

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on January 27, 2005, in Houston, Texas. The meeting opened at 9:14 a.m. with the following commissioners present:

**Texas Transportation Commission:**

Ric Williamson	Chair
Robert L. Nichols	Commissioner
John Johnson	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

**Administrative Staff:**

Michael W. Behrens, Executive Director  
Steve Simmons, Deputy Executive Director  
Richard Monroe, General Counsel  
Roger Polson, Executive Assistant to the Deputy Executive Director

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 3:11 p.m. on January 18, 2005, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

**Receive comments from area public officials, community and civic leaders, and private citizens. Report by the Houston District.**

The commission received comments from Houston District Engineer Gary Trietsch, Director of the Greater Houston Partnership Jodie Jiles, Metropolitan Transit Authority Chair David Wolff, Harris County Judge Robert Eckels and Galveston County Judge Jim Yarbrough.

**ITEM 1. Approval of Minutes of the December 16, 2004, regular meeting of the Texas Transportation Commission**

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the minutes of the December 16, 2004, regular meeting of the Texas Transportation Commission.

**ITEM 2. AWARDS/RECOGNITIONS/RESOLUTIONS**

Present the 2004 National Partnership for Highway Quality "Making a Difference" Award, Partnering Category, to the Houston District for the I-10 Katy Freeway Tri-Party Agreement

The commission received comments from Houston Mayor Bill White.

**ITEM 5. TRANSPORTATION PLANNING**

Appointment of two board members to the Austin-San Antonio Intermunicipal Commuter Rail District

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Assistant Executive Director of Engineering Operations Amadeo Saenz.

109929  
TPP

The Austin-San Antonio Intermunicipal Commuter Rail District (district) was established under the authority of Article 6550c-1, VTCS, and is governed by a board of directors (board). The board is responsible for the management, operation and control of the district.

Article 6550c-1 provides that the Texas Transportation Commission (commission) shall appoint two public members to the board.

In December 2002, the commission appointed the individuals listed below to the board of the district for a term of two years.

J. Tullos Wells

Mariano Camarillo

The commission has determined that it would be in the best interest of the citizens of central Texas for these individuals to be appointed for a second two-year term as members of the board for the district based on their experience and knowledge of commuter rail transportation and due to their exemplary service to bring commuter rail to the region.

IT IS THEREFORE ORDERED by the commission that each of the individuals named above is appointed as members of the Austin-San Antonio Intermunicipal Commuter Rail District for a two-year term.

The commission received comments from one of the appointees Mariano Camarillo.

**ITEM 3. PROMULGATION OF ADMINISTRATIVE RULES** Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

**a. Proposed Adoption****Chapter 1 - Management**

Amendments to §1.85, Department Advisory Committees, Trans-Texas Corridor Advisory Committees

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by General Counsel Richard Monroe:

109930  
propose  
TTA

The Texas Transportation Commission (commission) finds it necessary to amend amendments to §1.85, relating to department advisory committees, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §1.85 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

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

**b. Final Adoption**

**(1) Chapter 1 - Management and Chapter 9 - Contract Management**

**Amendments to §§1.21-1.24, §1.26 and §1.30 (Procedures in Contested Cases) and §9.2 (Contract Claim Procedure)**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by General Counsel Richard Monroe.

109931  
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§1.21-1.24, §1.26 and §1.30 concerning procedures in contested cases, and §9.2, concerning contract claim procedure, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and adopted amendments, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§1.21-1.24, §1.26, §1.30 and §9.2 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

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

**(2) Chapter 9 - Contract Management****Amendments to §§9.30-9.39, §9.41 and §9.42, the Repeal of §9.40 and §9.43, and New §9.43, Contracting for Architectural, Engineering, and Surveying Services**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Design Division Director Mark Marek:

109932  
DES

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§9.30-9.39, §9.41, and §9.42, the repeal of §9.40 and §9.43, and new §9.43, relating to contracting for architectural, engineering, and surveying services, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals, and new section, attached to this minute order as Exhibits A - D are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments, repeals, and new section are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

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

**(3) Chapter 21 - Right of Way****Repeal of §§21.31-21.51 and New §§21.31-21.41, Utility Accommodation**

The commission deferred action on this item after hearing testimony from Right of Way Division Director John Campbell. Comments were received from Attorney Diane Barlow; Director of SBC External Affairs Leslie Ward; and Charles Dolezel representing Center Point Energy.

