeting of the Texas
4 Transportation Commission to order. Note for the record
5 that public notice of this meeting, containing all items
6 on the agenda, was filed with the Office of the Secretary
7 of State at 5:03 p.m. on August 18, 2010.

8 Before we begin today's meeting, please take a
9 moment to place your cell phones and other electronic
10 devices in the silent mode, please.

11 As is our custom, we'll begin with comments
12 from the other commissioners, and we'll start with
13 Commissioner Meadows.

14 MR. MEADOWS: Thank you very much, Madam Chair.

15 I'd like to take just a moment and pause and
16 recognize an event which occurred a couple of weeks ago
17 when the North Texas Tollway Authority Board accepted the
18 Chisholm Trail/Southwest Parkway project. It was
19 referenced a couple of times yesterday.

20 You know, it's wonderful when all things
21 finally come together and the result is good, and in fact,
22 this is one of those stories where for 60 years that
23 section of North Texas has worked to see that project
24 delivered. Many, many obstacles, many frustrations, many
25 challenges, but after 60 years, a true collaborative

1 between the City of Fort Worth, Tarrant County, the RTC,
2 the NTTA and TxDOT, all working hard together caused that
3 project to be delivered and it will be under construction
4 in a very short period of time.

5 It was a historic moment, certainly, 30 years.
6 More importantly than anything else, it is absolutely
7 critical infrastructure serving a large area of Johnson
8 County and Tarrant County that have no infrastructure of
9 that size and scope, been under-served for many, many
10 years, so first and foremost, it was needed. But second
11 of all, just the historic nature to me was the fact that
12 it's a wonderful example of how it is that we can, all
13 these public agencies, work together in a truly
14 collaborative fashion to make good things happen for the
15 citizens of this state.

16 And I'd like to thank our staff, John Barton,
17 Amadeo Saenz, the NTTA Board, my fellow commissioners, all
18 of whom have worked hard on this project. In any event,
19 it's an important day just to acknowledge the good work
20 that was done and know that the citizens that we serve
21 will benefit from it.

22 Thank you very much.

23 MR. UNDERWOOD: Thank you, Bill. I'm glad you
24 brought that up.

25 I'm sad to report today, in a way, and glad in

1 another, we've had another accident with one of our
2 employees in the Atlanta District, Chad Helpf
3 [phonetic] -- I hope I pronounced that correctly -- but
4 this time I'm glad to report that it's not often that you
5 get to say that there was a head-on between a pickup and
6 an 18-wheeler and that the guy in the pickup lived through
7 it. We're fortunate that all he had was cracked ribs and
8 pelvis and whatnot, and I know that he'll be the first one
9 in the door Sunday morning when they open the doors of the
10 church. But our prayers and thoughts go out to Chad's
11 family.

12 And to the driving public, please be careful,
13 don't be distracted. In this case the gentleman in the
14 18-wheeler looked down, I believe the report is, to look
15 for a Gatorade bottle and looked back up and then all of a
16 sudden head on with our truck that was parked over there
17 in a legal area.

18 So I'm glad everything is all right for Chad's
19 family, but to the driving public, please be careful.

20 Anyway, thank you.

21 MR. HOLMES: Good morning and welcome.

22 I'd like to just tag on a little bit to
23 Commissioner Meadows' acknowledgment of the Chisholm
24 Trail/Southwest Parkway project. The rest of the state, I
25 would ask you to take a hard look at what the Metroplex is

1 doing. They have kind of taken the bull by the horns and
2 are self-help using the powers that have been given to
3 them by the legislature and their public, and are really
4 making incredible progress on dealing with their
5 transportation issues. These are powers that are
6 available to many parts of our state, and the rest of us
7 could take a hard look at that and see what they have done
8 and how that could apply to our areas.

9 And I congratulate the Metroplex on what
10 they're doing.

11 MR. HOUGHTON: Good morning, everyone, and
12 welcome.

13 I want to take a little bit different approach,
14 a little bit of different direction, but I had the
15 opportunity to be in Hidalgo County on Tuesday and tour
16 the area and see the fine work those folks have done down
17 there. And the money that we have taken from your
18 district, Commissioner Holmes, to build US 83 and some
19 beautiful assets, and the Hidalgo County RMA is getting
20 ready to come out of the ground.

21 And the point is that not only that RMA but
22 Cameron County is coming out of the ground with their toll
23 road Spur 550, and we know that Jeff Austin is here with
24 the NET RMA and they're getting ready to build, I think,
25 is it 49, John Barton? I think it's 49. And the CTRMA is

1 getting ready to, I think, the financial close sometime
2 before the end of the year, and even out in far West Texas
3 we're doing terms and conditions on the Cesar Chavez
4 Highway in El Paso sometime before the end of the year.
5 So there's a lot of activity.

6 I think they've taken notice, Commissioner
7 Meadows, of the Metroplex, these RMAs, and things are
8 starting to roll and to move, and I congratulate them, and
9 I can just see more to come in the future.

10 And I think you very much for all your support
11 out there.

12 MS. DELISI: As always, if you wish to address
13 the commission during today's meeting, please take a
14 moment and complete a speaker's card that are located at
15 the registration table in the lobby. To comment on an
16 agenda item, please fill out a yellow card and identify
17 the agenda item. If it's not an agenda item, we'll take
18 your comments at the end of the meeting during the open
19 comment period. For those comments, please complete a
20 blue card. Regardless of the color of card, we do ask
21 that you try and keep your remarks to three minutes.

22 Our first item of business today is approval of
23 the minutes of the July 28 and 29 meetings. Members, the
24 draft minutes have been provided to you in your briefing
25 materials. Is there a motion to approve?

1 MR. HOUGHTON: So moved.

2 MR. HOLMES: Second.

3 MS. DELISI: All in favor?

4 (A chorus of ayes.)

5 MS. DELISI: The motion passes.

6 With that, Amadeo, I'll had the agenda over to
7 you.

8 MR. SAENZ: Thank you, Madam Chair. Good
9 morning, everyone.

10 Our first order of business today involves
11 three resolutions recognizing some very important
12 individuals, three long-time TxDOT employees who have
13 chosen to retire from the department and they'll be
14 leaving us in the next few days. I'd like to ask each one
15 of them to step up to the podium so that I can quiz them
16 one more time.

17 The first person I'd like to have come up is
18 Dee Hernandez. Where are you, Dee? Come on. You still
19 have the offer to replace Roger on the dais for the last
20 meeting, if you want. You've watched him for 13 years.
21 He hasn't done anything, he just sits there.

22 (General laughter.)

23 MR. SAENZ: Anyway, Dee, I'm going to read the
24 resolution from the commission and myself.

25 "Whereas, the Texas Transportation Commission

1 recognizes Dee Hernandez, who served the Texas Department
2 of Transportation for more than 31 years, the last 13 year
3 as chief minute order clerk within the department's
4 administration;

5 "And whereas, Dee began her career with the
6 Texas Highway Department, working in the mail room of the
7 Transportation Planning Division, in January of 1979;
8 subsequently she took jobs in the Construction Division,
9 International Relations Office, and Legislative Affairs
10 Office before coming to work for the administration in
11 March of 1996; she became the chief minute order clerk in
12 November of 1997;

13 "And whereas, Dee's service as a minute order
14 clerk has set the standard for attention to detail and
15 determination to do the right job; in her position she has
16 been responsible for preparing commission agendas,
17 organizing, archiving and publishing minute orders, and
18 assembling the commission briefing books;

19 "And whereas, Dee has always taken on any job
20 that has been put before her and is always ready to help
21 out with special events and projects;

22 "And whereas, Dee has been the top fundraiser
23 for the Hispanic Awareness Committee's annual scholarship
24 fund drive for the last three years, and her uplifting
25 personality has been a bright spot in the administration's

1 offices and across the department with all the people that
2 she has worked with;

3 "Now, therefore, be it resolved that the Texas
4 Transportation Commission does hereby extend sincerest
5 best wishes to Dee Hernandez in recognition for her
6 professional achievements in a career of loyal service on
7 behalf of the State of Texas and its citizens."

8 Presented this day, Thursday, the 26th of
9 August 2010.

10 Dee, congratulations.

11 Dee, for my part, you've been, I guess, chief
12 minute order clerk through twelve commissioners, four
13 executive directors, and the little math that I did, for
14 13 years, 12 months in a year, that's 156 commission
15 meetings, about 40 minute orders per commission meeting,
16 that's over 6,000 minute orders that you've processed. So
17 you've been keeping us busy.

18 I want to thank you for your dedicated service
19 and friendship and support, and always having this can-do
20 attitude. So thank you, good luck, and best wishes.

21 Dee, would you like to say a few words?

22 MS. HERNANDEZ: First of all, I just want to
23 give the Lord thanks for giving me the strength to last
24 this long.

25 (General laughter.)

1 MS. HERNANDEZ: And I couldn't have been
2 blessed with two good bosses, Steve and Amadeo. I've
3 appreciated all that you have done for me. And Roger, I'm
4 going to miss you really, really, really, really a lot.

5 I've met a lot of friends throughout my years
6 and I've been blessed by those friendships, new and old,
7 and I just want to say thank you for giving me a blessed
8 career. I appreciate it.

9 (Applause.)

10 MR. SAENZ: Thank you, Dee. We'll hand out the
11 resolutions in a little bit and we'll take pictures, but
12 just sit up here in the front. You don't want to sit
13 right here? Okay.

14 Next I'd like Shirley Macik to please come
15 forward to the podium, and here is Shirley's resolution.

16 "Whereas, the Texas Transportation Commission
17 takes great pride in recognizing Shirley Macik, who has
18 served with the Texas Department of Transportation for
19 more than 37 years, most recently as executive secretary
20 for the assistant executive directors of District and
21 Engineering Operations;

22 "And whereas, Shirley began her career in the
23 Construction Division of the then Texas Highway Department
24 in 1968; Shirley moved to the Dallas District in 1973 but
25 stepped away a year later to be a stay-at-home mom;

1 "And whereas, after returning to the Dallas
2 District in 1979, Shirley was transferred to the Audit
3 Office in 1983, and when her husband's career brought them
4 to Austin a year later, she returned to the Construction
5 Division, and in 1990 joined the administration;

6 "And whereas, Shirley has also served as
7 secretary of the Contract Claims Committee and provided
8 administrative support for the AASHTO Task Force on Sharp
9 Implementation and the State Agency Coordinating
10 Committee;

11 "And whereas, her gentle spirit, steady
12 temperament and pursuit of excellence makes Shirley an
13 essential staff member in supporting program managers,
14 division directors, department administrators and co-
15 workers with their duties;

16 "And whereas, Shirley has consistently exceeded
17 expectations throughout her career with TxDOT, and the
18 wealth of knowledge and services she provided the agency
19 have been essential to its success;

20 "Now, therefore, be it resolved that the Texas
21 Transportation Commission does hereby extend sincerest
22 best wishes to Shirley K. Macik in recognition for her
23 professional achievements in a career of loyal service on
24 behalf of the State of Texas and its citizens."

25 Presented Thursday, the 26th of August 2010.

1 And Shirley, I also had the opportunity to work
2 with you when I first came to Austin in 2001, and I guess
3 you survived me but you couldn't survive John and David.

4 But we want to thank you for your service.
5 I've never seen anybody as dedicated as you and always
6 willing to lend a hand and get things done. So thank you
7 very much.

8 Would you like to say a few words?

9 MS. MACIK: Yes, I do.

10 I want to thank TxDOT for letting me have this
11 opportunity to serve not only my co-workers, department
12 members, the public, but I've had a wonderful career and
13 I've enjoyed every minute of it. In fact, I started my
14 career in the Greer Building here in 1968, so I am
15 finishing my career now in 2010 in the Greer Building.

16 But I have enjoyed every minute of it, I've
17 seen many changes, I've made many friends, and I will
18 truly miss my TxDOT family, but I will think about you
19 occasionally.

20 (General laughter.)

21 MR. SAENZ: You know, Shirley spent a lot of
22 time here in the Greer Building in executive
23 administration. She worked under five executive
24 directors, so you've got Dee beat by one. Dee, that means
25 you can't retire.

1 Finally, I'd like to ask Walter McCullough, our
2 district engineer from San Angelo, to please come up to
3 the podium. Here's our resolution for Walter.

4 "Whereas, the Texas Transportation Commission
5 takes great pride in recognizing Walter G. McCullough,
6 P.E., who has served the Texas Department of
7 Transportation for more than 39 years, most recently as
8 the San Angelo District Engineer;

9 "And whereas, Walter joined the then Texas
10 Highway Department in 1971 after earning his bachelor's
11 degree in civil engineering from Texas Tech University;

12 "And whereas, in 1975, Walter was assigned to
13 the Waco District office to work as an engineering
14 assistant in the Design Section, and later worked in the
15 McLennan County residency;

16 "And whereas, Walter earned his master's degree
17 from Baylor University in 1977 and transferred to the San
18 Angelo District in 1978 to serve as an engineer in the San
19 Angelo residency; he worked in the district laboratory and
20 served as construction engineer and became district
21 engineer in 1988;

22 "And whereas, among many accomplishments that
23 he has achieved throughout his career, Walter led the
24 development of the roadway projects in San Angelo leading
25 to the planned completion of US 67, the Houston Hart

1 Expressway, as well as several major projects on routes of
2 the Texas trunk system and the Ports to Plains Corridor;

3 "And whereas, Walter has chaired various
4 department research committees, including the Business
5 Title Classification Committee, and led the development of
6 the 2009 Strategic Maintenance Asset Management Plan;

7 "Now, therefore, be it resolved that the Texas
8 Transportation Commission does hereby extend sincerest
9 best wishes to Walter G. McCullough, P.E. in recognition
10 for his professional achievements in a career of loyal
11 service on behalf of the State of Texas and its citizens."

12 Presented today, August 26, 2010.

13 And Walter, I also want to thank you personally
14 for all the help that you have given me individually and
15 the things that I've learned from you. You were -- you
16 are still, because you have not retired, the dean of our
17 district engineers, and of course, during the last DE
18 meeting we did pass the torch over to Maribel; she's got
19 some very big boots to fill.

20 So we wish you all the luck, and of course,
21 keep in touch. Thank you, my friend.

22 MR. McCULLOUGH: I think Maribel is going to do
23 fine as being the new dean of the district engineers.

24 I want to thank the administration for what
25 they've done in everything for me personally, as well as

1 our district in West Texas. Thank you, as well as our
2 previous administrations.

