

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

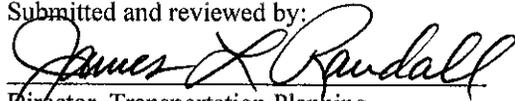
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§15.70-15.76, relating to international bridges, to be codified under Title 43, Texas Administrative Code, Part 1.

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.

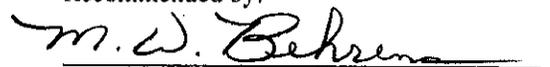
IT IS THEREFORE ORDERED by the commission that the amendments to §§15.70-15.76 are adopted and are authorized for filing with the Office of the Secretary of State.

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.

Submitted and reviewed by:

  
Director, Transportation Planning  
and Programming Division

Recommended by:

  
Executive Director

**110650 AUG 24 06**

Minute  
Number

Date  
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts  
3 amendments to §§15.70 - 15.76, concerning international bridges.  
4 The amendments to §15.73 and §15.75 are adopted with changes to  
5 the proposed text as published in the June 9, 2006 issue of the  
6 *Texas Register* (31 TexReg 4722). The amendments to §15.70,  
7 §15.71, §15.72, §15.74 and §15.76 are adopted without changes to  
8 the proposed text as published in the June 9, 2006 issue of the  
9 *Texas Register* (31 TexReg 4722) and will not be republished.

10

11 EXPLANATION OF ADOPTED AMENDMENTS

12 The adopted amendments are necessary to implement the provisions  
13 of House Bill 1653, 78<sup>th</sup> Legislature, Regular Session, 2003; add,  
14 revise or eliminate certain terms and definitions; update  
15 statutory references; clarify existing information; modify  
16 requirements for public involvement; and allow for a comparison  
17 of competing applications.

18

19 No public comments were received regarding the proposed  
20 amendments. However, the department made minor modifications to  
21 the language of proposed §15.73(3)(A) to further clarify when  
22 environmental approvals must be obtained and to eliminate  
23 confusion related to the coordination of the environmental  
24 process. In addition, the language of proposed §15.75(a)(1)(F)  
25 was modified to add the Texas Parks and Wildlife Department to

1 the list of agencies from which the department will solicit  
2 comments regarding the application.

3  
4 The amendments to §15.70 incorporate a new provision enacted by  
5 House Bill 1653, which amended Transportation Code, §201.612, to  
6 permit an entity that is authorized to construct a new  
7 international bridge to enter into the approval process with the  
8 Texas Transportation Commission (commission) and the United  
9 States simultaneously. This represents a change from the  
10 existing process whereby an applicant obtained commission  
11 approval prior to requesting approval from the United States.  
12 Section 15.70 is further amended to update relevant statutory  
13 references.

14  
15 Section 15.71 is amended to add the definitions of a competing  
16 bridge applicant and a district office, change the term "study  
17 sector" to "study area," and remove the definition of the Texas-  
18 Mexico Toll Bridge Study. The definition of competing bridge  
19 applicant is necessary to address the situation where two or  
20 more entities may be interested in constructing a new  
21 international bridge in the same area. The definition of  
22 district office is necessary to properly identify the specific  
23 location where applicants may obtain information. In this  
24 section, and throughout the amended rules, the term "study  
25 sector" is being replaced by the term "study area" in order to

1 bring the application process up to current transportation  
2 planning analysis methods. Similarly, the definition of, and  
3 all references to, the Texas-Mexico Toll Bridge Study (Study)  
4 are being removed because it is no longer used as a basis for  
5 analyzing international bridges.

6  
7 The first sentence of §15.72 is being removed as it is  
8 duplicative of a statement found in §15.70. The amendments to  
9 this section also include additional language to assist  
10 potential applicants with information-gathering related to the  
11 application process by directing them to their local department  
12 district office and the Transportation Planning and Programming  
13 Division.

14  
15 The amendments to §15.73 set forth the process for addressing  
16 competing applications, clarify the requirements related to  
17 environmental documentation and public involvement, establish  
18 new guidelines for notification of public officials, and remove  
19 all references to the Study and sector as previously described.