This item was deferred.

**(4) Chapter 22 - Use of State Property****Amendments to §§22.10-22.13, Use of State Highway Right of Way**

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Traffic Operations Division Director Carlo Lopez:

109933  
TRF

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§22.10-22.13, relating to the use of state highway right of way, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§22.10-22.13 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

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

**(5) Chapter 27 - Toll Projects**

**New Subchapter G, Operation of Department Turnpike Projects, §27.80, Definitions and §27.81, Free Use of Turnpike Projects by Military Vehicles**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

109934  
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt new §27.80 and §27.81, relating to definitions and the free use of turnpike projects by military vehicles, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §27.80 and §27.81 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

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

**ITEM 4. LEGISLATIVE AFFAIRS**

**Adoption of a report to the United States Congress making recommendations to accelerate the delivery of transportation infrastructure**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Legislative Affairs Office Director Coby Chase:

109935  
LAO

The Texas Transportation Commission (commission) has authority over transportation policy development involving the state transportation system.

Prior to the expiration of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21), the Texas Department of Transportation offered a number of proposals for the United States Congress to consider as it reauthorized the act. Those recommendations included federal flexibility to match the state flexibility found in HB 3588, 78<sup>th</sup> Texas Legislature, Regular Session, 2003, enhancing the design-build process, state discretion in tolling the federal-aid highway system, and receiving a greater rate of return on the fuel taxes sent to Washington, D.C.

The 108<sup>th</sup> Congress failed to reauthorize TEA 21 and has now extended it six times. The current extension expires in May 2005.

The United States Congress has now convened in its 109<sup>th</sup> Session.

Various members of the Texas Congressional Delegation, as well as officials of the United States Department of Transportation (US DOT), have expressed an interest in receiving the information set out in the commission's report entitled "TEA 21 Reauthorization, 109<sup>th</sup> Session of the U.S. Congress: A report to the United States Congress making recommendations to accelerate the delivery of transportation infrastructure."

IT IS THEREFORE ORDERED that the commission adopts this report, attached as Exhibit A, in its entirety and that the chairman of the commission provide the report to the governor, the lieutenant governor, the speaker of the house of representatives, members of the Texas delegation to the United States Congress, the presiding officers of its relevant committees of jurisdiction, the secretary of the United States Department of Transportation, and the administrator of the Federal Highway Administration.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 6. TURNPIKE PROJECT**

##### **Travis and Williamson Counties - Accept the General Engineering Consultant quarterly progress report for the Central Texas Turnpike Project**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phil Russell:

109936  
TTA

In TRAVIS and WILLIAMSON COUNTIES, State Highway 130 has been designated a turnpike project and a controlled access state highway from Interstate Highway 35 north of Georgetown to a southern terminus at US Highway 183.

In TRAVIS and WILLIAMSON COUNTIES, State Highway 45 has been designated a turnpike project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, State Highway Loop 1 has been designated a turnpike project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45.

The Texas Transportation Commission (commission) has issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike Project, a turnpike project composed of the SH 130, SH 45, and Loop 1 project elements (2002 Project), and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending November 2004, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

#### **ITEM 7. FINANCE**

**Various Counties - Accept the Quarterly Investment Report as of November 30, 2004 as required by the Public Funds Investment Act, Government Code, Chapter 2256**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Finance Division Deputy Director John Muñoz:

109937  
FIN

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

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

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

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase (2002 Project) of the Central Texas Turnpike System. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, and Minute Order 109732, dated July 29, 2004. The commission has designated the department's Director of Finance and Deputy Director of Finance as investment officers.

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

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the period ending November 30, 2004, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

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

Note: Exhibit A on file with minute order clerk.

#### **ITEM 8. STATE INFRASTRUCTURE BANK**

**Hidalgo County - Grant final approval of an application from the Hidalgo County to borrow \$1.2 million from the State Infrastructure Bank to pay for the construction of Mile 2 West Road from Mile 12 North to 0.2 miles south of SH 107 in Hidalgo County**

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Finance Division Deputy Director John Muñoz:

109938  
FIN

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorizes states to establish a State Infrastructure Bank (SIB) for the purpose of making loans and providing other financial assistance to public and private

entities, so as to encourage public and private investment in transportation facilities, expand the availability of funding for transportation projects, and reduce state costs.