3 I want to thank the commission for the same
4 thing. We appreciate your interest in West Texas, and in
5 the San Angelo area, we've got a lot of projects built.
6 And I especially want to thank you for being in San Angelo
7 last summer for a commission meeting. I hope you enjoyed
8 that. And Commissioner Meadows was there for a town hall
9 meeting and heard a lot of input from our community on
10 transportation. There is a definite interest for
11 transportation improvements in San Angelo and West Texas,
12 and I think you have heard that.

13 I want to thank the employees of the San Angelo
14 District. Those individuals are highly dedicated
15 professionals that do a great job for the Texas Department
16 of Transportation. They really are great people, and I
17 want to thank them personally for that.

18 Thirty-nine years with the department, I've
19 enjoyed every minute of it -- nearly every minute of it,
20 most of it.

21 (General laughter.)

22 MR. McCULLOUGH: So I want to thank you for the
23 opportunities, and I will certainly keep in touch with the
24 dealings of the Department of Transportation in the
25 future. Thank you.

1 (Applause.)

2 MR. UNDERWOOD: Walter, on a personal note,
3 having worked with you, I really appreciate your calm
4 demeanor and your broad knowledge that you shared with me,
5 and it will be missed. Thank you very much, sir.

6 MR. McCULLOUGH: Thank you, Commissioner.

7 MR. MEADOWS: I have to make a personal comment
8 as well, Walter. First of all, thanks for the hospitality
9 the times we were out there, it really was a great
10 experience. I know the Chair enjoyed firing the cannon as
11 much as we enjoyed watching her fire the cannon. I'm sure
12 there's some days she'd like to borrow that cannon and
13 bring it back here.

14 But I will tell you on the point of your
15 retirement I think that you need to recognize that we all
16 see you as truly the face of TxDOT. The short time I've
17 been involved, as I've gotten out in the field and you see
18 the district engineers, and the meetings I attended out
19 there, to see the relationship that you had with civic
20 leadership in the community over the area, not just San
21 Angelo but the entire district, business leadership, the
22 communication. You are the face of TxDOT and you make us
23 proud, as all our district engineers do, but I'm sure that
24 they look up to you and are going to miss you. But we
25 appreciate what you did and what you will continue to do,

1 I'm sure.

2 You'll stay in San Angelo?

3 MR. McCULLOUGH: Well, actually I live in Irion
4 County which is right adjacent to Tom Green County. Yes,
5 we're going to stay there.

6 MR. MEADOWS: Well, thank you.

7 MR. McCULLOUGH: Thank you, Walter.

8 Commissioners, these three people take with
9 them 108 years of experience, and like I said, we thank
10 them.

11 Before we step down and take some photographs
12 and hand out the retirement certificates and the
13 resolutions, I'd like to also recognize the great number
14 of other employees throughout the department who have
15 decided to retire effective August 31. We're saying
16 goodbye to a lot of good friends and excellent fellow
17 employees that are going to move on to the next phase of
18 their lives. On behalf of the administration, on behalf
19 of the commission, on behalf of the staff, we wish you all
20 good luck and remind you that you will always be part of
21 the TxDOT family whether you're an employee or a retired
22 employee, or a former employee, as the Aggies like to say.

23 So with that, we'll go ahead and real quickly
24 present the resolutions and take some photographs.

25 (Pause for presentation and photographs.)

1 MR. SAENZ: Commissioners, moving on to the
2 agenda, I'd like to move a couple of agenda items up on
3 the agenda. Agenda item number 6a(4) which is adoption of
4 final rules for the planning process, we had a committee
5 that was put in place to help us put our rules in
6 Administrative Code, and John Barton is proposing the
7 final rules and we'll have a presentation also.

8 MR. BARTON: Good morning, Chair Delisi,
9 commissioners, Director Saenz. For the record, my name is
10 John Barton, and as I always share with you, I have the
11 pleasure and distinct honor of serving as assistant
12 executive director for Engineering Operations for the
13 State of Texas here at the Texas Department of
14 Transportation.

15 There is a letter that is being passed to you
16 that I received from Judge Emmett who served as the
17 chairman of the Transportation Planning and Project
18 Development Rulemaking Advisory Committee that assisted us
19 on these two particular activities.

20 There are actually two items associated with
21 this action today. The first is for the final adoption of
22 repeals to Chapter 15 of our Transportation Planning
23 rules, and the minute order that would be before you now
24 would adopt repeals concerning those rules.

25 The current rules focus primarily on the

1 federal planning and programming requirements that are
2 applicable to our metropolitan planning organizations.
3 During the Sunset review process the department underwent
4 during the last legislative session, recommendations were
5 made to require the department to develop a transportation
6 planning and programming process for all modes of
7 transportation that involved transportation stakeholders
8 from across the state.

9 In response to that, in July of 2009, at your
10 commission meeting you created the Transportation Planning
11 and Project Development Rulemaking Advisory Committee that
12 was comprised of eleven members that represented
13 metropolitan planning organizations, transit agencies,
14 small communities, counties, councils of governments and
15 tolling authorities, as well as the Federal Highway
16 Administration.

17 And this rulemaking advisory committee met five
18 times, throughout the course of their work, with
19 department staff to give us advice and to help us review
20 and draft proposed revisions to these rules. They also
21 solicited, through the department, public comment on these
22 draft rules on two occasions, and on May 4 of 2010, they
23 unanimously recommended the commission take up the
24 proposed draft rules.

25 Commission, in May of 2007 through Minute Order

1 112264, you proposed the repeal of the Chapter 15 rules
2 that are before you at this moment and a public hearing
3 was held regarding that matter and no comments were
4 received.

5 The issue that is associated with these
6 revisions is that a comprehensive approach to
7 transportation planning, programming and project
8 development and funding requires significant revisions of
9 the rules that we have in place today in Chapter 15, and
10 to help us focus on those changes, the department, through
11 this rulemaking advisory committee, recommends creating a
12 new chapter, which will be the next item that you take up,
13 that would address transportation planning and programming
14 funding and performance reporting that will, in other
15 words, be in Chapter 16 of this particular section of our
16 rules.

17 The provisions that are in Chapter 15 that are
18 appropriate will be moved over there, those that are now
19 unnecessary are being removed and repealed in their
20 entirety.

21 And I have a letter that I would like to read
22 to you, as a part of both of these minute orders that are
23 before you, that was written by Judge Emmett. He,
24 unfortunately, could not be here today to speak to you as
25 the chair of this rulemaking advisory committee, but he

1 did want to provide comments in the form of this letter,
2 and I think a copy is before you, but I would like to read
3 it into the record, if you would allow me.

4 And it says, "Dear Chair Delisi, It is my
5 privilege and honor to recommend for the Texas
6 Transportation Commission's consideration proposed
7 revisions to the rules contained in Title 43, Texas
8 Administrative Code, Part 1, regarding transportation
9 planning and project development.

10 "The Transportation Planning and Project
11 Development Rulemaking Advisory Committee created by the
12 commission has diligently and dutifully considered these
13 proposed rule revisions and recommend your favorable
14 consideration of their adoption.

15 "I also want to commend the Transportation
16 Planning and Project Development Rulemaking Advisory
17 Committee members and the department staff who worked on
18 this task for their professionalism and dedication during
19 the crafting of these proposed rule revisions. Their
20 efforts have resulted in rules that, when adopted, will
21 enable a more productive and cooperative transportation
22 planning and project development process that will benefit
23 all of Texas.

24 "Thank you for allowing me to serve on this
25 committee, and I respectfully request and recommend your

1 favorable consideration of the final adoption of these
2 proposed rule revisions."

3 Sincerely, Ed Emmett, Harris County Judge, and
4 chairman of this rulemaking advisory committee.

5 Commissioners, those are the comments that I
6 would share with you about this particular item. Staff
7 would recommend your adoption of this minute order. I'll
8 be happy to answer any questions that you may have, and I
9 believe that there's some people here today to speak on
10 this issue.

11 MR. SAENZ: John, before we go, I forgot to add
12 6a(3) because you talked about 6a(3) and 6a(4). So agenda
13 item 6a(3) is the repeal of Chapter 15 and that will be
14 one minute order, and agenda item 6a(4) will be the
15 adoption of new Chapter 16.

16 MR. BARTON: That's correct, Director Saenz.

17 MS. DELISI: Are there any questions of John?

18 (No response.)

19 MS. DELISI: Then I'd like to call up Chairman
20 Joe Pickett.

21 MR. PICKETT: Madam Chair and commissioners.
22 First, I've met the dean of the delegation from San
23 Angelo, and I know he is retiring and I was wondering if
24 he remembers anybody else's retirement. If you remember
25 Chairman Junell from San Angelo? I'll bet he was glad

1 when Chairman Junell retired. That's all I thought of and
2 that's probably what he thought of.

3 (General laughter.)

4 MR. PICKETT: Mr. Barton mentioned the members
5 of the committee, and as many of you know, you were busy
6 yesterday, I had a hearing yesterday, and so I wanted to
7 come over and just reiterate a little bit what I knew Mr.
8 Barton would tell you about the rules, and it's more the
9 committee.

10 He mentioned the diversity of the committee.
11 It included two legislators: myself and also a member of
12 the Senate which was kind of unusual because TxDOT did not
13 provide lunch and they made us buy our own, and Senator
14 Watson still came to the meetings. So that was probably a
15 big deal.

16 (General laughter.)

17 MR. PICKETT: The genesis of this was initiated
18 by you all, so I came to say I appreciate that and thank
19 you. The genesis prior to that had been House Bill 300,
20 the Sunset bill, so this was you all taking a proactive
21 stance on trying to do some of the things that were being
22 recommended.

23 The good thing about the process for myself in
24 this is it's not under the same time constraints of a
25 legislative session, we don't have all the other people

1 poking and prodding and last minute amendments that seem
2 to really mess things up. We had time to really look at
3 these things, and I will tell you, I, for one, and I
4 believe most of the other members, it's not just stuff
5 going out. I think we all learned differently at that
6 process, having FHWA there and the resources, questions
7 got asked. We would actually get off subject for a little
8 bit, but at the end of the day we'd learned something else
9 that we could take on and use.

10 There's not a lot of fanfare on what is
11 proposed before you, but I think it's a pretty big deal, I
12 think it's a very big deal. I think as the session comes
13 up and the Grant Thornton issues are brought forward, I
14 think you're going to be able to say been there, done that
15 if you adopt these.

16 There's a lot of things in here that aren't the
17 first time that you've heard the recommendations for, but
18 if you take those actions, I think it's real positive
19 steps to not only empower MPOs which should be, but I
20 think it helps TxDOT, the clarity. A lot of the buzzwords
21 that we've been asking for are in these proposed rules.

22 So with that, again, I want to thank the staff.
23 We met right here in the conference room behind your
24 meeting room here several times, and it didn't include the
25 phone calls and messages, and you had a really dedicated

1 group of people. And I want to personally thank Judge
2 Emmett. I had never met Judge Emmett until you put us
3 together in the same room, and so now we have a
4 relationship on some other things that we're working on
5 because of that as well. So I also want to thank you.

6 And also, you have another House member here,
7 Representative Miller is here with his delegation. Please
8 be kind to their request. They came with law enforcement
9 officers that are going to arrest him if they don't get
10 the item that they want on the agenda and haul him back.

11 (General laughter.)

12 MR. PICKETT: So with that, thank you, and I
13 hope you adopt the rules. And if you have any questions
14 of us between now and then, I would really appreciate
15 them. Again, thank you.

16 MS. DELISI: Thank you.

17 MR. BARTON: If there are no other questions,
18 then again, the staff would recommend your adoption of
19 these rules. And I'd just add one more note, I would like
20 to express my sincere appreciation to all the members of
21 the committee. They did an outstanding job, I believe.
22 And certainly to Judge Emmett for his leadership of that
23 committee.

24 And I would like also like to commend for your
25 acknowledgment some staff members from our Office of

1 General Counsel who worked very diligently in the
2 preparation of these rules, primarily Mr. J.D. Ewald who
3 did an outstanding job, Robin Carter who also did an
4 unbelievable job, and Angie Parker who assisted them in
5 that matter. So if you get the chance to see those
6 individuals, I would recommend and commend to you that
7 they did a great job.

8 MS. DELISI: Okay. Well, with that, can I get
9 a motion on we'll start with 6a(3)?

10 MR. HOUGHTON: So moved.

11 MR. HOLMES: Second.

12 MS. DELISI: All in favor?

13 (A chorus of ayes.)

14 MS. DELISI: The motion passes.

15 All right. And then can I get a motion on
16 approval of agenda item 6a(4)?

17 MR. HOUGHTON: So moved.

18 MR. UNDERWOOD: Second.

19 MS. DELISI: All in favor?

20 (A chorus of ayes.)

21 MS. DELISI: The motion passes. Thanks, John.

22 MR. SAENZ: Thank you, John, and thank you for
23 leading and working with the group. And of course,
24 Representative Pickett, thank you for helping us put this
25 thing together.

1 I'm going to move on to agenda item number 12,
2 commission. Agenda item number 12 deals with the
3 Proposition 14 Program and adding a project in Gillespie
4 County, and John will make that presentation as well.

5 MR. BARTON: Yes. I think this is the item
6 that perhaps Representative Miller was interested in, but
7 this is an additional project being funded through our
8 Proposition 14 Bond Program. You should have a copy of
9 the minute order as well as the exhibit in your book.

10 As you know, the Proposition 14 Bond Program
11 has been a very successful program, a tool that the
12 legislature has given to us, and it's, I think,
13 appropriate that Chairman Pickett is here today. This
14 particular project is being funded from a portion of the
15 Proposition 14 Bond Program that we refer to as the Safety
16 Bonds, and these were the Pickett-Ogden bond program that
17 they established that allowed us to set aside a specific
18 portion of these bond proceeds to be used on safety
19 projects.

20 As we've implemented several of these safety
21 projects from across the state, we've experienced cost
22 underruns and savings as projects were built, and it's
23 allowing us to now bring forward one additional safety
24 project on US 290 in Gillespie County to construct a left
25 turn lane and to widen some shoulders in an area within a

1 community that is experiencing traffic growth in the
2 Fredericksburg area that also has a university campus at
3 that location.