20  
21 Section 15.73(3)(A) is amended to clarify that an applicant must  
22 comply with the department's administrative rules pertaining to  
23 Environmental Policy and must obtain all environmental approvals  
24 required for the project prior to submission of the application.  
25 The amendments also instruct the applicant to coordinate with

1 the U.S. Department of State and the department regarding the  
2 form and content of the environmental document. These changes  
3 are necessary to address confusion regarding the type of  
4 environmental documentation that is required for international  
5 bridge projects and to ensure consistency in the environmental  
6 review process.

7

8 Section 15.73(3)(B) has been amended to align the public  
9 involvement requirements related to international bridge  
10 applications with the public involvement requirements found in  
11 the department's administrative rules pertaining to  
12 Environmental Policy. This change is necessary to address  
13 confusion regarding the public involvement process and to ensure  
14 that members of the public, competing bridge applicants, and  
15 local officials have adequate notice of the hearing or meeting  
16 and an opportunity to comment on the proposed project or provide  
17 information as appropriate.

18

19 In addition, the amendments to paragraph (3)(B) of §15.73 set  
20 forth the information that an applicant must include in the  
21 notices of public hearings and meetings. Specifically, new  
22 paragraph (3)(B)(i) requires a statement that the applicant  
23 intends to submit an international bridge application to the  
24 commission. New paragraph (3)(B)(ii) requires a description of  
25 the project, including design and location information. New

1 paragraph (3)(B)(iii) requires an instruction to competing  
2 bridge applicants that they have 60 days from the date the  
3 notice is published to provide the applicant with design,  
4 financial, and social and environmental information on the  
5 competing project.

6  
7 New §15.73(3)(C) requires the applicant to send a copy of the  
8 notice described in §15.73(3)(B) to the county judges and city  
9 mayors within a certain geographic area.

10  
11 New §15.73(4) is added to set forth the procedures to be  
12 followed when two or more applicants compete for approval of the  
13 construction of a new international bridge in the same study  
14 area. The amendments require an applicant to address the impact  
15 of competing projects and demonstrate how its submittal is  
16 superior to the other projects.

17  
18 New §15.73(4)(A) describes the method by which the applicant  
19 will provide an analysis of its project compared against  
20 competing projects. The amendments require the applicant to  
21 analyze its project as a stand-alone project and then analyze  
22 its project against competing projects, demonstrating the  
23 superiority of one project by comparing the impacts on cost  
24 benefits, project viability, design, and social and  
25 environmental impacts.

1

2 Finally, new §15.73(4)(B) provides that the applicant will not  
3 be required to analyze a competing project if the competing  
4 bridge applicant does not provide data to the applicant  
5 necessary to perform the analysis on a competing project.

6

7 Appendix A, which describes the Texas Mexico border sectors  
8 identified in the Study, has been deleted since the Study is no  
9 longer used as a basis for analyzing international bridges. The  
10 amendment to §15.74 removes a reference to an organizational  
11 position no longer used by the department.

12

13 The amendments to §15.75 eliminate references to obsolete state  
14 agency titles, and the section is revised to reflect current  
15 titles. In addition, the Texas Parks and Wildlife Department  
16 has been added to the list of agencies from which the department  
17 will solicit comments regarding the application. New subsection  
18 (b)(4) of §15.75 is added to clarify that the commission, as  
19 part of its analysis of the application, will consider  
20 information pertaining to competing bridges, information timely  
21 submitted by competing bridge applicants as well as any other  
22 information provided by the department.

23

24 In §15.76, all references to the Study and sector are being  
25 removed as previously described. New subsection (e)(3) of

1 §15.76 is added to reflect language in Transportation Code,  
2 §201.612, and provides that applications not approved by the  
3 commission must be withdrawn from consideration for approval by  
4 the United States.