Pursuant to this legislation, Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department).

The provision of capital to the SIB will result in the reduction of burdens and demands on the limited funds available to the Texas Transportation Commission (commission) and an increase in the effectiveness and efficiency of the department by allowing the SIB to provide financial assistance to eligible transportation projects.

Pursuant to Transportation Code, Chapter 222, Subchapter D, the commission has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB. These rules are codified as Title 43, Texas Administrative Code, Chapter 6.

Title 43, Texas Administrative Code, §6.23 authorizes eligible entities to submit applications for financial assistance from the SIB and prescribes requirements for an application.

In accordance with 43 TAC §6.32, on December 16, 2004, in Minute Order 109907, the commission granted preliminary approval of an application from Hidalgo County (county) to borrow \$1.2 million from the SIB to pay for construction costs of Mile 2 West Road from Mile 12 North Road to 0.2 miles south of SH 107 in Hidalgo County.

The county has represented that the loan will be secured by general and road and bridge funds. The county has submitted evidence of a Moody's A3 bond rating. The present and projected financial condition of the SIB is sufficient to cover this request.

On August 3, 2004, the Hidalgo County Commissioner's Court passed a resolution authorizing submission of this application to the SIB. This resolution indicates the official written approval of the projects by the governing body of the county and demonstrates local public support.

The project is not on the state highway system, but is eligible for federal aid and is currently authorized with Category 10, Supplemental Transportation Projects through the Coordinated Border Infrastructure and Safety Program funding. The project is consistent with the Texas Transportation Plan, but is not included in the Statewide Transportation Improvement Program.

The proposed project and loan conform with the purpose of the SIB and will expand the availability of funding for transportation projects and reduce direct state costs.

All necessary social, economic, and environmental studies have been completed and no further coordination is required. The project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

In accordance with 43 TAC §6.31, the department has reviewed and analyzed the application, finds the application to be in compliance with the requirements of 43 TAC, Chapter 6, and recommends that the commission grant final approval of the application pursuant to 43 TAC §6.32.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by Hidalgo County meets the requirements of 43 TAC §6.32(b) and §6.32(e) and, in accordance with those sections, the commission grants final approval of the application to borrow \$1.2 million from the State Infrastructure Bank, to be repaid over a period of 8 years at 3.75 percent interest per annum, and authorizes and directs the executive director to enter into a financial assistance agreement with the city.

**ITEM 9. BUILDING CONSTRUCTION**

**Harris County - Authorize submission to Bond Review Board for approval of a Lease with Option to Purchase for the Houston District Headquarters pursuant to Government Code, Section 1231.001(2)(B) and Title 34, Texas Administrative Code, Section 181.1(2)(B)**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Finance Division Deputy Director John Muñoz:

109939  
FIN

Transportation Code, Chapter 201, Subchapter C, § 201.1055 authorizes the Texas Department of Transportation (department) to enter into an agreement with a private entity offering the best value to the state to design, construct and lease to the department, with an option to purchase, a district office headquarters in a county with a population of 3.3 million or more, on property owned by the department, and leased to the private entity.

Pursuant to this authority, Minute Order 109807 authorized the department to commence and complete discussions with Gilbane Properties, Inc. necessary to finalize the terms and documents concerning the lease with option to purchase a new district office for the Houston District headquarters. In order to obtain the best value for the state, the department intends to enter into a lease-purchase agreement in which certificates of participation will be issued to finance the design and construction of the facilities.

Government Code, §1231.041 provides that an entity issuing a state security may not do so unless approved by Texas Bond Review Board (board). A state security includes a lease-purchase obligation that is issued by or on behalf of the department. Government Code, §1231.042 provides that, in order to obtain the approval of the board to enter into a lease-purchase agreement, a state agency must apply to the board in the manner prescribed by the board.

Pursuant to this authority, the board has adopted lease purchase agreement review rules, codified at 34 TAC §§181.1-181.12. §181.1(2)(B) provides that a state agency that proposes to enter into a lease purchase agreement shall apply for board approval by filing an application with the board. §181.3(c) prescribes documentation required to be included with an application.