4 And so the minute order that is before you
5 today would specifically allocate funding to that
6 particular project in the amount of \$2.2 million. We
7 believe that that project is a very worthwhile project,
8 will help save several lives and avoid several crashes on
9 that particular section of roadway. And in doing so, I'd
10 just point out that if you look at the recapitulation of
11 the funding that's available from this remaining, it will
12 leave approximately \$286 million in Prop 14 Bond proceeds
13 that have not yet been dedicated to other projects that is
14 still awaiting consideration by the commission.

15 So staff would recommend your approval of this
16 minute order and the funding of this project, and I'll be
17 happy to answer any questions, and I do believe that
18 Representative Miller is here to speak on this particular
19 item.

20 MS. DELISI: Any questions for John?

21 (No response.)

22 MS. DELISI: Okay. Then Representative Miller.

23 MR. MILLER: Thank you, Madam Chair. I guess
24 first I need to thank Chairman Pickett for those kind
25 words. He is right, with one exception. He's right about

1 the fact that they are here to take me back in handcuffs
2 if you don't approve it, but he is wrong with the fact
3 that we've got a jail overcrowding problem there in
4 Gillespie County and so they don't have any room for me.
5 So when I get back to Fredericksburg, I guess I'll have to
6 take my wife shopping.

7 (General laughter.)

8 MR. MILLER: First, I want to say thank you to
9 you, Chairman Delisi and commissioners, certainly for all
10 your hard work and for what you do for Texas and for
11 Texans. I know your job is not easy and you have a lot of
12 issues that come before you and decisions that you have to
13 make, not only concerning the Texas Hill Country but this
14 entire state, so I want to personally applaud you for the
15 work you do and look forward to working with you again in
16 this upcoming session. I also want to thank you for
17 considering this important issue today and allowing me to
18 come before you and address you on it.

19 Secondly, before I go any further, I would like
20 to recognize some very special guests and dignitaries from
21 Fredericksburg and Gillespie County, if you'd allow me to
22 do so. And they can stand as I call their name.

23 We have the Mayor of the City of
24 Fredericksburg, Tom Musselman; we have Councilman Graham
25 Pearson; we have from the commissioners court Commissioner

1 Curtis Cameron; we have our Chief of Police Paul
2 Oestreich; our Gillespie County Sheriff Buddy Mills; from
3 the Hill Country University Center, Jimmy Sparks and Brad
4 Hardin; from Texas Tech University, Bob Hickerson, and
5 also from Texas Tech, Dr. Julie Martinson.

6 I want to especially appreciate them getting up
7 early this morning and leaving Fredericksburg and coming
8 down here to show the community support for this. I've
9 asked these good folks to come down to demonstrate to you
10 how important this issue is to them, but also to represent
11 a cross-section of the entire community that has been
12 working a long time on this project. And they're very
13 excited about the fact that this project is open now, but
14 before we go too far down the road, you might say -- no
15 pun intended -- we've already started to see a safety
16 issue occur where we've had accidents out there, as John
17 just told you about. In fact, we've had one fatality as a
18 result of this.

19 So I want to certainly thank TxDOT and the
20 staff for taking time to hear the concerns of the
21 community and my concerns. They heard us out, they
22 started brainstorming on what the possibilities were to
23 resolve these issues. I specifically want to thank your
24 executive director, Amadeo Saenz, for all the time that
25 we've worked together through issues and everything that

1 he does.

2 Our district engineer took a special interest
3 in this project. Carlos, I want to thank you for your
4 work. I have two great district engineers, Mario Medina
5 down in San Antonio and Carlos in the Austin area do a
6 great job. And Howard Lyons is our area engineer. I want
7 to thank all of them for their work.

8 I'm sure that you've heard about these safety
9 situations and we sincerely believe that as this campus
10 becomes more popular, as enrollment continues to grow,
11 these conditions will only worsen. The particular
12 challenge with this stretch of the highway is that there's
13 a bridge right before the campus and then there's sort of
14 a blind curve that brings you into this, and fortunately
15 we've had a reduction in speed after a study was done out
16 there, but still, folks coming into this area of
17 Fredericksburg are unaware of the fact that this campus
18 exists and the safety issues that exist with the campus,
19 Old San Antonio Road that's out there and the blind curve.

20 Additionally, we're fortunate that this group,
21 among others in Fredericksburg, have recruited and will
22 soon be building and in the process of building the new
23 Former Texas Rangers Museum and Educational facility out
24 there just adjacent to this. So again, those of you that
25 have visited Fredericksburg, and we certainly appreciate

1 you coming and spending your hard-earned dollars there,
2 but there's a lot of people that enjoy Fredericksburg and
3 we want to continue to make sure that when they come to
4 Fredericksburg and Gillespie County that they're safe.

5 We are very proud of this new Hill Country
6 University System. It's a real plus for not only the
7 community but for those who want to continue their
8 education but for whatever reason, whether it's economics
9 or simply they can't afford the time to get away to come
10 to an established university, this is a facility, by
11 working through the Texas Tech program and their system,
12 that gives them tremendous opportunities.

13 This is a true asset for Texas, so the
14 challenge becomes how do we keep those who attend, work
15 and use this great facility safe. I think a testament to
16 that is the concern and the calls that I've received from
17 our sheriff, Sheriff Mills, and Chief Oestreich about
18 something has to be done. So I truly believe that this is
19 exactly the situation that was envisioned by Chairman
20 Pickett and Senator Ogden when the legislature authorized
21 these safety bonds.

22 So I want to thank you again for allowing me to
23 address you, for allowing our delegation to come, and for
24 your consideration, and ask for your favorable
25 consideration on this issue. And I'd be happy to answer

1 any questions, but I'm sure I've taken too much of your
2 time already.

3 MS. DELISI: Thank you, Representative.

4 Any questions for Representative Miller?

5 (No response.)

6 MS. DELISI: Okay. Thank you so much.

7 MR. BARTON: Madam Chair, I'll just close by in
8 addition to sharing with you that I also would recommend
9 for your commendation, Carlos Lopez and his leadership, as
10 well as Howard Lyons. In addition to that, Carol Rawson,
11 your director of Traffic Operations Division, and David
12 Casteel, your assistant executive director for Field
13 Operations, they received this inquiry, they took it
14 seriously, they came up with a creative solution working
15 with this community, and I think that they should be
16 commended for that effort of helping save lives and make a
17 roadway safer.

18 So with that, again staff recommends your
19 approval of this minute order.

20 MS. DELISI: Is there a motion?

21 MR. HOUGHTON: So moved.

22 MR. HOLMES: Second.

23 MS. DELISI: All in favor?

24 (A chorus of ayes.)

25 MS. DELISI: The motion passes.

1 MR. BARTON: Thank you.

2 MR. SAENZ: Thank you, John, and thank everyone
3 that worked on this important project.

4 Commission, we will return back to agenda item
5 number 3 and continue with the agenda. Dave Fulton, our
6 director of the Aviation Division, will present three
7 minute orders concerning our aviation programs. David.

8 MR. FULTON: Thank you, Amadeo, commissioners.
9 For the record, my name is Dave Fulton, director of TxDOT
10 Aviation Division.

11 The first item is a minute order that contains
12 a request for grant funding approval for 13 airport
13 improvement projects. The total estimated cost of all
14 requests, as shown in Exhibit A, is approximately \$4.7
15 million: approximately \$3.4 million in federal funding,
16 \$800,000 in state funding, and approximately \$500,000 in
17 local funding.

18 A public hearing was held on July 22. No
19 comments were received. We would recommend approval of
20 this minute order.

21 MS. DELISI: Any questions? Is there a motion?

22 MR. UNDERWOOD: So moved.

23 MR. HOLMES: Second.

24 MS. DELISI: All in favor?

25 (A chorus of ayes.)

1 MS. DELISI: The motion passes.

2 MR. FULTON: Thank you.

3 Item (b) is a minute order for the purpose of
4 continuation of the Routine Airport Maintenance Program
5 for Fiscal Year 2011. This program allows the department
6 to match local funds for airport maintenance and small
7 capital improvement work items on a 50-50 basis up to an
8 approved amount in state funds. No changes in the program
9 are recommended for the upcoming year.

10 A public hearing was held on July 22. No
11 comments were received. We would also recommend approval
12 of this minute order.

13 MS. DELISI: Any questions? Is there a motion?

14 MR. UNDERWOOD: So moved.

15 MR. HOLMES: Second.

16 MS. DELISI: All in favor?

17 (A chorus of ayes.)

18 MS. DELISI: The motion passes.

19 MR. FULTON: The final minute order is a
20 request for approval of the Aviation Capital Improvement
21 Program for 2011-2013. TxDOT is required by Section
22 21.109 of the Transportation Code to prepare and update
23 annually a multi-year aviation facilities capital
24 improvement program which is a plan for general aviation
25 airport development in Texas. The FY 2011-2013 plan

1 includes approximately \$241 million of general aviation
2 airport improvement projects. Over the three-year period,
3 this represents projected funding of approximately \$172
4 million in federal funding, \$36 million in state funding,
5 and \$33 million in local contributions.

6 A copy of the draft CIP as posted on TxDOT's
7 Aviation website for review and comment. No substantive
8 comments were received. The Texas Aviation Advisory
9 Committee approved the plan during their meeting on August
10 3, 2010.

11 I would also like to point out that approval of
12 this plan includes no commitment of funding of any kind.
13 All individual projects will be brought before the
14 commission at the appropriate time for your consideration
15 on their individual merits.

16 We would recommend approval of the FY 2011-2013
17 Aviation Capital Improvement Plan.

18 MS. DELISI: Any questions? Motion?

19 MR. UNDERWOOD: So moved.

20 MR. UNDERWOOD: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. FULTON: Thank you.

25 MS. DELISI: Thanks, Dave.

1 MR. HOLMES: Dave, before you sit down, I
2 wanted to just make a brief comment. In looking at
3 publications that deal with general aviation facilities
4 around the country, I note that many of the ones that you
5 work have been rated very, very highly, and I want to
6 congratulate you and your staff on doing a really great
7 job.

8 MR. FULTON: Well, thank you very much.

9 MR. SAENZ: Thank you, Dave.

10 Agenda item number 4, commissioners, Eric
11 Gleason, our director of the Public Transportation
12 Division, will present two minute orders dealing with our
13 public transportation programs.

14 MR. GLEASON: Good morning. For the record, my
15 name is Eric Gleason, TxDOT director of Public
16 Transportation.

17 Agenda item 4a awards approximately \$1.5
18 million of FTA funds from various federal programs and
19 state matching funds to regional lead agencies for Fiscal
20 Year 2011. The awards in this minute order supercede
21 Minute Order 112065, dated December 27, 2009. It also
22 awards funds to lead agencies, NorTex Regional Planning
23 Commission, and the South Texas Development Council,
24 representing two planning regions not previously funded
25 for Fiscal Year 2011, and removes funding from one region,

1 the Coastal Bend Council of Governments, where lead agency
2 responsibilities are changing.

3 This effort has traditionally been funded by
4 FTA Section 5304 funds. Through this minute order, other
5 sources of federal funds are made available to support the
6 regional coordinated planning process.

7 Staff recommends your approval of this minute
8 order.

9 MS. DELISI: Is there a motion?

10 MR. HOUGHTON: So moved.

11 MR. HOLMES: Second.

12 MS. DELISI: All in favor?

13 (A chorus of ayes.)

14 MS. DELISI: The motion passes.

15 MR. GLEASON: Agenda item 4(b) awards
16 approximately \$264,000 of FTA Section 5316, Job Access
17 Reverse Commute Program funds, and approximately 53,000
18 transportation development credits to Texoma Area
19 Paratransit System for fleet procurement.

20 TAPS has been contracting with a private over-
21 the-road carrier to provide work-based transportation to
22 the Peterbilt factory in Denton. The private carrier is
23 no longer able to continue providing the work and TAPS is
24 requesting these funds to purchase vehicles to take on the
25 service themselves.

1 Staff recommends approval of this minute order.

2 MR. HOUGHTON: So moved.

3 MR. HOLMES: Second.

4 MS. DELISI: All in favor?

5 (A chorus of ayes.)

6 MS. DELISI: The motion passes.

7 MR. GLEASON: Thank you.

8 MR. SAENZ: Thank you, Eric.

9 Agenda item number 5, commissioners, deals with
10 authorization of expenditures of some general revenue from
11 this past legislative session, and Bill Glavin will make
12 that presentation.

13 MR. GLAVIN: Thank you, Amadeo, commission.
14 For the record, my name is Bill Glavin. I'm the Rail
15 Division director for the Texas Department of
16 Transportation.

17 This minute order is dealing with an \$8.7
18 million appropriation for the Austin-San Antonio passenger
19 rail project. The 81st Legislature authorized \$8.7
20 million for environmental review and preliminary
21 engineering for passenger rail studies between Austin and
22 San Antonio. This money could be used for a variety of
23 studies being pursued as part of the implementation of
24 passenger rail in that corridor.

25 The Lone Star Rail District, working from

1 previous TxDOT studies, the Central Texas Rail Relocation
2 Study and the San Antonio Regional Rail Freight Study, is
3 working with the Union Pacific to relocate its through
4 freight operations to east of I-35. The relocation of the
5 UP's through freight would open up the existing freight
6 lines for passenger rail service between Austin and San
7 Antonio, therefore, providing the citizens of Austin and
8 San Antonio with an alternative mode of travel between
9 these two cities.

10 In addition, on May 19, 2010, TxDOT applied for
11 \$14 million in planning grants through the Federal
12 Railroad Administration's High Speed and Intercity
13 Passenger Rail Program to study passenger rail within the
14 corridor extending from Oklahoma City, Oklahoma to Dallas-
15 Fort Worth, Texas, down through Austin, San Antonio, and
16 to a point in South Texas. If TxDOT is successful and is
17 awarded the planning grant for this corridor, a portion of
18 this funding, approximately \$2.8 million, would be used
19 for the required 20 percent match.

20 This corridor study would include the section
21 of the corridor that encompasses the Austin-San Antonio
22 passenger rail project. This minute order authorizes the
23 department to enter into any agreements necessary to
24 perform the preliminary engineering and environmental
25 reviews to further the Austin to San Antonio passenger

1 rail project.