5

6 COMMENTS

7 No comments on the proposed rules were received.

8

9 STATUTORY AUTHORITY

10 The amendments are adopted under Transportation Code, §201.101,  
11 which provides the commission with the authority to establish  
12 rules for the conduct of the work of the department, and more  
13 specifically, Transportation Code, §201.612, which authorizes  
14 the commission to adopt rules to administer that section.

15

16 CROSS REFERENCE TO STATUTE

17 Transportation Code, §201.612.

1 SUBCHAPTER G. INTERNATIONAL BRIDGES

2 §15.70. Purpose. Transportation Code, §201.612 provides [~~Texas~~  
3 ~~Civil Statutes, Article 6674v-8, provide~~] that a political  
4 subdivision or private entity authorized to construct or finance  
5 the construction of a bridge over the Rio Grande must obtain  
6 approval from [~~of~~] the Texas Transportation Commission and the  
7 United States [~~for the construction of the bridge before~~  
8 ~~requesting approval from the federal government~~] under  
9 Subchapter IV, Chapter 11, Title 33, United States Code, for the  
10 construction of the bridge. Transportation Code, §201.612  
11 directs the department to allow an applicant to concurrently  
12 seek approval from the commission and the United States. This  
13 subchapter [~~undesignated head~~] prescribes the procedures and  
14 conditions by which a political subdivision or private entity  
15 may obtain the approval of the commission.

16  
17 §15.71. Definitions. The following words and terms, when used  
18 in this subchapter [~~undesignated head~~], shall have the following  
19 meanings, unless the context clearly indicates otherwise.

20 (1) Applicant--A political subdivision or private entity  
21 authorized by law to construct or finance the construction of a  
22 bridge over the Rio Grande.

23 (2) Commission--The Texas Transportation Commission.

1           (3) Competing bridge applicant--An applicant whose  
2 project will compete for traffic and revenue and may have  
3 social, environmental, traffic congestion, and mobility impact  
4 on the study area.

5           (4) [+3] Department--The Texas Department of  
6 Transportation.

7           (5) District office--One of the 25 geographical areas,  
8 managed by a district engineer, in which the department conducts  
9 its primary work activities.

10           (6) [+4] Metropolitan planning organization--An  
11 organization designated in certain urbanized areas to carry out  
12 the transportation planning process as required by Title 23,  
13 United States Code, §134.

14           (7) [+5] Project--The construction or the financing of  
15 the construction of a bridge over the Rio Grande.

16           (8) [+6] Study area-- [~~Study sector--The affected area~~  
17 ~~of the proposed bridge as defined in the Texas Mexico Toll~~  
18 ~~Bridge Study, Research Report Number 1976,~~] The [this] area on  
19 [will encompass] both sides of the Texas-Mexico border affected  
20 by the proposed bridge.

21           ~~[-7] Texas Mexico Toll Bridge Study--Research Report~~  
22 ~~Number 1976, Center for Transportation Research, Bureau of~~  
23 ~~Engineering Research, The University of Texas at Austin, April~~

1 ~~1994; this study may be obtained by writing Center for~~  
2 ~~Transportation Research Library, 3208 Red River, Suite 200,~~  
3 ~~Austin, Texas 78705, and paying a reproduction fee.]~~  
4

5 \$15.72. New Bridge. [~~A political subdivision or private entity~~  
6 ~~that desires to construct or finance the construction of a~~  
7 ~~bridge over the Rio Grande must obtain approval from the~~  
8 ~~commission for the construction of the bridge before requesting~~  
9 ~~approval from the federal government under Subchapter IV,~~  
10 ~~Chapter 11, Title 33, United States Code.] To obtain commission  
11 [such] approval for a project, the political subdivision or  
12 private entity must submit an application and comply with all  
13 requirements and conditions imposed by this subchapter [these  
14 sections]. Prior to submitting an application to the  
15 department, applicants are encouraged to confer with their local  
16 department district office. The applicant should direct  
17 questions regarding the application and approval process, as  
18 well as questions relating to the respective roles and  
19 responsibilities of the applicant and the department, to the  
20 Transportation Planning and Programming Division (TPP).  
21~~

22 \$15.73. Preliminary Studies. Prior to submitting an application  
23 to the department for the approval of a project, an applicant

NOTE: Additions underlined

Deletions in [ ]

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Exhibit B

1 shall conduct a study of the design, financial feasibility, and  
2 ~~the~~ social and environmental impact of the project, including  
3 the effect of any competing applications.