IT IS THEREFORE ORDERED by the commission that the Texas Department of Transportation is authorized and directed to file with the Texas Bond Review Board an application to enter into a lease-purchase agreement for the Houston District headquarters.

**ITEM 10. CONTRACTS**

**a. Award or Reject Highway Improvement Contracts**

**(1) Maintenance**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order, rejecting Project Number RMC 6124-35-001 in Tarrant County as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

109940  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on January 11 and 12, 2005.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

## **(2) Highway and Building Construction**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order, rejecting Project Nos. MG 2004(778) in Cameron County; CPM 496-2-15 in Knox County; and CPM 140-4-41 in Pecos County as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

109941  
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on January 11 and 12, 2005.

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

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

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

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

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

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

Note: Exhibit A on file with minute order clerk.

**b. Contract Claims****Upshur County - Project STP 2000(43)RM - Approve claim settlement with Longview Bridge and Road, Inc. for additional compensation**

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

109942  
AEO

In UPSHUR COUNTY on US HIGHWAY 259, Longview Bridge and Road, Inc. (contractor) was awarded construction project STP 2000(43)RM in the amount of \$9,532,010.37.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in the amount of \$118,400 for erosion control excavation work. The contractor disagreed with the method of payment used for reimbursement of the removal of silt from the project.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claim was successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$6,000 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$6,000 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

**ITEM 11. ROUTINE MINUTE ORDERS**

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute orders, presented by Executive Director Michael W. Behrens.

**a. Donations to the Department****(1) Brewster County - Amend Minute Order 109850 to correct the name of the donor from Lajitas Real Estate, Inc. to Lajitas Real Estate, Ltd.**

109943  
OGC

A private company donated sufficient funding, property and services to provide for land 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 1.2 mile length of highway designated as FM 170 in Brewster County, Texas.

The Texas Transportation Commission (commission) approved Minute Order 109850 on October 28, 2004 accepting the amount of the estimated donation. The name of the company in the minute order was incorrect and is being corrected by this minute order.

NOW, THEREFORE, IT IS ORDERED that Minute Order 109850 be amended so that the name of the company, Lajitas Real Estate, Inc., in that minute order be replaced with the name that is registered with the Secretary of State, which is Lajitas Real Estate, Ltd.

(2) Travis County - Consider a donation from the Association of Modified Asphalt Producers (AMAP) to pay for travel expenses for a department employee to give a presentation at the Sixth Annual AMAP Conference on February 1-2, 2005 in Las Vegas, Nevada

109944  
OGC

The Association of Modified Asphalt Producers (AMAP) is making a donation of \$904.96 for travel expenses for a Texas Department of Transportation (department) employee to make a presentation at the 6<sup>th</sup> Annual AMAP Conference in Las Vegas, Nevada on February 1-2, 2005.

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

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Members of the donor's organization may be interested in a contract, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$904.96 by AMAP is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) **Travis County** - Consider a donation from the Rubber Pavement Association to pay for travel expenses for a department employee to give a presentation at the Technical Advisory Board meeting on February 3-5, 2005, in Reno, Nevada

109945  
OGC

This minute order considers a donation of \$1104.66 from the Rubber Pavement Association (RAP) to the Texas Department of Transportation (department) for a department's employee's travel expenses. The employee will make a presentation about the department's hot mix specifications and asphalt rubber use in Texas at RPA's annual meeting, which will be held on February 3-5, 2005, in Reno, Nevada.

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

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Members of the donor's organization may be interested in a contract, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$1104.66 by RPA 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.

(4) Travis County - Consider a donation from the International Association of Foundation Drilling (ADSC) to pay for travel expenses for a department employee to accept an award at ADSC's annual meeting on February 3-5, 2005, in San Diego, California (MO)

109946  
OGC

This minute order considers a donation of \$904.96 in travel expenses from the International Association of Foundation Drilling (ADSC) for a Texas Department of Transportation (department) employee to accept an award at ADSC's annual meeting that will be held on February 3 -5, 2005, in San Diego, California. The employee will receive the 2005 "Outstanding Service Award" for his participation in the development of the department's Drilled Shaft Inspectors Program and for the positive way that he encouraged participation in the program to industry members.