2 The staff recommends approval of this minute
3 order.

4 MS. DELISI: And this is approval for the
5 entire amount of the appropriation?

6 MR. GLAVIN: That is correct.

7 MS. DELISI: Okay.

8 MR. UNDERWOOD: So moved.

9 MR. HOLMES: Second.

10 MS. DELISI: All in favor?

11 (A chorus of ayes.)

12 MS. DELISI: The motion passes.

13 MR. SAENZ: Thank you, Bill.

14 Agenda item number 6, commissioners, deals with
15 the promulgation of administrative rules. 6(a) deals with
16 final adoptions, and 6a(1) is for final adoption of rules
17 in Chapter 15. Bob Jackson will present this minute
18 order.

19 MR. JACKSON: Bob Jackson, general counsel.

20 As part of the department's restructuring of
21 its planning rules, this minute order merely moves rules
22 concerning corridor advisory committees and corridor
23 segment advisory committees from Chapter 15 to Chapter 1.

24 We received no public comments. We recommend adoption of
25 the minute order.

1 MR. HOUGHTON: So moved.

2 MR. HOLMES: Second.

3 MS. DELISI: All in favor?

4 (A chorus of ayes.)

5 MS. DELISI: The motion passes.

6 MR. SAENZ: Agenda item 6a(2) is final adoption
7 for Chapters 13 and 15, and Rick Collins, our director of
8 our Research and Technology Office, will present this
9 agenda item.

10 MR. COLLINS: Good morning. My name is Rick
11 Collins, director of the Research and Technology
12 Implementation Office.

13 This minute order adopts the repeal of Section
14 15.13, New Product Evaluation, and moves the section to
15 Chapter 13, new Section 13.7, New Product Evaluation. The
16 commission, by minute order 112263, dated May 27, 2010,
17 proposed the repeal and new section. No comments were
18 received, and staff recommends your approval.

19 MR. HOUGHTON: So moved.

20 MR. HOLMES: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. SAENZ: Thank you, Rick.

25 Agenda items 6(a)(3) and (4) we've already

1 taken. Agenda item 6a(5) deals with right of way and
2 utility accommodation, and John Campbell will present a
3 minute order for you.

4 MR. CAMPBELL: Good morning. For the record,
5 my name is John Campbell. I'm the Right of Way Division
6 director.

7 I'd like to present for your consideration this
8 morning item 6a (5) which provides amendments concerning
9 utility design to clarify responsibilities for performing
10 that design, installation and relocation.

11 Current rules provide that the utility
12 companies are responsible for installation adjustment or
13 relocation of their utility facilities. The proposed
14 amendments to Section 21.37 provide that the department
15 and the utility company may agree to have the department
16 procure the design of a utility accommodation that's been
17 made necessary as the result of a transportation project.

18 The commission, by Minute Order 112266 on May
19 27 of 2010 proposed the amendments. We held a public
20 hearing on July 7 of 2010 to receive comments. There were
21 no comments received at the public hearing. We also
22 received no written comments during the public period.

23 Staff recommends your approval of the minute
24 order.

25 MR. HOUGHTON: So moved.

1 MR. HOLMES: Second.

2 MS. DELISI: All in favor?

3 (A chorus of ayes.)

4 MS. DELISI: The motion passes.

5 MR. SAENZ: Thank you, John.

6 Agenda, item 6a(6) dealing with Toll Projects,
7 we're going to defer that agenda item at this time. And
8 moving on to agenda item 6b dealing with proposed adoption
9 of rules, and we have four minute orders that will be
10 presented by Deputy Executive Director Steve Simmons
11 concerning ethics and compliance programs of people that
12 work with the department.

13 MR. SIMMONS: Good morning, Madam Chair,
14 commissioners. For the record, I'm Steve Simmons, deputy
15 executive director for the Texas Department of
16 Transportation, and I'll be presenting these minute
17 orders, again in my capacity as the interim internal
18 compliance officer for the department.

19 Because we list these agenda items by chapter
20 number, I do need to take these out of order because we'll
21 be adding some, moving some and repealing some of the
22 items, so if you'll indulge me, I'd like to begin with
23 agenda item 6b(3).

24 Proposed Chapter 10, Ethical Conduct by
25 Entities doing Business with the Department, sets for

1 required conduct and most and enforcement provisions for
2 entities doing business with the department. Enforcement
3 provisions applicable to highway improvement contractors
4 are provided in Chapter 9, Subchapter G, and not in this
5 chapter.

6 Proposed Chapter 10 requires entities to
7 conduct themselves in an ethical manner. It addresses
8 conflicts of interest, adherence to law, and good standing
9 with the comptroller, other state agencies, other states,
10 and agencies of the federal government. The proposed
11 chapter also requires entities to adequately address and
12 notify the department of business-related crimes or
13 offenses, debarment or other behavior that seriously and
14 directly affects the entity's responsibility to the
15 department, and that is also a violation of the law, the
16 department's rules, or the entity's internal compliance
17 procedures.

18 Violations of required conduct is grounds for
19 application of enforcement action. Each enforcement
20 subchapter provides a chart that gives guidelines for
21 application of an enforcement action and limits discretion
22 of the executive director in assigning levels of
23 enforcement actions. The charts apply specific
24 enforcement actions to specific grounds for violation, and
25 considers factors including the seriousness and

1 willfulness of the act, whether and when the entity has
2 committed similar acts, whether the department has been
3 fully compensated for any damages, and any other
4 mitigating factors.

5 The executive director may impose a less severe
6 enforcement action than recommended in the chart, but not
7 a more severe enforcement action.

8 Subchapters D and E provide enforcement
9 procedures for ethical violations for architectural,
10 engineering and surveying services providers. Under
11 Subchapter D, the executive director may impose a score
12 reduction to the provider's points total under Chapter 9,
13 Subchapter C relating to contracting for architectural,
14 engineering and surveying services.

15 Alternately, under Subchapter E, the assistant
16 executive director may remove a provider's
17 precertification and prohibit that person from reapplying
18 for precertification for a specified amount of time. A
19 provider may appeal a score reduction under Subchapter E
20 by first requesting an informal hearing with the executive
21 director. If the provider is unsatisfied with the
22 decision of the executive director, that provider may
23 pursue a contested case with the State Office of
24 Administrative Hearings, or SOAH.

25 Following the contested case hearing, the

1 administrative law judge's proposal for decision is
2 presented to the commission at a regularly scheduled open
3 meeting for a determination based on the proposal for
4 decision. The commission may consider oral presentations
5 and written documents presented by the department and
6 interested parties. The commission's determination on the
7 proposal for decision will be adopted by minute order.

8 A provider may appeal removal of
9 precertification under Subchapter E by submitting a notice
10 of appeal to the executive director, accompanied by either
11 documentation or a request for an in-person meeting with
12 the executive director. At the meeting the person may
13 present written documentation or oral testimony and may
14 answer questions from the executive director. The
15 executive director will issue a final order after
16 considering all documentation and testimony.

17 Subchapter F of Chapter 10 provides sanctions
18 for entities not subject to Chapters D and E and also not
19 covered by Subchapter G of Chapter 9 -- I can tell you a
20 lawyer helped me write this -- relating to highway
21 improvement contractors. Available sanctions, in order of
22 increasing severity, are: a reprimand, prohibition from
23 participating in a specified agreement, a limit on the
24 contract amount or amount of funds that may be awarded or
25 paid to the entity, or debarment of the entity for a

1 period of not more than 60 months.

2 The director imposes the sanction under this
3 subchapter. An entity may appeal this sanction under
4 Subchapter F by the same method described regarding the
5 SOAH cases. The administrative law judge's proposal for
6 decision is presented, again, at the commission and
7 adopted by minute order. The commission's determination
8 for the proposal will be adopted by the minute order,
9 again.

10 We do have a hearing scheduled for these ethics
11 rules on September 22, and staff recommends approval of
12 this minute order, and I'd be happy to answer any
13 questions?

14 MS. DELISI: Any questions?

15 MR. HOUGHTON: So moved.

16 MR. HOLMES: Second.

17 MS. DELISI: All in favor?

18 (A chorus of ayes.)

19 MS. DELISI: The motion passes.

20 MR. SIMMONS: The next item I'd like to present
21 is item 6b(2).

22 Chapter 9, Subchapter G provides a sanction
23 process for violations by highway improvement contractors.
24 Subchapter is being revised to be consistent with the
25 structure and provisions of New Chapter 10 that I just

1 described. The most substantive changes from existing
2 Subchapter G include the addition of ethical grounds in
3 Chapter 10 as grounds for sanction, a revised sanction
4 process in order to be consistent with enforcement
5 procedures previously mentioned, and a revised appeals
6 process.

7 Grounds for sanction in this subchapter include
8 failure to execute a highway improvement contract after a
9 bid is awarded, the rejection by the commission of two or
10 more bids by the contractor during a 36-month period
11 because of contractor error, the department's declaration
12 of a contractor in default on a highway improvement
13 contract, and violations of Section 10.101 regarding
14 required conduct.

15 Available sanctions under this subchapter are,
16 in order of increasing severity: a reprimand, prohibition
17 from participating in a specified agreement, a limit on
18 the contract amount or amount of funds that may be awarded
19 or paid to the contractor, or debarment of the contractor
20 for a period not more than 60 months.

21 The executive director will impose a sanction
22 in accordance with guidelines provided in a chart format
23 that applies specific grounds for sanctions to a specific
24 sanction and considers factors, including the seriousness
25 and willfulness of the act, whether and when the

1 contractor has committed similar acts, whether the
2 department has been fully compensated for any damages, and
3 other mitigating factors.

4 The executive director, again, may impose a
5 less severe sanction than recommended in the chart but not
6 a more severe sanction. A contractor may appeal a
7 sanction by first requesting an informal hearing with the
8 executive director. It then goes to the State Office of
9 Administrative Hearings, then back to the commission and
10 adoption by minute order.

11 The appeals process I just described clarifies
12 the appeals process in Subchapter G by stating that after
13 a proposal for decision is issued by the administrative
14 law judge, the proposal for decision goes to the
15 commission rather than back to the executive director.

16 Staff again recommends this minute order.

17 MS. DELISI: Is there a motion?

18 MR. HOUGHTON: So moved.

19 MR. HOLMES: Second.

20 MS. DELISI: All in favor?

21 (A chorus of ayes.)

22 MS. DELISI: The motion passes.

23 MR. SIMMONS: Thank you.

24 The next item is 6b(1). For reasons of
25 reorganization, Section 1.8, Internal Ethics and

1 Compliance Program, is being repealed and moved into New
2 Chapter 10, and Section 1.9 is being repealed as it and
3 Chapter 9, Subchapter G are redundant.

4 Staff recommends approval of this minute order.

5 MR. HOUGHTON: So moved.

6 MR. HOLMES: Second.

7 MS. DELISI: All in favor?

8 (A chorus of ayes.)

9 MS. DELISI: The motion passes.

10 MR. SIMMONS: And the last item is item 6b(4),
11 amendments to Section 15.92, 26.56, 27.53 and 31.39 change
12 references to Section 1.8 relating to the requirements for
13 an Internal Ethics and Compliance Program to instead refer
14 to Section 10.51. Again, Section 1.8 is being removed
15 from New Chapter 10. And I'd recommend approval.

16 MR. HOUGHTON: So moved.

17 MR. HOLMES: Second.

18 MS. DELISI: All in favor?

19 (A chorus of ayes.)

20 MS. DELISI: The motion passes.

21 MR. SIMMONS: Thank you.

22 MR. SAENZ: Thank you, Steve.

23 Agenda item number 7, commissioners, deals with
24 the approval of our Audit Plan for the next fiscal year,
25 and Owen Whitworth, our internal auditor, will make that

1 presentation.

2 Where is Owen? Someone go find Owen and we'll
3 move on.

4 We're going to go ahead and continue and move
5 on to item number 8 dealing with Toll Roads, and Brian
6 Ragland will present a minute order concerning approval of
7 the Central Texas Turnpike System Annual Operating and
8 Management Budget. Brian.

9 MR. RAGLAND: Thank you. Good morning. For
10 the record, I'm Brian Ragland, director of the Finance
11 Division.

12 This proposed minute order approves the 2011
13 operations and maintenance budget for the Central Texas
14 Turnpike System, as required by the bond indenture. The
15 budget is attached and includes amounts for toll
16 operations, maintenance and a five-year plan for capital
17 outlay. The total for 2011 is about \$56 million, and
18 staff recommends your approval.

19 MR. HOUGHTON: So moved.

20 MR. UNDERWOOD: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. RAGLAND: Thank you.

25 MR. SAENZ: Thank you, Brian.

1 Agenda item 8b, commission, will be deferred at
2 this time. I will now go back to agenda item 7 dealing
3 with our Audit Plan, and Owen Whitworth, our internal
4 auditor, will make that presentation.

5 MR. WHITWORTH: Good morning. Sorry for my
6 tardiness. My name is Owen Whitworth. I'm the TxDOT
7 Audit director, and I have prepared the Audit Plan for
8 your consideration this morning.

9 The TxDOT Internal Audit Act, the Government
10 Code, Chapter 2102, requires Internal Audit to create an
11 audit plan that is prepared using risk assessment
12 techniques and that identifies individual projects to be
13 conducted during the year. The Audit Plan must be
14 approved by the state agency's governing board. In
15 addition, the board must periodically review the resources
16 dedicated to the Internal Audit Program and determine if
17 adequate resources exist to ensure that risks identified
18 in the risk assessment are adequately covered during a
19 reasonable time frame.

20 This audit plan was prepared by completing a
21 risk assessment of the department's functions, obtaining
22 input from district engineers, division directors, office
23 directors, regional support center directors, discussing
24 the potential audit areas with members of the department's
25 administration and seeking input from the Audit

1 Subcommittee.

2 The audit plan identifies the audits to be
3 conducted and the resources available. The Audit Office
4 considers its resources for the Fiscal Year 2011 to be
5 adequate to address the risks that warrant audit coverage.

6 The Audit Subcommittee of the Texas
7 Transportation Commission reviewed the Audit Plan on
8 August 25, 2010 and voted to recommend approval of the
9 plan to the full commission.

10 The Audit Plan for Fiscal Year 2011 is being
11 presented to the commission for approval and a
12 determination that adequate resources exist to ensure the
13 risks identified are adequately covered and recommend your
14 approval.

15 MS. DELISI: Is there a motion?

16 MR. UNDERWOOD: So moved.

17 MR. HOUGHTON: Second.

18 MS. DELISI: All in favor?

19 (A chorus of ayes.)