4 (1) Design. The applicant shall provide a preliminary  
5 design geometric layout certified by a registered professional  
6 engineer to be in accordance with standards and criteria from  
7 appropriate design manuals applicable at the date of  
8 application. The layout must identify:

9 (A) horizontal and vertical alignments and cross-slope  
10 data of the proposed structure showing overall structure length,  
11 width, spans, span length, and type of construction, along with  
12 dimensions, where applicable, of:

13 (i) lane width;

14 (ii) curb width;

15 (iii) sidewalks;

16 (iv) shoulder width;

17 (v) calculated minimum vertical clearance over other  
18 roadways and waterways; and

19 (vi) toll booths and miscellaneous appurtenances;

20 (B) geometric termini locations along with inspection  
21 stations and queue lanes where applicable;

22 (C) the location and preliminary layout of approach  
23 roadways and intersections on both sides of the border with

1 changes necessitated by the project to existing facilities on  
2 both sides of the border; and

3 (D) the location and layout of any other accommodation  
4 of buildings or appurtenances deemed necessary by the applicant  
5 and any law or regulation governing the operation and  
6 maintenance of port of entry operations.

7 (2) Financial feasibility study. An applicant shall  
8 conduct a feasibility study to determine the financial viability  
9 of the project. The study shall include the following  
10 information.

11 (A) A financial overview of the project, which shall  
12 include:

13 (i) summary cost estimates for the planning, design,  
14 construction, operation, and maintenance of the project; and

15 (ii) a statement of all financing requirements for  
16 the project and sources of all financing.

17 (B) A project construction schedule identifying the  
18 timing, amount, and source of all cash required to pay for all  
19 construction costs.

20 (C) An analysis of the expected financing period of the  
21 project, such period to be the greater of 10 years or the time  
22 taken to fully pay any and all liabilities incurred for the  
23 planning, design, construction, operation, and maintenance of

1 the project plus the time taken to fully pay any and all  
2 liability refunding, renegotiations, conversions, and  
3 extensions.

4 (i) An applicant that issues or contemplates issuing  
5 any form of liability with a term longer than one year within  
6 three years of the date of application shall consider a portion  
7 of that liability as incurred for the planning, design,  
8 construction, operation, and maintenance of the project unless  
9 the applicant demonstrates otherwise to the satisfaction of the  
10 commission in the financial feasibility study. A liability not  
11 less than the cost of construction and not more than the costs  
12 of planning, design, and construction shall be considered in the  
13 financial feasibility study as if it had been incurred directly  
14 for the project.

15 (ii) The term of any liability amount determined in  
16 clause (i) of this subparagraph shall be the longest term of any  
17 liabilities issued or contemplated by the applicant within three  
18 years of the application date plus the time taken to fully pay  
19 any and all liability refundings, renegotiations, conversions,  
20 and extensions.

21 (D) A detailed analysis of costs over the expected  
22 financing period of the project, which shall include:

23 (i) costs of operations by reasonable expense

1 categories for each year; and

2 (ii) costs of maintenance for each year, such costs  
3 identifying each major system, structure, and component of the  
4 project that is subject to wear or deterioration, and the  
5 analysis of such costs stating both the cost and the expected  
6 frequency of inspection, repair, renewal, rehabilitation, and/or  
7 replacement required to keep the project in like-new condition.

8 (E) A pro forma analysis based on cash basis accounting  
9 for each year of planning, design, construction, and the  
10 expected financing period of the project showing:

11 (i) anticipated cash receipts, sources of cash  
12 receipts, and rates charged to achieve those cash receipts;

13 (ii) anticipated cash disbursements;

14 (iii) anticipated cash balances;

15 (iv) cash used to meet the requirements of any bond  
16 sinking fund and loan or liability amortization payment.