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

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

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as

provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

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

The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Members of the donor's organization may be interested in a contract, but, nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$856.25 by ADSC 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.

**b. Eminent Domain Proceedings**

**(1) Travis and Williamson Counties - controlled access turnpike projects**

109947  
ROW

The Texas Transportation Commission (commission) has determined that in order to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its highways, public necessity requires the construction, expansion, enlargement, extension, or operation of the following turnpike projects in this state as a part of the state highway system (highway system), as described in this order.

The commission has determined that each of the following listed parcels of land, each being more particularly described in the exhibits attached to this order and being designated, identified, and listed by an alphabetical exhibit reference in this order under "CONTROLLED ACCESS", and such additional lesser estates or property interests described in the exhibits, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Transportation Code, §361.131, §361.132, §361.135, and §203.054, as a part of the highway system to be constructed, expanded, enlarged, extended, or operated thereon.

The commission has determined that in order to facilitate the flow of traffic and promote the public safety and welfare and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the turnpike projects to be constructed on said parcels of land are designated as controlled access highways, and on such parcels of land where there is remaining abutting private property, roads are to be built as a part of said turnpike projects whereby the right of ingress and egress to or from the remaining private property abutting on said turnpike project is to be permitted and/or denied, as designated and set forth on each of the exhibits attached to this order.

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

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

CONTROLLED ACCESS				
<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
A	Williamson	SH 130	0440-05-007	1120
B	Travis	SH 130	0440-06-008	197
C	Travis	SH 130	0440-06-008	304, pts 1&2, and 304E, pts 1&2
D	Travis	SH 130	0440-06-008	311
E	Travis	SH 130	0440-06-008	313, pts 1&2
F	Travis	SH 130	0440-06-008	316
G	Travis	SH 130	0440-06-008	1301E

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

**(2) Various Counties - noncontrolled and controlled access highways**

109948  
ROW

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

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

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

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

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

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

## NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Fort Bend	US 90A	0027-08-149	33
2	Fort Bend	US 90A	0027-08-149	98
3	Hidalgo	US 83	0038-06-034	3
4	Falls	SH 6	0049-04-056	3
5	Brazos	SH 6	0050-02-087	14
6	Brazos	SH 6	0050-02-087	17 & 17E
7	Brazos	SH 6	0050-02-087	24
8	Brazos	SH 6	0050-02-087	57
9	Bastrop	US 290	0114-04-060	22
10	Bastrop	US 290	0114-04-060	39
11	Wood	US 69	0190-03-071	19
12	Wood	US 69	0190-03-071	20
13	Fort Bend	SH 6	0192-01-081	9
14	Fort Bend	SH 6	0192-01-081	10
15	Fort Bend	SH 6	0192-01-081	11
16	Dallas	IH 35	0196-03-224	1
17	Henderson	US 175	0197-06-045	1 & 1E
18	Walker	SH 30	0212-02-032	27
19	Bexar	US 281	0253-04-125	6
20	Bexar	US 281	0253-04-125	9
21	Bexar	US 281	0253-04-126	4
22	Galveston	SH 124	0367-02-072	3
23	Galveston	SH 124	0367-02-072	4
24	Jones	FM 1082	0975-02-017	2E
25	Johnson	FM 731	1094-03-016	35B
26	Limestone	FM 937	1191-04-020	31 & 31E
27	Hunt	SH 276	1290-05-012	1
28	Burnet	FM 1431	1378-03-028	3
29	Burnet	FM 1431	1378-03-028	12
30	Burnet	FM 1431	1378-03-028	13
31	Harris	SH 6	1685-05-082	2
32	Harris	SH 6	1685-05-082	14
33	Harris	SH 6	1685-05-082	15
34	Harris	SH 6	1685-05-082	17
35	Harris	SH 6	1685-05-082	18
36	Harris	SH 6	1685-05-082	19
37	Burnet	RM 2341	2206-01-012	9
38	Williamson	FM 1460	2211-02-014	21

## CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Hill	IH 35	0014-07-090	8
B	McLennan	IH 35	0015-01-195	1
C	Bell	IH 35	0015-14-117	28
D	Bell	IH 35	0015-14-117	34
E	Bell	IH 35	0015-14-117	44
F	Orange	IH 10	0028-09-109	22
G	Hidalgo	US 83	0039-17-144	152
H	Hidalgo	US 83	0039-17-144	153
I	Hidalgo	US 83	0039-17-145	33
J	Hidalgo	US 83	0039-17-145	56
K	Denton	IH 35	0081-13-042	1 Pts.1&2
L	Travis	US 290	0113-08-039	141AC
M	Travis	US 290	0113-08-039	144E
N	Travis	US 290	0113-08-039	150
O	Travis	SH 71	0113-13-086	140AC
P	Travis	SH 71	0113-13-086	141AC
Q	Travis	SH 71	0113-13-086	143AC
R	Travis	US 183	0151-09-039	31A
S	Travis	US 183	0151-09-039	31B
T	Travis	US 183	0151-09-039	32
U	Travis	US 183	0151-09-039	84 Pts 1,2&3
V	Travis	US 183	0151-09-039	87
W	Montgomery	US 59	0177-05-079	204A
X	Wood	US 69	0190-03-071	22AC
Y	Harris	IH 10	0271-06-099	504
Z	Harris	IH 10	0271-06-100	392
AA	Harris	IH 10	0271-07-261	210
BB	Harris	IH 10	0271-07-261	234
CC	Harris	IH 10	0271-07-262	554
DD	Harris	IH 10	0271-07-263	596
EE	Harris	IH 10	0271-07-263	642
FF	Harris	IH 10	0271-07-264	109
GG	Harris	IH 10	0271-07-265	660
HH	Harris	SH 249	0720-03-076	363
II	Harris	SH 249	0720-03-076	408
JJ	Harris	NASA RD	0981-01-078	9
KK	Harris	SH 6	1685-05-082	10
LL	Chambers	SH 99	3510-10-004	22 & 22E
MM	Bexar	Wurzbach Pkwy	8000-15-007	27

Note: Exhibits 1 through 38 and A through MM are on file with minute order clerk.

**c. Highway Designations**

**(1) Harrison County - Remove the designation of SH 154 from the junction of Loop 390 to I-20 and extend the designation of Loop 390 from US 80 to SH 43**

109949  
TPP

In HARRISON COUNTY (county) in the city of Marshall (city), county and city officials have requested the removal from the state highway system of the designation of a portion of the segment of STATE HIGHWAY 154 from the intersection of SL 390 to the intersection of IH 20.

In order to facilitate the flow of traffic, promote public safety, and maintain continuity on the state highway system, the county and city officials have also requested that a portion of the segment of SH 154 from the intersection of US 80 to the intersection of SH 43 be redesignated as STATE HIGHWAY LOOP 390.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended the removal of the designation of a segment of SH 154 and the redesignation of a portion of the segment of SH 154 as SL 390.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. A segment of STATE HIGHWAY 154 is removed from the state highway system from the intersection of SL 390 to the intersection of US 80, a distance of approximately 0.8 mile.
2. A segment of STATE HIGHWAY 154 is redesignated on the state highway system as STATE HIGHWAY LOOP 390 from the intersection of US 80 to the intersection of SH 43, a distance of approximately 1.7 miles.
3. A segment of STATE HIGHWAY 154 is removed from the state highway system from the intersection of SH 43 to the intersection of US 59, a distance of approximately 2.3 miles.
4. A segment of STATE HIGHWAY 154 is removed from the state highway system from the intersection of US 59 to the intersection of FM 31, a distance of approximately 1.2 miles.
5. A segment of STATE HIGHWAY 154 is removed from the state highway system from the intersection of FM 31 to the intersection of IH 20, a distance of approximately 3.0 miles.

**(2) Henderson County - Redesignate a segment of FM 317 as a State Loop 7**

109950  
TPP

In HENDERSON COUNTY (county), in the city of Athens (city), the final segment of FM 317 is scheduled to be completed and opened to traffic by January 2006. The new location of FM 317 will complete the loop in and around the city.

In order to facilitate the flow of traffic, promote public safety, and maintain continuity on the state highway system, the city and county have requested that the segments of FM 317 that form the loop around the city be redesignated as STATE HIGHWAY LOOP 7.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the segments of FM 317 be redesignated as SL 7.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that a former segment of FARM TO MARKET ROAD 317 from SH 31 southward, westward, northward, and then eastward to the intersection of SH 31 be redesignated as STATE HIGHWAY LOOP 7, a distance of approximately 16.6 miles.