20 MS. DELISI: The motion passes.

21 MR. WHITWORTH: Thank you.

22 MR. SAENZ: Thank you, Owen.

23 Commission, moving on to agenda item number 9
24 dealing with our Pass-Through Toll Program, and John
25 Barton will present a minute order.

1 MR. BARTON: Thank you. Again for the record,
2 my name is John Barton, assistant executive director for
3 Engineering Operations.

4 Item 9 presents a minute order that would
5 authorize the department to execute a pass-through toll
6 agreement with those public entities whose proposals were
7 selected by you under the February 2010 pass-through toll
8 call and which we were able to successfully negotiate
9 final terms of an agreement, and they are shown in the
10 exhibit to the minute order.

11 To extend the use of funds to the greatest
12 extent possible, as you know, for the benefit of the
13 public here in Texas, you authorized an additional call
14 under the Pass-Through Toll Program. We took applications
15 from March through May of 2010 and limited proposals to
16 projects that were highway projects for construction cost
17 reimbursement only, and the total estimated program amount
18 of \$300 million from Category 12.

19 The department evaluated 34 applications that
20 were submitted, and during your meeting in June of 2010,
21 through Minute Order 112305, you selected the proposals
22 that best provided value to the state and directed the
23 staff to attempt to negotiate financial terms with those
24 potential pass-through toll agreement entities.

25 Exhibit A to your minute order reflects the

1 terms of the financial agreements that we've been able to
2 reach with those particular entities suggesting a pass-
3 through toll project. I would like to note for you that
4 we were not able to reach agreement with all of those that
5 were in the first list of projects for the minute order in
6 June, and therefore, we will begin the process of
7 negotiations with the four other entities who had projects
8 that we had designated in that minute order in case we
9 reached a situation such as this.

10 The total reimbursement under the negotiated
11 terms for these pass-through toll projects, as shown in
12 the exhibit, is \$214 million and a little bit more, and
13 therefore, we will be able to move forward with additional
14 negotiations with these other proposed pass-through toll
15 projects.

16 The commission's approval is necessary to
17 finalize the approval of these proposals and to authorize
18 our executive director to enter into a pass-through toll
19 agreement in accordance with these negotiated financial
20 terms. Staff would recommend your approval of this minute
21 order, and as always, I'd be happy to address any
22 questions that you may have.

23 MS. DELISI: Any questions?

24 MR. HOUGHTON: So moved.

25 MS. DELISI: Hold on. I've got one person

1 signed up to testify. If there are no questions of John,
2 then I'd like to call up Mayor Bill Jones.

3 MAYOR JONES: Good morning, Madam Chair,
4 commissioners, Director Saenz. Bill Jones, mayor of the
5 City of Temple.

6 I come before you today just to reiterate the
7 fact that we're one of the ones on the alternate list and
8 we are quite excited about the opportunity of beginning
9 negotiations with the department for our pass-through
10 project.

11 I just wanted to remind you that our project is
12 one which provides tremendous safety for our area, for our
13 city, particularly the overpass over State Highway 36
14 which as traffic picks up in Temple is becoming more and
15 more dangerous as the days go forward.

16 We see a lot of traffic on our existing
17 Northwest Loop today. This is through our industrial park
18 and we are seeing tremendous growth in the traffic through
19 the industrial park because of growth in west Temple, as
20 well as the great fortunes we've seen in our industrial
21 area.

22 We just opened an H.E.B. distribution center in
23 Temple in the first week of June, and they were stated to
24 have 100 jobs when they opened and they started with 200
25 employees, and they're already talking with us about

1 expansion of that facility. They're very pleased with the
2 results of having come to Temple, and so as an H.E.B.
3 distribution center, you can imagine the truck traffic is
4 quite extensive. We're glad to see it but we can
5 certainly use the capacity on that loop for safety reasons
6 as well as mobility through our park.

7 We have the capacity needs. One other thing
8 that I think will be important for the future is we've
9 always worked on this as a bypass for I-35. TxDOT is
10 working on designs on keeping maximum mobility on
11 Interstate 35 through Temple as that major section between
12 our loops and where the overhead section is in Temple will
13 be an extensive reconstruction as I-35 is widened. The
14 plan is to keep that open and flowing but we all know that
15 construction can cause delays, and we have delays through
16 Temple even without construction on that section.

17 So this Northwest Loop expansion will enhance
18 mobility through the state as a result of the construction
19 that's likely to happen sometime the middle of this decade
20 and towards the end of the decade.

21 So we would appreciate the opportunity to
22 negotiate with TxDOT on this project finally. We've
23 worked on it a long time, as has the staff of TxDOT. We
24 have a great working relationship with our director,
25 Richard Skopik, and I also have the privilege of serving

1 on the Killeen-Temple MPO and so the entire staff for the
2 Waco District is a tremendous resource for the State of
3 Texas but certainly for us.

4 So thank you for your consideration and we look
5 forward to the negotiation, and hopefully we'll be back
6 here to say thank you for the opportunity to work with you
7 on a pass-through financing project. Thanks for your
8 attention.

9 MS. DELISI: Thank you.

10 MR. BARTON: If there are no other speakers or
11 questions, I would just again like to recognize Renee
12 Garcia with the Design Division and Cindy Landis. They've
13 done an outstanding job of managing this effort for us, as
14 well as their district engineers and their staff in
15 negotiating out these deals with these entities, and Mark
16 Marek, your Design Division director, for their leadership
17 in making this possible. And again, staff would recommend
18 your approval of this minute order.

19 MR. HOLMES: John, just for the record, which
20 projects fell out and which are the four alternates?

21 MR. BARTON: Okay. The projects that fell out
22 was a project in El Paso with Camino Real Regional
23 Mobility Authority that would have funded a project on FM
24 659 in the El Paso community. Also, Brazoria County was
25 unable to move forward with a project on State Highway 36

1 and it fell out as well. So those are the two that fell
2 out in the initial process.

3 The four that are remaining are one with the
4 North Central Texas Council of Governments for a project
5 on Interstate 30 to add some HOV lanes, if you will, along
6 Interstate 30; the City of Temple that the mayor was just
7 speaking of, a project on Loop 363 there in their
8 community; a project with the Hidalgo County Regional
9 Mobility Authority for an interchange of US 281 with one
10 of their border crossing roadways; and then a project with
11 Denton County on FM 1171 which is the expansion of a
12 roadway where there's a lot of residential development
13 occurring.

14 MS. DELISI: Okay. Any other questions of
15 John? If not, is there a motion?

16 MR. HOLMES: So moved.

17 MR. UNDERWOOD: Second.

18 MS. DELISI: All in favor?

19 (A chorus of ayes.)

20 MS. DELISI: The motion passes.

21 MR. SAENZ: Thank you, John. Now we'll move on
22 to agenda item number 10, and John will also present the
23 minute order dealing with our American Recovery and
24 Reinvestment Act, or the Economic Stimulus Program.

25 MR. BARTON: Thank you, Director Saenz,

1 commissioners, Madam Chair.

2 The two items that I'll cover now are items 10a
3 and 10b, taking 10a first. This is a minute order in
4 front of you to approve changes to the list of public
5 transit and aviation projects that will be funded or
6 potentially be funded from the Recovery Act. There are
7 two exhibits to the minute order.

8 Exhibit A lists proposed federal stimulus
9 funded projects through our aviation program. We did have
10 some underruns on the programs that the Federal Aviation
11 Administration selected here in Texas, and so we have
12 identified these additional airport improvement projects
13 that the FAA may consider funding with those underruns, as
14 well as underruns from other projects around the nation.
15 And it's necessary that we seek commission approval of
16 this list to submit for consideration to FAA.

17 Exhibit B to the minute order lists some
18 transit program funding shifts that were necessary to
19 completely and fully utilize the Recovery Act funding that
20 was provided to us through our transit program. Eric
21 Gleason and his staff have worked very closely with all of
22 our transit providers and operators around the state in
23 making sure that they've fully utilized all of these funds
24 and this minute order will allow for some final revisions
25 to fully utilize those funds and have them committed to

1 these grants before the end of the program.

2 So staff would recommend your approval of this
3 minute order, and again, I would be happy to answer any
4 questions you may have.

5 MR. HOUGHTON: So moved.

6 MR. HOLMES: Second.

7 MS. DELISI: All in favor?

8 (A chorus of ayes.)

9 MS. DELISI: The motion passes.

10 MR. BARTON: And item 10b is also an item
11 dealing with the Recovery Act funding. This item would
12 approve additional mobility and preventive maintenance
13 projects, as well as some rehabilitation projects from
14 around the state that might be funded in the event that we
15 experience underruns on ongoing projects or projects that
16 we take bids on in September of this year, so next month.

17 It's necessary in order to that because the
18 final opportunity to obligate Recovery Act funds to
19 projects expires on September 24 of this year, 2010, and
20 in order to be able to be positioned to meet that
21 deadline, this minute order would give our executive
22 director discretion to utilize any unobligated and
23 remaining balances of Recovery Act funds to one of these
24 specific projects.

25 Exhibit A lists some mobility related projects

1 from around the state. Some of these were projects that
2 were originally on the larger list of mobility projects
3 that we were unable to fund, specifically the bottom three
4 in the Corpus Christi, Abilene and Childress districts, as
5 well as the top one which is a portion of the Dallas-Fort
6 Worth Connector, DFW Connector, that would allow us to add
7 one of the deferred elements to provide some additional
8 lanes on State Highway 121, if funding were available and
9 Director Saenz so chose to move those funds on to that
10 particular project.

11 Exhibit B lists some preventive maintenance and
12 rehabilitation projects from across the state that are
13 ready to proceed, meet the criteria for the Recovery Act,
14 and could certainly benefit from the addition of any
15 Recovery Act funds that might be available in order to
16 allow us to fully obligate and use all the money that was
17 assigned to Texas.

18 So this is, in essence, the final fallback plan
19 to ensure that we will be able to obligate and use every
20 dollar of Recovery Act funds assigned to Texas, and staff
21 would recommend your approval of this minute order, and I
22 would be happy to answer any questions you may have.

23 MR. HOUGHTON: So moved.

24 MR. HOLMES: Second.

25 MS. DELISI: All in favor?

1 (A chorus of ayes.)

2 MS. DELISI: The motion passes.

3 MR. SAENZ: Commission, I just want to take
4 this time to thank John for leading the charge on this
5 Economic Stimulus Program. It was one of those programs
6 that we were challenged to do a great amount of work in a
7 short amount of time and with a lot of additional
8 requirements, and John and staff from TxDOT, with John
9 managing the program, did an excellent job. And Texas got
10 \$2.25 billion and we have obligated everything, this is
11 just the last catchall.

12 But John, how much are we talking about as
13 potential final?

14 MR. BARTON: As it stands today, working with
15 the districts and metropolitan organizations, we have a
16 potential for less than \$3 million, so this is just a
17 worst case scenario, multiple opportunity fallback plan,
18 but there isn't a lot of money left out there. And we are
19 scrubbing the books, making sure that any project that we
20 already have identified underruns on, before it closes out
21 we'll move those monies out to ensure that we don't lose
22 any of the money for any projects. But current review by
23 Finance Division staff indicates it's approximately \$3
24 million or less.

25 MR. SAENZ: Great job, John. Thank you.

1 MR. BARTON: Thank you. And again, it's not
2 what I did, it's a lot of hard work by many, many staff
3 members, not only here in Austin but in the districts, as
4 well as metropolitan planning organizations. They are all
5 to be thanked for their hard work on behalf of Texas.
6 Thank you.

7 MR. SAENZ: Thank you, John.

8 Agenda item number 11, commission, deals with
9 the Proposition 12 Bonds and our plan to issue debt, and
10 James Bass will present a minute order for you.

11 MR. BASS: Thank you, Mr. Saenz. For the
12 record, I'm James Bass, chief financial officer at TxDOT.

13 This minute order is a continuation from our
14 discussion yesterday, and simply put, this minute order
15 would direct the department staff to move forward with a
16 debt structure that would result in general revenue
17 realizing a near-term savings, but also that debt
18 structure shall be based upon our continuing discussions
19 with state leadership.

20 I'd be happy to answer any questions on our
21 discussion from yesterday. If there are none, staff would
22 recommend approval of this minute order.

23 MR. HOUGHTON: So moved.

24 MR. HOLMES: Second.

25 MS. DELISI: All in favor?

1 (A chorus of ayes.)

2 MS. DELISI: The motion passes.

3 MR. BASS: Thank you.

4 MR. SAENZ: Thank you, James.

5 Agenda item number 13, commissioners, deals
6 with transportation planning. Jim Randall, director of
7 the Transportation Planning and Programming Division, will
8 present two minute orders dealing with advisory
9 committees.

10 MR. RANDALL: Thank you, sir. Good morning,
11 commissioners. Jim Randall with the Planning and
12 Programming Division.

13 Item 13a, this minute order reappoints ten
14 members to the Border Trade Advisory Committee. The
15 purpose of the committee created in 2001 by the 77th
16 Legislature is to define and develop a strategy and make
17 recommendations to the commission and the governor in
18 order to address the highest priority border trade
19 transportation challenges.

20 The Border Trade Advisory Committee
21 recommendations are included in the international trade
22 corridor plan and presented to the presiding officer of
23 the state's House and Senate. Those nominations have been
24 coordinated with the Secretary of State's Office. Upon
25 your approval, the ten individuals or positions named in

1 the minute order will be reappointed to the committee with
2 terms expiring August 31, 2013.

3 Staff recommends approval of this minute order.

4 MR. HOLMES: So moved.

5 MR. HOUGHTON: Second.

6 MS. DELISI: All in favor?

7 (A chorus of ayes.)

8 MS. DELISI: The motion passes.

9 MR. RANDALL: Item 13b, this minute order
10 appoints Spencer Chambers to the commission's Port
11 Authority Advisory Committee. This seven-member committee
12 provides a forum for exchange of information between the
13 Texas Transportation Commission, the department and
14 committee members representing the Texas port industry and
15 others who have interest in Texas water ports.

16 Mr. Alex G. Dryer has submitted a resignation
17 letter and nominated Spencer Chambers to the dedicated
18 seat on the committee that represents the Port of Houston
19 Authority. Mr. Dryer's term will expire on February 28,
20 2013. Upon your approval of this minute order, Mr.
21 Chambers will be appointed to the Port Authority Advisory
22 Committee to serve for a term expiring February 28, 2013.