17 (F) A description of the methods used in preparing the  
18 financial feasibility study, the assumptions contained in the  
19 study, and persons and entities responsible for the preparation  
20 of the study.

21 (G) An analysis of the need for the project and  
22 potential impact on traffic congestion and mobility, [~~including~~  
23 ~~identification of the Texas-Mexico Toll Bridge Study sector, as~~

1 ~~described in Appendix A of paragraph (4) of this section, in~~  
2 ~~which the project is located,~~] and:

3 (i) average annual daily traffic (AADT) in the study  
4 area [~~sector~~] for major arterials and controlled access roadways  
5 for both sides of the border for five years preceding the date  
6 of the application;

7 (ii) data from any existing international bridge or  
8 other international crossing in the study area [~~sector and~~  
9 ~~adjacent sectors~~] indicating AADT for the five preceding years;

10 (iii) data from any existing international bridge or  
11 other international crossing in the study area [~~sector and the~~  
12 ~~adjacent sectors~~] indicating average delay time for traffic  
13 seeking to use any international bridge or other international  
14 crossing for the five preceding years;

15 (iv) projected AADT for the proposed bridge and other  
16 crossings in the study area [~~sector and adjacent sectors~~] 20  
17 years after completion (projections shall be based on the  
18 current department travel demand model, and the process used to  
19 make the projections shall be clearly identified and submitted  
20 with the data);

21 (v) a comparison of the project with other similar  
22 projects already in operation; and

23 (vi) a projection of changes in the free flow of

1 trade caused by the project.

2 (3) Social and environmental impact. An applicant shall  
3 conduct a study of the social and environmental impact of the  
4 project [~~, consistent with the spirit and intent of the National~~  
5 ~~Environmental Policy Act (NEPA), Title 42, United States Code,~~  
6 ~~§§4321 et seq., and Title 23, United States Code, §109(h),]~~ and  
7 shall provide for public involvement and notice to local  
8 officials.

9 (A) Environmental documentation. An applicant shall  
10 comply with the requirements in Chapter 2 of this title  
11 (relating to Environmental Policy) and shall obtain the  
12 environmental approvals required for the project prior to  
13 submittal of the application. The applicant shall coordinate  
14 concurrently with the U.S. Department of State and the  
15 department regarding the form and content of an environmental  
16 document prepared under Subchapters A and C of Chapter 2 of this  
17 title.

18 [~~(i) An applicant shall prepare an environmental~~  
19 ~~assessment or an environmental impact statement in accordance~~  
20 ~~with NEPA.]~~

21 [~~(ii) The form and content of an environmental~~  
22 ~~assessment or environmental impact statement prepared by an~~  
23 ~~applicant must be approved by the department.]~~

1 (B) Public involvement. An applicant shall comply with  
2 the public involvement requirements in Chapter 2 of this title  
3 that apply to paragraph (3)(A) of this section. Notices of  
4 public meetings and public hearings must include [An applicant  
5 ~~shall provide for public involvement by]:~~

6 (i) a statement that the applicant intends to submit  
7 an international bridge application to the commission [holding  
8 ~~one or more public meetings];~~

9 (ii) a description of the proposed bridge, including  
10 a description of the design and adjacent facilities and  
11 identification of the area to be served [publishing a notice of  
12 ~~the public meeting in local newspapers having a general~~  
13 ~~circulation not less than 10 days before each public meeting];~~  
14 and

15 (iii) instructions that competing bridge applicants  
16 may submit information pertaining to the design, financial  
17 feasibility, and social and environmental impact of a competing  
18 project to the applicant no later than 60 days after the date of  
19 the notice [notifying the department in writing not less than 10  
20 ~~days in advance of each public meeting].~~

21 (C) Notice to local officials [Reeord]. The applicant  
22 shall send a copy of the notice described in paragraph (3)(B) of  
23 this section by first class mail to the county judge of each

1 county within 150 miles of the location of the project and the  
2 mayor of each municipality within 50 miles of the location of  
3 the project [~~An applicant shall provide the department a summary~~  
4 ~~of all public meetings held under this section. The summary and~~  
5 ~~analysis for each public meeting shall include:~~].