**d. Load Zones & Postings**

**Various Counties - Revise load restrictions on various bridges on the state highway system**

109951  
BRG

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

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

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

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

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

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

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

**(1) Chambers County - SH 99 from FM 1045 to I-10E - Consider the donation of 15.413 acres of land for a highway improvement project**

109952  
ROW

In CHAMBERS COUNTY, on SH 99, from FM 1045 to IH 10E, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

J.C. Sellers, Jr. and Cecil C. Sellers (owners) are the owners of the property described in Exhibit A. The owners want to donate this property estimated at \$18,496 to the department for a highway improvement project to widen US 183.

The owners are not subject to department regulations or oversight, are not currently party to a contested case before the department, and are not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

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

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, §1.504.

Note: Exhibit A on file with minute order clerk.

(2) Comanche County - 333 West Bivar Street in DeLeon - Consider the sale of a surplus maintenance site

109953  
ROW

In the City of De Leon, COMANCHE COUNTY, at 333 WEST BIVAR STREET, the State of Texas acquired certain land for a maintenance site by instrument recorded in Volume 211, Page 623, Deed Records of Comanche County, Texas.

The land and the improvements (surplus land), described in Exhibit A, are no longer needed for a highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Department of Transportation may recommend the sale of real property which is no longer needed for a highway purpose.

The City of De Leon has requested that the state sell the surplus land to the city for \$9,533.

The Texas Transportation Commission finds \$9,533 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for highway or public transportation purposes and that the value of the surplus land is less than \$10,000. The executive director is authorized to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the City of De Leon, Texas, for \$9,533; SAVE AND EXCEPT, however, there is excepted

and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(3) Dallas County - I-30 at SH 161 in Grand Prairie - Consider the exchange of surplus right of way for needed right of way

109954  
ROW

In the city of Grand Prairie, DALLAS COUNTY, on INTERSTATE HIGHWAY 30, the State of Texas (state) acquired certain land for a state highway purpose by instruments recorded in Volume 4588, Page 382, and Volume 5006, Page 225, Deed Records of Dallas County, Texas.

Upon completion of a highway improvement project on I-30 at SH 161 in Grand Prairie, a portion of the land (surplus land), described in Exhibit A, will no longer be needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus land as whole or partial consideration for other land needed for a state highway purpose.

A deed for land needed for a state highway purpose (new land), described in Exhibit B, has been executed by Graydon Lee Gibson and wife, Oleta Gibson, (owners), who are also the abutting landowners of the surplus land. The owners have requested that, after the improvement of I-30 at the above location, the surplus land be conveyed to them. The state has agreed to pay to the owners the \$85,802 cash difference in value between the value of the new land, improvements, and damages and the value of the surplus land, which is \$5,148, pursuant to an executed exchange agreement.

It is the opinion of the commission that after the improvement of I-30 at the above location, it is proper and correct that the state convey the surplus land to the owners in exchange and as partial consideration for the conveyance of the new land and the state's cash payment to the owners of \$85,802.

NOW, THEREFORE, the commission finds that after the improvement of I-30 at the above location, the surplus land will no longer be needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the owners in exchange and as partial consideration for the conveyance of the new land and the state's cash payment of \$85,802 to the state; 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.

FURTHER, if the improvement of I-30 at the above location is never completed, then this finding and order shall be automatically cancelled.

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

**(4) Galveston County - I-45 south of Orange Grove Road in League City - Consider the sale of a surplus drainage easement**

109955  
ROW

In the City of League City, GALVESTON COUNTY, on INTERSTATE HIGHWAY 45, the State of Texas (state) acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Book 2001, Page 119, Official Public Records of Real Property, Galveston County, Texas.

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

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

Saddle Creek Ranch, Ltd., (Saddle Creek) is the owner of the fee underlying the surplus easement and has requested that the surplus easement be sold to Saddle Creek for \$1,880.

The commission finds \$1,880 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for a state highway purpose and that the value of the surplus easement is less than \$10,000 and authorizes the executive director to execute a proper instrument releasing all of the state's rights and interest in the surplus easement to Saddle Creek Ranch, Ltd., for a cash consideration of \$1,880.