23 Staff recommends approval of this minute order.

24 MR. HOLMES: So moved.

25 MR. HOUGHTON: Second.

1 MS. DELISI: All in favor?

2 (A chorus of ayes.)

3 MS. DELISI: The motion passes.

4 MR. RANDALL: Thank you.

5 MR. SAENZ: Thank you, Jim.

6 Agenda item 14, commissioners, deals with right
7 of way and the use of our options, and John Campbell will
8 present a minute order for your consideration.

9 MR. CAMPBELL: Good morning again. For the
10 record, my name is John Campbell, director of the Right of
11 Way Division.

12 I'm presenting for your consideration a minute
13 order item under agenda item 14. This minute order
14 authorizes the El Paso District engineer to negotiation
15 option agreements with individual property owners and to
16 expend funds for option fees, as well as the other
17 expenses necessary to purchase options along the proposed
18 route for State Loop 375.

19 All of the property along the proposed route is
20 experiencing expanded commercial, industrial and
21 residential development. It's likely that this private
22 development will continue before the project is released
23 under the normal schedule in about a year. If one or more
24 option agreements can be negotiated prior to the scheduled
25 project release, it's anticipated that the needed right of

1 way can be acquired ultimately more efficiently at a lower
2 cost and with less disruption to the ultimate project.

3 The district recommends that the district
4 engineer be authorized to negotiate option agreements
5 along the proposed route to help preserve the
6 transportation corridor. Staff recommends your approval
7 of the minute order.

8 MR. HOUGHTON: So moved.

9 MR. HOLMES: Second.

10 MS. DELISI: All in favor?

11 (A chorus of ayes.)

12 MS. DELISI: The motion passes.

13 MR. SAENZ: Thank you, John.

14 Agenda item number 15 deals with an
15 environmental restriction on some right of way, and Dianna
16 Noble will present the minute order. Dianna is our
17 director of our Environmental Affairs Division.

18 MS. NOBLE: Good morning, commissioners. For
19 the record, my name is Dianna Noble, director of
20 Environmental Affairs for TxDOT.

21 Agenda item number 15 requests your approval to
22 restrict 1.95 acres of a tract of land owned by TxDOT for
23 the purposes of mitigating wetland impacts. In Bowie
24 County, TxDOT proposes to construct various improvements
25 on IH-30 near the City of Hooks. One of these

1 improvements is the construction of one-way frontage
2 roads. The construction of these one-way frontage roads
3 results in placing fill in an existing wetland.

4 The Army Corps of Engineers will allow TxDOT to
5 use these 1.95 acres to mitigate for the impacts if TxDOT
6 prohibits the grazing of livestock, land clearing and
7 other activities on these 1.95 acres. Your approval will
8 allow TxDOT to place the Army Corps of Engineers requested
9 restrictions on this 1.95 acres. Staff recommends your
10 approval.

11 MR. HOUGHTON: So moved.

12 MR. HOLMES: Second.

13 MS. DELISI: All in favor?

14 (A chorus of ayes.)

15 MS. DELISI: The motion passes.

16 MS. NOBLE: Thank you.

17 MR. SAENZ: Thank you, Dianna.

18 Agenda item number 16, James Bass will present
19 a minute order requesting adoption of the department's
20 Legislative Appropriations Request for Fiscal Years 2012-
21 2013. James.

22 MR. BASS: Thank you, Mr. Saenz. Once again,
23 I'm James Bass, chief financial officer at TxDOT.

24 We've had discussions on the department's
25 appropriations request I believe dating back to last

1 December, and we delivered a draft of that document to you
2 in June. We do not have the final version before you
3 today. Staff just got the ability to start entering that
4 into the Legislative Budget Board's system last week.
5 We're working on making sure everything ticks and ties to
6 the four-year work plan, and one thing that still could
7 potentially change between now and the end would be debt
8 service for Proposition 12 that we just discussed, if we
9 do get different direction from state leadership.

10 Having said that in the lead-in, for 2012 and
11 2013, the department would be requesting just over \$24.2
12 billion of appropriation. That is broken into two pieces.

13 One of those is exceptional items, and the exception
14 items is for roughly \$8.6 billion in total. Some of the
15 items that fall into that exceptional item category deal
16 with Proposition 12: there's \$1 billion to finish the
17 Proposition 12 projects that are being started this
18 biennium; there's another billion dollars requested for
19 deposit to the Revolver; and there's a third billion
20 dollars out of Proposition 12 that is being requested to
21 go to fund additional projects off the top 100 most
22 congested list.

23 In addition, there's a request for additional
24 grants in the public transportation are as part of the
25 exceptional items. There are various rail projects in the

1 exceptional item category, and there's also a large
2 request for the unfunded mobility and preservation
3 projects that the department and our partners in the
4 private sector consultant engineering industry could
5 deliver if there was additional funding provided.

6 Again, that exceptional item group totals \$8.6
7 billion. That leaves a baseline request of \$15.6 billion
8 for the department for 2012 and 2013.

9 A few highlights of that number, as we've
10 discussed in previous months, the department's FTE level
11 requested in '12 and '13 would be down to 12,200, down
12 from what we've had this biennium and prior of around
13 14,000.

14 MR. HOUGHTON: Where are we currently?

15 MR. BASS: Currently, our average for the year,
16 we're around 12,225, in that ballpark.

17 And so that takes it down, less money going for
18 that allows more dollars to go for program delivery,
19 whether that be preservation or mobility.

20 As part of that \$15.6 billion, just about 10
21 percent of it is going for debt service, so when you look
22 at our overall budget of \$15.6-, \$1.6- of it, or just a
23 little bit over \$1.5- is going for debt service on the
24 various debt programs, Proposition 14, Mobility Fund, and
25 Proposition 12.

1 In addition to that, I'd highlight part of that
2 \$15.6- is built and based upon borrowed money or one-time
3 funding, the bond proceeds. We're spending out Prop 14,
4 Mobility Fund, Proposition 12, and we have the 121 dollars
5 that are going in the Dallas area, Dallas District, and
6 then there's the stimulus dollars that will continue to be
7 spent and paid out in 2012 and 2013. All of those special
8 funding sources, if you will, are about \$3.2 billion, or
9 20 percent of our overall request.

10 So 20 percent of our request in '12 and '13 is
11 coming from special funding sources, and another 10
12 percent is going towards debt service for projects that
13 have been delivered previously but we're committed to
14 obviously make those debt service payments going forward.

15 After making those few highlights on the
16 appropriations request, I'd be happy to answer any
17 questions that you may have. The other thing I would
18 point out on the minute order is at the bottom, as we work
19 to make sure all of the figures are aligned and if we get
20 direction from state leadership on the Proposition 12 debt
21 service that's different than what we've assumed, there's
22 a provision in here that would allow, under Mr. Saenz's
23 direction, to amend these numbers if that is indeed
24 necessary to do those corrections.

25 If no questions, staff would recommend your

1 approval.

2 MR. HOUGHTON: So moved.

3 MR. HOLMES: Second.

4 MS. DELISI: All in favor?

5 (A chorus of ayes.)

6 MS. DELISI: The motion passes.

7 MR. BASS: Thank you.

8 MR. SAENZ: Thank you, James. And I know that
9 this year we also used our four-year work plan to develop
10 our LAR and we had a lot of input from the field from the
11 regional people and the finance people, and we can say
12 this year that what we are asking for, we have a plan
13 that's behind it that's tied to projects, that's tied to
14 work that's going to be produced that we can then report
15 after the session as to how much we've actually done.

16 So thank you, and great accomplishment.

17 Agenda item number 17 deals with the Unified
18 Transportation Program, and Brian Ragland will present a
19 minute order concerning an amendment.

20 MR. RAGLAND: Thank you, Amadeo. For the
21 record, Brian Ragland, director of the Finance Division.

22 This proposed minute order amends the 2010
23 Unified Transportation Program by transferring \$2 million
24 of Category 7 funding from Lubbock to Hidalgo County in
25 2011, with repayment occurring in 2014. And this, of

1 course, is at the request and in consultation with the
2 MPOs, and staff recommends your adoption.

3 MS. DELISI: Any questions?

4 MR. HOUGHTON: So moved.

5 MR. UNDERWOOD: Second.

6 MS. DELISI: All in favor?

7 (A chorus of ayes.)

8 MS. DELISI: The motion passes.

9 MR. SAENZ: Agenda item number 18 will be
10 deferred at this time and we'll move on to agenda item
11 number 19. We have two minute orders to be presented by
12 Brian Ragland, again, concerning our investment policies.

13 MR. RAGLAND: Item number 19a is a proposed
14 minute order with regard to the annual approval of the
15 commission's investment policy and strategies, as required
16 by statute, specifically the Public Funds Investment Act.
17 The primary theme of the policy is to invest funds to
18 preserve principal and meet our daily cash flow demands.

19 There are a few changes to the policy this year
20 that are minor. Section 7 will now require any outside
21 financial manager to be an RIA, a Registered Investment
22 Advisor. Section 10 and 11 are clarified to specify using
23 delivery versus payment transactions, and we updated the
24 list of qualified institutions. Specifically, we added
25 RBC Capital, and we deleted Wachovia which is now part of

1 Wells Fargo, and we deleted Merrill Lynch which is now
2 part of Bank of America.

3 Staff recommends your adoption.

4 MR. HOUGHTON: So moved.

5 MR. HOLMES: Second.

6 MS. DELISI: All in favor?

7 (A chorus of ayes.)

8 MS. DELISI: The motion passes.

9 MR. RAGLAND: Item number 19(b) is also an
10 annual minute order which approves the commission's debt
11 management policy and also its derivative management
12 policy. The debt management policy establishes parameters
13 we work under administering our long-term and short-term
14 financing programs. The only change in the debt
15 management policy this year is the inclusion of a non-
16 delivery versus payment transactions in the credit
17 enhancement area, and also in that area that financial
18 institutions must have at least a double-A long-term
19 rating.

20 The derivative management policy establishes
21 the responsibilities and guidelines for the use of
22 interest rate swaps and similar products. There are some
23 minor changes to it as well which just strengthen the
24 policy as it is.

25 And the other thing that this minute order does

1 is it authorizes the execution, if needed, of certain
2 derivative transactions through August 25 of next year.
3 We do not have any plans to initiate any types of new swap
4 transactions, this is only providing flexibility should we
5 need to effect our current transactions that we're a part
6 of.

7 And that's all I have on that. Unless you have
8 questions, staff recommends your approval.

9 MR. HOUGHTON: So moved.

10 MR. HOLMES: Second.

11 MS. DELISI: All in favor?

12 (A chorus of ayes.)

13 MS. DELISI: The motion passes.

14 MR. SAENZ: Agenda item number 20 is our
15 Obligation Limit Report.

16 MR. RAGLAND: Number 20 is the monthly, and for
17 this month also it's the annual report on the Obligation
18 Limit. Through August the contracts let from traditional
19 Fund 6 totaled \$1.378 billion. That excludes the CDA
20 portion of that limit. And as you know, our cap of the
21 year was \$1.6 billion. So we did end up a little bit
22 under our cap, a lot under, about \$220 million under our
23 cap for the year. We are still working to get some things
24 in there before the end of the month which is only two
25 days away, but all of those funds will roll into 2011 and

1 will be available by category, by district to be added to
2 the lettings for next year.

3 Regarding motor fuel taxes, again good news for
4 the fourth month in a row. We had an up-tick of about 3
5 percent, I believe, 3.08 percent. That brings our annual
6 number to a negative .21 percent versus 2009. As we've
7 discussed in the past, the original estimate back in
8 September was an increase of .5 percent, so we ended up
9 down .7 percent from where we thought we would be which
10 translates to about \$15 million for the fund.

11 And then finally, I was asked to tack onto this
12 item a short mention of the latest rescission.

13 MS. DELISI: Before you go on. Is it possible
14 in the future when we talk about the deposits to the State
15 Highway Fund to break it down by gas and diesel?

16 MR. RAGLAND: It is. We have that. In fact, I
17 was going to mention, and I failed to, that over those
18 last four months the gasoline portion was up around 2
19 percent, the diesel portion was, I think, about 8-1/2 to 9
20 percent up for that four-month period. But yes, I can
21 split them. I think it's about 25 percent diesel, 75
22 percent gas.

23 Regarding the latest rescission, on August 16,
24 FHWA issued a notice of rescission of federal aid
25 apportionments. The grand total nationally was \$2.2

1 billion; Texas' share of that was a little over \$190
2 million. This is in addition, of course, to previous
3 rescissions and there's a page in your book that shows the
4 cumulative rescissions over the years.

5 Our way of handling this is that we have a
6 stakeholder committee on rescissions which includes both
7 TxDOT staff and also includes the metropolitan planning
8 organizations. They convened a meeting and came up with
9 recommendations on how to allocate that \$190 million
10 across the various apportionment categories.

11 Just to bring some clarity to it, all the funds
12 rescinded are from the apportionment authority only, and
13 there should be no effect or there will be no effect on
14 any planned letting activity. These are planning dollars,
15 long-term planning dollars that it's basically just a
16 reduction of those, but because our balance of
17 apportionment is so much higher than our obligation
18 authority, we're able to back off those planning dollars
19 without hitting our letting.

20 And that's all I have unless you have any
21 questions on this item. There's no action.

22 MR. SAENZ: Thank you, Brian.

23 MR. RAGLAND: Thank you.

24 MR. SAENZ: Agenda item number 21, we have Uly
25 Flores from our Maintenance Division that will present a

1 minute order concerning a property exchange in the Fort
2 Worth District.

3 MR. FLORES: Thank you, Amadeo. Good morning.
4 For the record, my name is Uly Flores. I'm the director
5 of Facilities Management.

6 This proposed minute order withdraws the
7 previous property exchange minute order passed by the
8 commission in June 2009. It also authorizes the
9 department to reissue a request for proposal to select and
10 negotiate with the top-ranked proposer to design and build
11 replacement facilities at the Fort Worth District, and
12 that's in exchange for surplus property located at I-30
13 and Collins Road in Arlington.

14 The 18.38-acre property in Arlington has a
15 revised appraised value of \$12 million from \$17.6 million.

16 Projects in the new RFP will include a new area and
17 maintenance facility and renovation of a district lab at
18 the Fort Worth District, that's at the complex, and a new
19 maintenance facility at Glen Rose and a new maintenance
20 facility at Mineral Wells.

