

TEXAS TRANSPORTATION COMMISSION

LEON County

MINUTE ORDER

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District BRYAN

Texas Westmoreland Coal Company (TWCC) would like to donate sufficient funding, property, and services to provide land for acquisition and exchange of right of way, utility relocation, environmental assessments, schematics, plans specifications and estimates, and construction and construction engineering necessary for relocation of an approximately 3.6-mile length of highway designated as FARM TO MARKET ROAD 39 in Leon County shown in Exhibit A (existing right of way). The estimated donation is \$5 million.

TWCC has further agreed that upon completion of construction for the realignment and reconstruction of a new replacement highway facility for such portion of FM 39, it will convey to the state an approximately 4-mile parcel of property shown in Exhibit A (new right of way).

Transportation Code, §201.206, authorizes the Texas Department of Transportation (department) to accept a donation in any form, including realty, personalty, money materials, and services, for the purpose of carrying out its functions and duties.

Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60<sup>th</sup> day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30<sup>th</sup> day after the date the decision in the case becomes final.

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

In accordance with Transportation Code, Chapter 202, Subchapter B, the commission may recommend the exchange of surplus land as partial or full consideration for other land needed by the state for highway purposes.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation and exchange is in the best interest and welfare of the traveling public.

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

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The commission also finds that the donor is interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would nonetheless provide significant public benefits and would not influence or reasonably appear to influence the department in the performance of its duties.

It is the opinion of the commission that upon completion and acceptance of the new right of way, the existing right of way shown in Exhibit A (surplus land) will no longer be needed for highway purposes, will be surplus, and should be removed from the state highway system. It would then be proper and correct that the state convey and release its rights, title and interest in the surplus land to TWCC, SAVE AND EXCEPT all mineral rights including coal and lignite rights, title and interest, in exchange and as consideration for the conveyance of the new right of way to the state.

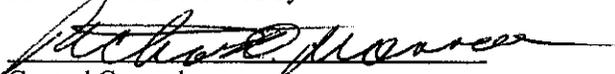
IT IS THEREFORE ORDERED by the commission that the donation by TWCC is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation and completion of the exchange.

IT IS FURTHER ORDERED by the commission that the executive director is authorized to tender the following proposal to TWCC:

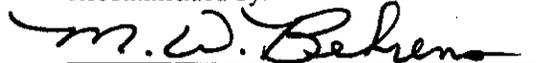
Provided that TWCC at its sole expense completes construction of the new right of way to the satisfaction of the department, conveys the new right of way shown in Exhibit A to the state, and pays the cash difference between the value of the existing right of way and the value of the new right of way, if any, then the commission will recommend the conveyance of the existing right of way in accordance with Transportation Code, Chapter 202, Subchapter B.

FURTHER, in consideration of the foregoing premises and in accordance with Transportation Code, Chapter 202, Subchapter B, the commission hereby finds that if and when TWCC satisfactorily complies with all the conditions of this minute order, the designation of the surplus land as part of the state highway system is then cancelled and the surplus land is no longer needed for highway or public transportation purposes and recommends, subject to approval by the attorney general, that the Governor of Texas execute proper instruments conveying and releasing all of the state's rights, title and interest in the surplus land described in Exhibit A to TWCC, SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land, including all coal and lignite rights, title and interest, in exchange and as consideration for the conveyance to the state of the new right of way.

Submitted and reviewed by:

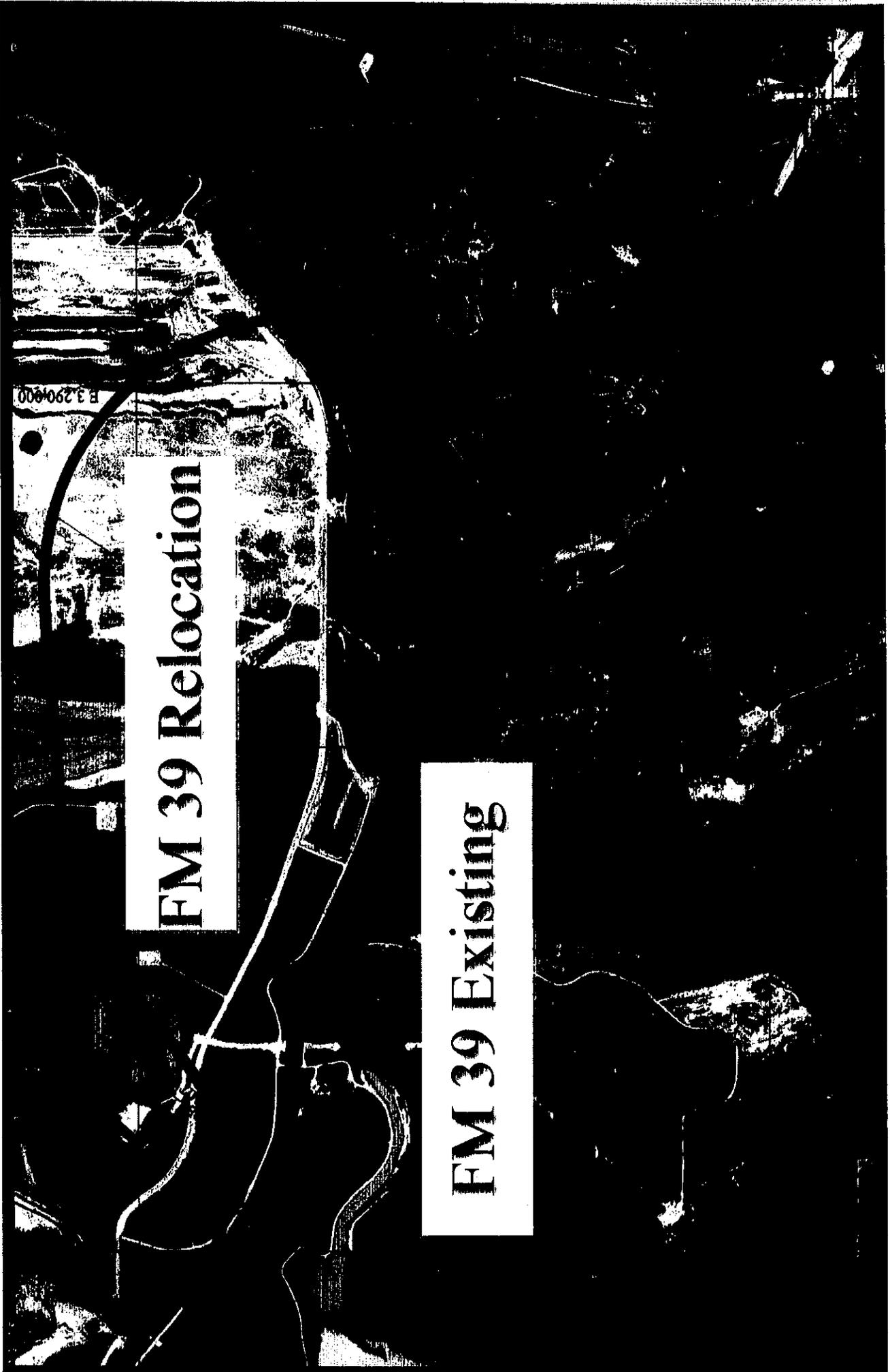
  
General Counsel

Recommended by:

  
Executive Director

**110207 AUG 25 05**

Minute Number      Date Passed



**FM 39 Relocation**

**FM 39 Existing**