Note: Exhibit A on file with minute order clerk.

**(5) Grayson County - SH 11 at Lackey Street in Tom Bean - Consider the sale of surplus right of way**

109956  
ROW

In the city of Tom Bean, GRAYSON COUNTY, on STATE HIGHWAY 11, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 870, Page 281, Deed Records of Grayson County, Texas.

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

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

Lonnie C. Jones and wife, Patsy C. Jones, are the abutting landowners and have requested that the surplus land be sold to them for \$510.

The commission finds \$510 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Lonnie C. Jones and wife, Patsy C. Jones, for \$510; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

**(6) Lubbock County - US 62 at Memphis Avenue in Lubbock - Consider removing right of way from the state highway system and quitclaiming the right of way to the city of Lubbock**

109957  
of  
ROW

In the city of Lubbock, LUBBOCK COUNTY, on US HIGHWAY 62, the State of Texas (state) used for highway purposes certain land that was dedicated to the public by plat.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend, at the city's request, the quitclaim of land to the city when the land was dedicated to the public by plat.

The city of Lubbock (city) has requested that the surplus right of way be removed from the state highway system and quitclaimed to the city.

It is the opinion of the commission that it is proper and correct that the state quitclaim its rights, title and interest in the surplus right of way to the city in accordance with the statute.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for a state highway purpose and recommends, subject to the attorney general, that the Governor of Texas execute a proper instrument quitclaiming all of the state's rights, title and interest in the surplus right of way to the city of Lubbock; 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 right of way.

FURTHER, IT IS ORDERED by the commission that the surplus right of way is removed from the state highway system.

Note: Exhibit A on file with minute order clerk.

(7) Smith County - Loop 49 - Designation of 44 parcels of land as uneconomical remainders

109958  
ROW

In SMITH COUNTY, on LOOP 49, the Texas Department of Transportation (department) is in the process of acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §203.0521, provides that if a proposed acquisition of real property or a real property interest under §203.0521 would leave the owner of the property a remainder of a tract, then the Texas Transportation Commission (commission) shall offer to purchase the remainder if the commission makes certain determinations as set out in §203.0521.

The remainders of the tracts of land, described in Exhibits "A" through "RR", all meet the requirements set out in §203.0521, in that the remainders are landlocked and have little or no value or utility to the owners thereof.

The owners of the remainders of the tracts of land, described in Exhibits "A" through "RR", have requested that the department purchase the remainders along with the tract or property interest needed for highway purposes.

NOW, THEREFORE, the commission finds that the remainders of the tracts of land, described in Exhibits "A" through "RR", be classified as uneconomic remainders and that offers to purchase said tracts along with the tract or property interest needed for highway purposes be made to such owners.

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

(8) Tarrant County - US 377 from 1.0 mile south of the Denton County line to Keller Hicks Road - Consider the donation of two parcels of land (0.056 acres and 0.007 acres) for a highway improvement project

109959  
ROW

In TARRANT COUNTY, on US 377, from 1.0 mile south of the Denton County line to Keller Hicks Road, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

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

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

The City of Keller (owner) is the owner of the property described in Exhibits A and B. The owner wants to donate these properties estimated at \$19,515 to the department for a highway improvement project to reconstruct US 377.

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

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

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibits A and B, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, §1.504.

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

**f. Speed Zones**

**Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state**

109960  
TRF

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

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

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

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

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

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

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict.

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

**ITEM 12. Executive Session Pursuant to Government Code, Chapter 551****a. Section 551.071 - Consultation with and advice from legal counsel****b. Section 551.072 - Discussion of real property purchase, exchange, lease, donations****c. Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.**

The commission did not meet in executive session.

**OPEN COMMENT PERIOD** - The commission received comments from Linda Mercer, E.I. Smith, Robin Holzer, David Mifflin, Teresa Allen, Robin Holzer, Polly S. Ledvina, Ed Browne, and Tom Compson

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commissioners approved adjourning the meeting.

The regular meeting of the Texas Transportation Commission adjourned at 1:54 p.m.

APPROVED:

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Ric Williamson, Chair  
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on January 27, 2005, in Houston, Texas.

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Dee Hernandez, Chief Minute Clerk  
Texas Department of Transportation