21 Staff recommends approval.

22 MS. DELISI: Is there a motion?

23 MR. HOUGHTON: So moved.

24 MR. UNDERWOOD: Second.

25 MS. DELISI: All in favor?

1 (A chorus of ayes.)

2 MS. DELISI: The motion passes.

3 MR. FLORES: Thank you.

4 MR. SAENZ: Thank you, Uly.

5 Agenda item number 22 deals with our contracts.

6 Agenda item 22a(1) deals with our Highway Maintenance and
7 Department Building Construction contracts, and 22a(2)
8 deals with our Highway and Transportation Enhancement
9 Contracts. And Russel Lenz will make the presentation on
10 these two minute orders.

11 MR. LENZ: Good morning. For the record, I'm
12 Russel Lenz, the director of the Construction Division.

13 As a matter of interest, this month we hit a
14 new threshold for statistics. We had the most number of
15 projects let in one letting since August of 1995, and we
16 had the most dollars let in construction since July of
17 2006. So we're doing pretty good, we had a lot of work.

18 Item 22a(1) is for the consideration of the
19 award or rejection of Highway Maintenance and Department
20 Building Construction contracts let earlier this month on
21 August 10 and 11. We present 20 projects today; the
22 average number of bidders were 4.2; and we had an overall
23 underrun of 10.56 percent. And staff recommends the award
24 of all maintenance projects.

25 MR. HOUGHTON: So moved.

1 MR. HOLMES: Second.

2 MS. DELISI: All in favor?

3 (A chorus of ayes.)

4 MS. DELISI: The motion passes.

5 MR. LENZ: Item 22a(2) is for the consideration
6 of the award or rejection of Highway Transportation
7 Enhancement and Building Construction contracts let
8 earlier this month as well. We present 226 projects; the
9 average number of bidders was 5.07; and we had an overall
10 underrun of 7.04 percent. Staff recommends the award of
11 all construction projects with the exception of five
12 projects which I'll outline now.

13 A project in McLennan County, project number
14 BR2007(722). The project received only two bids with the
15 low bidder being 50 percent over the estimate. The
16 project had some dissimilar bridge work combined into one
17 contract, and we recommend rejection to consider revising
18 the PS&E to split the project into two contracts to
19 improve competition.

20 A project in Wharton County, project number
21 NH2011(199). The project received only one bid with the
22 lower bidder being 120 percent over the estimate, and we
23 recommend rejection to reevaluate and see if greater
24 competition can be instilled in the process.

25 Harris County project number CM2008(495). The

1 low bidder is mathematically and materially unbalanced.
2 The low bidder's prices are mathematically unbalanced and
3 there's an error in the bid quantity of the items that re
4 unbalanced, and when the revised quantities are entered,
5 the ranking of the bidders change. In accordance with our
6 rules, we're recommending rejection and the quantities to
7 be corrected and the project re-let, and the current
8 bidder will not be allowed to rebid the project.

9 Harris County project number DMO2006(885).
10 There's a quantity of trench excavation protection that's
11 in error by a significant amount in the contract. When
12 the corrected quantity is entered, the ranking of the
13 bidders change. The low bidder has demonstrated that
14 they're not mathematically unbalanced for this project and
15 it appears that they were unaware of the error. We're
16 recommending rejection and correction of the quantities
17 and the project re-let.

18 In Coryell County, project number STP2011(191).
19 There were numerous quantities that were in error, some
20 significantly. In addition, the project contained bid
21 alternates, and one of the alternates, more than 50
22 percent of the quantities were in error and two items were
23 missing entirely. At this point we have no way to know
24 what the bidders would have bid or which alternate they
25 would have bid had the quantities been correct. We're

1 recommending rejection and the quantities be corrected and
2 the project be re-let.

3 We're also recommending the award of one
4 project in La Salle County, STP2011(338)TE, where the
5 bidder alleged a bid error. The contractor included a
6 statewide average price for the concrete pavement in their
7 bid and they failed to update that price with a
8 subcontractor's quote when they submitted their bid. The
9 alleged error does not appear to meet the bid error
10 criteria outlined in our rules, so we're recommending the
11 award to the low bidder.

12 Any questions?

13 MS. DELISI: Any questions of Russel before I
14 call up the speakers?

15 (No response.)

16 MS. DELISI: Okay. Then at this time I'd like
17 to call up Charlie Fotz, Brad Shearer and Mr. Cokinos.

18 MR. FOTE: Good morning. My name is Charlie
19 Fotz. I'm executive vice president for Satterfield &
20 Pontikes. We're the company that alleged a bid error on
21 the project in La Salle County. Usually I'm presenting to
22 try to get some work, in this case we're trying to ask the
23 commission to reject our proposal because of the bid
24 error.

25 As staff has said, we did not post the only

1 subcontractor bid for that line item which resulted in
2 about a \$1.3 million error. And we want to quickly run
3 through how that occurred, and then talk maybe a little
4 bit about the legal precedence of this, and to help you,
5 hopefully, consider our request.

6 MR. SHEARER: My name is Brad Shearer. I'm vice
7 president with Satterfield & Pontikes, and I was involved
8 in the bid on bid day. And what transpired is that pretty
9 much at the last minute we received our bid from the
10 concrete subcontractor and we received no other bids, so
11 we had nothing to measure it to at that point except for
12 the TxDOT number that we took off of the website which was
13 the state average.

14 And so at the last moment we were updating the
15 bids, and then we went through our top sheet that was
16 electronically done, and so we had updated it to be able
17 to get our total, because there was also a building
18 involved, and we discovered the error, that we did not get
19 that number plugged in there. So we immediately tried --
20 it was probably about four minutes before 1:00, five
21 minutes before 1:00, we immediately tried to get a hold of
22 our bid runner and she had already entered the bid room
23 and had silenced her phone.

24 So we never heard back from her till around
25 4:30 that afternoon, and she gave us the tab and we were

1 apparently second, and so we were relieved at that point.

2 And then we received a letter that we were the apparently
3 low bidder, and the actual low bidder on the project was
4 thrown out. I don't know the reasons for that, I don't
5 know if it was a non-responsive or bid error as well.

6 So that's what transpired. We did use care in
7 trying to correct this situation, it's just that time did
8 not allow it, the communication broke down, and that's
9 where we're at.

10 Do you have any questions?

11 (No response.)

12 MR. SHEARER: All right. Thank you for your
13 time.

14 MR. COKINOS: Madam Chair, commissioners, I'm
15 Gregory Cokinos. I represent Satterfield & Pontikes, I'm
16 an attorney, and I really focus my practice heavily in
17 construction law.

18 The reason I'm here today is to point out that
19 there should be an equitable remedy today to excuse
20 Satterfield & Pontikes from this bid error, this bid bust.

21 The circumstances which Mr. Shearer described was clearly
22 a mistake. They were doing everything they can to be
23 conscientious and discover any potential error. They
24 discovered it late and did not have time to get their bid
25 runner the information and hold back on the bid.

1 They used the plug number of the state highway
2 department, the \$30 number, and it ended up in a \$1.3
3 million error. And I want to also point out that had that
4 \$1.3 million been included in their bid, they would have
5 been right with the other bidders on this project, around
6 \$15 million plus, and there was about a 10 percent
7 discrepancy in their bid and the next low bidder. And
8 we're not sure why they kicked out the other low bid, but
9 the circumstance of the relief we felt when they actually
10 kicked out the low bid that we didn't get the job, and
11 then we got a letter and we got it awarded to us really
12 complicated the issues.

13 But there is precedence in Texas to support the
14 equitable relief that we're requesting in that the mistake
15 was an honest mistake, it wasn't careless error, and there
16 are two cases. One is a Supreme Court case, James Taylor
17 v. Arlington Independent School District, which talks
18 about the fact that simple negligence can be considered to
19 excuse an error such as this. And they used those
20 principles in that Supreme Court case in a Court of
21 Appeals case, State of Texas v. Cannon, and that case is
22 almost identical to this particular instance.

23 In that particular case, a contractor submitted
24 a bid and he forgot to include -- he submitted the bid at
25 two unit prices, 63 cents and 40 cents for two items. It

1 should have been \$1.63 and it should have been \$1.40, and
2 it ended up in a considerable error in the bid. They
3 didn't find out until after the bid was awarded but before
4 the contract was awarded they advised TxDOT of the error
5 and ultimately they had to through the court system but
6 the courts held that it was an excusable error, it was a
7 mistake that was not conscious indifference, it wasn't
8 careless, it was an ordinary mistake of ordinary
9 negligence.

10 And in this particular case, we have really
11 those very similar facts, and it would be a considerable
12 penalty to Satterfield & Pontikes to have to move forward
13 with this contract, particularly considering they would
14 have notified TxDOT and did what they could to notify them
15 before the bid went in, and then they were subsequently
16 not awarded the contract and thought they were relieved.

17 So unless there's some questions, I don't have
18 anything further to add. Thank you.

19 MS. DELISI: Thank you.

20 MR. HOLMES: I have a couple of questions, one
21 for Russel and then one for Bob.

22 Russel, why did we reject the apparent low
23 bidder?

24 MR. LENZ: I believe it was considered non-
25 responsive.

1 Ken Barnett is in the back room that will know
2 specifically why that one was thrown out.

3 MR. BARNETT: Yes, sir. Good morning. Ken
4 Barnett, for the record, director of the Construction
5 Section.

6 What happens in those cases is when we tabulate
7 the bids, those are read, those are posted on the internet
8 by Whitley & Siddons and other companies. We take them in
9 the back, because those are not official total bid
10 amounts, we just read the number. That person may appear
11 to be low; when we get in the back there's some error in
12 the actual unit prices they provided to us, they're
13 missing items or bid zero dollars or whatever, and that
14 bid ultimately is declared non-responsive because we don't
15 actually have unit prices for those items.

16 When it's read at the letting, they just read
17 the number that the contractor intended to bid, but if
18 there aren't unit prices in there for us to have a
19 contract on, that's actually a non-responsive bid. So
20 that's why that apparent low bidder was declared non-
21 responsive.

22 MR. HOUGHTON: So they didn't fill in the blank
23 is what you're saying.

24 MR. BARNETT: Essentially, sir, he did not fill
25 in the blank.

1 MR. HOLMES: So you had one that didn't fill in
2 the blank that you threw out and one that filled in the
3 blank with the TxDOT number that we accepted. Is that it?

4 It sounds like we've got kind of a mess in this
5 one.

6 MR. BARNETT: Yes, sir. Can't argue that.

7 Yes, we had an apparent low bidder that didn't
8 fill in the blank and was non-responsive. These gentlemen
9 actually did fill in the blank, their bid was complete, it
10 was responsive, it's just the price they bid on an item is
11 not the price they intended to bid on the item.

12 MR. HOLMES: It was the price that TxDOT?

13 MR. BARNETT: As I talked to them, as we've
14 discussed this through the process when I met with them,
15 they entered a statewide average price just off the
16 internet. We post statewide average prices and many
17 contractors use those statewide averages to kind of get
18 scale for what their bid is going to be. As they
19 explained to you, during the course of preparing their
20 bid, they did not replace that statewide average price
21 with the subcontractor quote that they got.

22 In this case the project location is a little
23 bit remote in La Salle County, so the price for concrete
24 at that particular location is very different than what an
25 overall statewide average would be.

1 MR. HOUGHTON: So the statewide was lower and
2 the actual was a lot.

3 MR. BARNETT: Yes, sir. It was almost 50
4 percent of what their quote was.

5 MR. HOUGHTON: Fifty percent higher. So they
6 have some responsibility -- or they looked at our average
7 and assumed an average and put it in their bid, and the
8 other guys didn't fill in the blank.

9 MR. BARNETT: the other guys just completely
10 didn't fill in the blank.

11 MR. HOUGHTON: That happens, Ken?

12 MR. BARNETT: It usually happens a couple of
13 times every letting, Commissioner. It may have happened
14 more this letting because there was just so many projects,
15 but it typically happens a couple of times every letting,
16 they just don't fill in the blank.

17 MR. HOUGHTON: Do you want to ask Bob? I have
18 a question. Do we have precedent for this? Have we done
19 this before in this situation? Has there been a like
20 situation, Russel or Ken?

21 MR. BARNETT: There are many cases where we've
22 brought bid errors before you. In this particular case,
23 and in all cases, we look very closely at what the Texas
24 Administrative Code provides for us. One of the things it
25 outlines is it must be mathematical in nature. I really

1 can't say this here, I don't know what calculation error
2 they did.

3 The big one is exercise of ordinary care. Did
4 they exercise ordinary care, did they check everything? I
5 mean, it's not just some error in judgment, they forgot
6 something. That appears to be the case here, they just
7 forgot to do something.

8 The previous bid errors that we've looked at in
9 the past, there are precedents that we've come to you
10 before with exactly the same recommendation under very
11 similar circumstances.

12 MR. HOLMES: Bob, the attorney for the
13 contractor said that there was some Supreme Court
14 precedence. Are you familiar with that, have you talked
15 about it?

16 MR. JACKSON: No, he hasn't presented that to
17 our office. And what he's saying is that you have the
18 ability to go ahead and reject the bid and not hold them
19 to the bid. But you have a rule that requires you to hold
20 them to the bid unless you find that they did exercise
21 ordinary care. And that's really what it comes down to
22 and it's your decision, and staff's recommendation is that
23 they did not.

24 And Joanne is deputy general counsel.

25 MS. WRIGHT: I'm Joanne Wright. And that's

1 what the Supreme Court case says. Our rules are patterned
2 on what's in that Supreme Court case that he referenced,
3 so it's the exact same standard, whether they exercised
4 ordinary care.

5 MR. HOLMES: So if I understand what you said,
6 Joanne, was that you agree with the Supreme Court case as
7 interpreted by Mr. Cokinos, but you just disagree with the
8 facts. Is that it?

9 MS. WRIGHT: The commission must make a finding
10 on whether they exercised ordinary care in this particular
11 error.

12 MR. HOLMES: And using the posted TxDOT price
13 would be careless?

14 MS. WRIGHT: According to staff, that was not
15 an exercise of ordinary care.

16
17 MR. JACKSON: And what we also caution you, we
18 recommend is we need to be consistent. As Ken brought up,
19 we've had some bid errors over the last year, you've
20 always held the bidder to their bid, and we just want to
21 be consistent. That's what will best protect the
22 department.

23 MR. BARNETT: A followup a little bit on the
24 ordinary care. Part of the process that went into our
25 recommendation, what the average statewide unit bid price

1 is is the statewide average for that item bid statewide.
2 It ties nothing to any one in particular project. This
3 particular project is a building with concrete pavement
4 around it, not a huge project.

5 You understand that the statewide average also
6 includes concrete pavement in Houston and Dallas and
7 everywhere else where it could be on the order of millions
8 of square yards and there's a huge order of magnitude of
9 difference between those two. So the statewide average
10 can be pulled down significantly for cases like this where
11 you have a smaller quantity in a remote location.

12 So use of that is not probably a good practice
13 for a bid. I mean, maybe it's okay to give yourself kind
14 of an idea where you're at, but that's clearly probably
15 not a good way to bid projects.

16 As far as our recommendation for bid errors,
17 usually when this occurs, lack of ordinary care is what it
18 comes down to, and in this case we don't see that because
19 use of a statewide average, we don't see how that can be
20 ordinary care. They had the statewide average on the
21 spreadsheet that they mentioned, also for the proposal
22 they wrote the numbers in, and again, not only did they
23 have the wrong number on the spreadsheet, they turned
24 around and wrote the wrong number on their proposal as
25 well. So I mean, there was multiple options that this

1 could have been corrected and was not.

2 When we brought forward to you a recommendation
3 to accept the error and said, yes, ordinary care was
4 followed, it's sometimes inexplicable why what happened,
5 happened. Their spreadsheet has the number they meant to
6 bid and for whatever reason they wrote something else
7 down. But everything they provide to us clearly shows
8 that they intended that to bid all the time, and as the
9 example that the gentleman gave us, they wrote \$10 instead
10 of \$1,000. Nobody knows why they did that, that's just
11 what they did.

12 In those cases we say yes, ordinary care was
13 exercised, you clearly intended to bid \$1,000, but for
14 whatever reason, you wrote something else down. In those
15 cases we recommend to you that ordinary care was followed.
16 We just don't see that that happened in this case.

17 MR. SHEARER: May I say something?

18 MS. DELISI: Yes.

19 MR. SHEARER: I mean, we put that number in
20 there to populate the spreadsheet and then when we got the
21 number, we attempted to get the number changed. Okay? So
22 we made that effort to get it done, it just didn't get
23 done. So once we understood what happened to our number,
24 and what had happened is that our estimator did not
25 populate that number in there and it didn't get changed.

1 And then there was some confusion that I didn't
2 explain. The estimator that handled this was on vacation
3 for a week and did not answer his cell phone, did not take
4 emails, he went on vacation. So I told Ken that I was at
5 a little disadvantage. But the number right above it was
6 like \$52, and that's where part of this came in, and it
7 was just an error.

8 It wasn't intentional. We didn't intend to bid
9 the \$30 number, we intended to populate a different number
10 in there, and when we got it, we tried to make it happen
11 and our bid runner just went in earlier than she should
12 have. And so as far as ordinary care, I mean, I
13 understand. I mean, there's four bullet points that have
14 to do with bid error, and if you don't allow or if you say
15 that we didn't use ordinary care, we still have 75 percent
16 of the other bullet points that we're there on.

17 I mean, I just want you to understand that we
18 are aware of the number, we are aware of what happened, we
19 tried to get it changed, and it just didn't get done. It
20 got turned it, we couldn't get the bid pulled, and that's
21 where we're at, and we apologize for it.

22 MR. HOLMES: And so this is all about the bond?
23 Is that the bottom line?

24 MR. LENZ: Yes, sir, Commissioner, it is.

25 MR. HOLMES: I don't know, this one is kind of

1 a mess.

2 MR. LENZ: I would agree.

3 MS. DELISI: We do have two more people signed
4 up to testify, I believe on a different project, so let's
5 just go to that real quick. I'd like to call up Chris
6 McLorg. I'm sorry, I got it wrong? I can feel your pain.

7 MR. McLORG: Madam Chair, commissioners, thank
8 you for letting me appear before you. For the record, my
9 name is Chris McLorg. I am the general manager for
10 Ledcor's Seal and Construction Division. Ledcor is the
11 low bidder on the Coryell project.

12 This project let two weeks ago. Last week we
13 were advised that three bidders had registered protests
14 with the department alleging quantity errors in the bid
15 documents. This week the department advised us that they
16 reviewed the bid and concur, there was a major bid item
17 bust in the base bid and there were several major item
18 busts in the alternates -- concrete was the alternate
19 here. There were also several quantity errors in the bid
20 throughout but they are not material in terms of financial
21 impact.

22 With the revised quantities, Ledcor is still
23 the low bidder, the bid rank does not change, and the
24 contract value would change less than 1 percent. This is
25 a unit price contract, and so neither the state nor the

1 contractor is affected by unit price quantity changes.

2 Of the three bidders that protested this bid,
3 two did not bid the quantities that they are protesting,
4 and we would argue that all bidders have a responsibility
5 to review specifications and plans when bidding and bring
6 discrepancies to the owner's attention prior to bid award
7 and not after bid award.

8 Ledcor and other bidders worked hard to provide
9 a fully responsive bid, all bidders were treated fairly,
10 and all bidders had access to the same key information.
11 Rebidding this project would delay the project and create
12 additional cost to the state in terms of the rebid. Also,
13 we believe the sanctity of the bidding process is weakened
14 when unsuccessful bidders can derail the project by
15 protesting minor items that do not change impact.

16 We bid this project to the best of our ability,
17 we were responsive. The errors the department made would
18 not change the outcome and do not materially affect the
19 project price, and we would very much like to go to work.

20 We request your approval of this, and I'd be
21 happy to answer any questions you may have .

22 MS. DELISI: Are there any questions?

23 (No response.)

24 MS. DELISI: Okay. Then I'd like to call up
25 Pat Pluenneke.

1 MR. PLUENNEKE: Good morning, commissioners.
2 My name is Pat Pluenneke. I'm a vice president with James
3 Construction Group located in Belton, Texas, and I'm also
4 here to speak about the Coryell County project.

5 As was pointed out previously by the director,
6 the quantities were in error on the project, and during
7 the process of estimating the project and reviewing it,
8 you have to take in several considerations, and working
9 through the quantities, you don't always realize what may
10 be accurate or not. But our contention is that the
11 quantities were accurate.

12 We potentially could have bid it another way.
13 As was mentioned earlier, there were two alternates on the
14 project, a base bid and an alternate bid, and depending on
15 the one you choose, it could be priced differently.

16 We feel that the if department has the
17 opportunity to go back and correct the errors on the
18 quantities, that the department will get the price they
19 need, and we look forward to the chance, if the department
20 re-advertises, to go back and rebid this project. A good
21 chance the project could come in at a lower cost,
22 competition will probably be stronger, and material prices
23 could potentially go down as well, so there's a chance the
24 department could actually get a lower cost on the project.

25 So we'd request that the project would be rebid

1 and look forward to the opportunity of doing so if that
2 would be your decision.

3 Appreciate your time this morning.

4 MR. HOUGHTON: Which project are you talking
5 about? The same one?

6 MR. PLUENNEKE: The same one, yes, sir. Any
7 questions?

8 (No response.)

9 MR. PLUENNEKE: Thank you.

10 MS. DELISI: We're done with the speakers.

11 MR. UNDERWOOD: I've got a question for Russel.

12 Russel, you were -- I don't want to use the
13 wrong adjective -- but bragging about that we had a lot of
14 lettings this month. Does that create undue pressure on
15 these firms we do business with where all of a sudden it's
16 like feast or famine. One month we're at \$5, the next
17 month we're at \$5,000. Don't quote me on the dollar
18 amounts, but you see what I'm getting at.

19 MR. LENZ: Yes. I don't know if I would say
20 undue pressure, but it does certainly heighten the
21 pressure to develop bids for the process. It does take
22 some significant time and effort, yes, sir.

23 MR. UNDERWOOD: Not only significant time and
24 effort, but when you have a multitude -- how many dollars
25 are we talking about now on this, compared to the last

1 month, compared to two months ago, three months ago?

2 MR. LENZ: It's a significant difference.

3 MR. HOLMES: And 20 percent, 50 percent?

4 MR. LENZ: Probably closer to about 30 percent,
5 30 to 40 percent.

6 MR. UNDERWOOD: What I'm getting at is some of
7 the conversation I've had with the people is that they
8 feel like it's feast or famine, it's just almost a roller-
9 coaster ride. Is there some reason why we do that?

10 MR. LENZ: We don't do it intentionally. We
11 try our best, through the planning and financial
12 management of the program, to do our best to try and level
13 the letting volume as much as we can. At the end of the
14 year, the accelerated projects were Prop 12 projects which
15 we moved into this fiscal year to get the work out on the
16 street as quickly as possible.

17 MR. UNDERWOOD: And in doing that, though, I
18 would think that that really does create pressure on these
19 firms and whatnot, when there's more money out or more
20 projects available. I don't know that you can afford to
21 cherry-pick at this time in their line of work, so you're
22 basically trying to be involved in each one of these
23 projects that fit your type of work.

24 MR. LENZ: Well, their effort would certainly
25 be heightened or a lot higher because they do want to make

1 sure that they can take advantage of the projects that are
2 available now, not knowing what the future holds.

3 MR. UNDERWOOD: And the fact that it puts a lot
4 of pressure on their people and whatnot, trying to do
5 something in a timely manner.

6 Do we give them enough time?

7 MR. LENZ: We advertise for 21 days. It
8 depends on who you talk to whether that's sufficient or
9 not. We always welcome anyone to come to any of our
10 offices or area offices to look at a project or discuss a
11 project with our engineering staff. Districts have been
12 doing that for a long time. But with the volume you're
13 talking about, that does also present a challenge.

14 MR. UNDERWOOD: Okay. I appreciate it. Thank
15 you. I just wanted to make sure the commission understood
16 this is a lot of pressure on these gentlemen.

17 MR. HOUGHTON: Well, I want to commend you,
18 Russel, from the standpoint we had 1,109 bids in this
19 cycle. That's a lot. And again, from the standpoint of
20 five that you're recommending and one that's being
21 contested, that's a lot of volume. And congratulations to
22 your staff for shifting through all of these successfully,
23 some unsuccessfully, but very few.

24 MR. LENZ: Thank you. And the staff worked
25 very, very hard.

1 MR. HOLMES: Kind of as a follow-on to
2 Commissioner Underwood, it puts pressure on the
3 contracting community but it puts pressure on our staff
4 too, and we have quantities wrong in some bids and we've
5 got posted numbers that have a great variation to what the
6 reality is on that given one.

7 And I'm kind of struggling with this one. I
8 don't even know which project it is.

9 MR. LENZ: La Salle.

10 MR. HOLMES: La Salle County. I would prefer
11 that we hold that one and look at it and understand a
12 little bit more.

13 MS. DELISI: What we can do, with the
14 appropriate motion, is defer action on the La Salle County
15 project so that we can have a better understanding of what
16 we have done in the past on similar examples.

17 MR. HOUGHTON: And that we're consistent.

18 MS. DELISI: And that we're being consistent.

19 MR. HOUGHTON: Right. I would move that, that
20 we defer the La Salle County project and move to approve
21 the balance, with the recommendation of staff on the
22 rejections.

23 MR. HOLMES: Second.

24 MS. DELISI: You've heard the motion, there's a
25 second. All in favor?

1 (A chorus of ayes.)

2 MS. DELISI: The motion passes.

3 MR. SAENZ: Thank you, Russel.

4 Commission, agenda item number 23 deals with
5 our Routine Minute Orders, I do want to bring up that
6 agenda item 23a(5) dealing with donations to the
7 department for the Travel Information Division, that item
8 will be deferred. All the other items are our Routine
9 Minute Orders, and staff would recommend approval of all
10 minute orders with one motion. We would be happy to
11 answer any questions should you have a question on an
12 individual minute order.

13 MS. DELISI: Is there a motion?

14 MR. HOUGHTON: So moved.

15 MR. HOLMES: Second.

16 MS. DELISI: All in favor?

17 (A chorus of ayes.)

18 MS. DELISI: The motion passes.

19 This completes all of the action items on the
20 agenda. Before we recess into executive session, is there
21 anyone signed up for open comment?

22 MR. SAENZ: No.

23 MS. DELISI: At this time we will recess to
24 take up two items in executive session: under Government
25 Code Section 551.071, consultation with and advice from

1 legal counsel regarding pending and contemplated
2 litigation, including a briefing by the Office of the
3 Attorney General on *Kemp v. Amadeo Saenz, Jr., et al.*, and
4 *Sierra Club v. FHWA and TxDOT*; and under Section 551.074,
5 discuss the duties of one or more persons who fills a
6 position of Executive Director, Deputy Executive Director,
7 Chief Financial Officer, Assistant Executive Director,
8 General Counsel, Audit Office Director, Director of
9 Government and Public Affairs, and Director of Strategic
10 and Policy Performance Management.

11 Please note for the record that it is 11:20
12 a.m., and this open meeting is in recess.

13 (Whereupon, at 11:20 a.m., the meeting was
14 recessed, to reconvene this same day, Thursday, August 26,
15 2010, following conclusion of the executive session.)

16 MS. DELISI: The meeting of the Texas
17 Transportation Commission is reconvened. For the record,
18 the time is 12:41 p.m. The commission has concluded its
19 executive session.

20 Is there any other business to come before the
21 commission?

22 (No response.)

23 MS. DELISI: There being none, I will entertain
24 a motion to adjourn.

25 MR. HOLMES: So moved.

1 MR. UNDERWOOD: Second.

2 MS. DELISI: All in favor?

3 (A chorus of ayes.)

4 MS. DELISI: The motion passes. Please note
5 for the record that it is 12:41 p.m., and this meeting
6 stands adjourned.

7 (Whereupon, at 12:41 p.m., the meeting was
8 concluded.)

C E R T I F I C A T E1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

MEETING OF: Texas Transportation Commission

LOCATION: Austin, Texas

DATE: August 26, 2010

I do hereby certify that the foregoing pages, numbers 1 through 116, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Transportation.

(Transcriber) 8/31/10
(Date)

On the Record Reporting, Inc.
3307 Northland, Suite 315
Austin, Texas 78731