6 [~~(i) a summary of the meeting;~~]

7 [~~(ii) a summary of comments received, and the~~  
8 ~~response to and analysis of comments; and]~~

9 [~~(iii) a summary of the proposed changes in project~~  
10 ~~location and design planned as a result of comments.]~~

11 [~~(D) Revision to environmental document. An applicant~~  
12 ~~shall revise the environmental document for the project to~~  
13 ~~address any issues or concerns identified during the public~~  
14 ~~involvement process.]~~

15 (4) Analysis of competing applications. An applicant  
16 shall address the impact of competing projects (if any) and  
17 demonstrate how its submittal is superior to that of any  
18 competing bridge applicant.

19 (A) The applicant's preliminary study analysis shall be  
20 performed depicting any competing projects. The applicant shall  
21 perform an analysis demonstrating the applicant's project as a  
22 stand-alone project and, if there is a competing project, an  
23 analysis showing both the applicant's project and any competing

1 projects. The analysis reflecting the competing projects must  
 2 demonstrate how design, traffic, financial, social, and  
 3 environmental impacts are affected by the competing projects and  
 4 shall include the rationale for how one project is superior  
 5 based on these impacts, for example, cost benefits, project  
 6 viability, better design, and less adverse social and  
 7 environmental impacts.

8 (B) The applicant will not be required to include an  
 9 analysis of the competing project unless the competing bridge  
 10 applicant provides the information described in paragraph

11 (3)(B)(iii) of this section by the deadline specified in that  
 12 paragraph.

13 ~~[(4) Sectors. The following Appendix A describes the~~  
 14 ~~sectors identified in the Texas-Mexico Toll Bridge Study.]~~

15 ~~[Figure: 43 TAC §15.73(4)]~~

Texas-Mexico border sectors					
Sector	Sector Name	Eastern Boundary	Western Boundary	Existing Binational Entry Systems	Proposed Binational Entry Systems
1	Gulf of Mexico	Gulf of Mexico	Palmito Hill Road	None	None
2	Brownsville/ Matamoros	Palmito Hill Road	Flor de Mayo Road	1. Gateway 2. B&M	1. Port of Brownsville 2. Los Tomates 3. Flor de Mayo
3	Los Indios	Flor de Mayo Road	Extension of FM 491	Los Indios	None
4	Eastern Valley/ Rio Bravo	Extension of FM 491	Extension of FM 1423	Progrese	Donna/Rio Bravo
5	Central Valley/ Reynosa	Extension of FM 1423	Extension of FM 886	1. Hidalgo/Reynosa 2. Los Ebanos Ferry	1. Pharr/Reynosa 2. Anzalduas 3. Mission 4. Los Ebanos
6	Western Valley	Extension of FM 886	Western city limits of Roma	1. Rio Grande City/ Camargo 2. Roma/Miguel Alemán	None
7	Lake Falcon	Western city limits of	Eastern city limits of	Lake Falcon Dam	None

NOTE: Additions underlined  
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Exhibit B

		Roma	Laredo		
8	Laredo/Nuevo Laredo	Eastern-city-limits of Laredo	Colombia Bridge	1. Laredo Bridge #1 2. Laredo Bridge #2 3. Colombia	Laredo Bridge #3
9	Guerrero	Colombia Bridge	Eastern-city-limits of Eagle Pass/ Piedras Negras	None	None
10	Eagle Pass/ Piedras Negras	Eastern-city-limits of Eagle Pass	Western-city-limits of Eagle Pass	Eagle Pass/ Piedras Negras #1	Eagle Pass/ Piedras Negras #2a and #2b
11	Quemado	Western-city-limits of Eagle Pass	Eastern-city-limits of Eagle Pass	None	None
12	Del Rio/Ciudad Acuña	Eastern-city-limits of Del Rio	Western-city-limits of Del Rio	Del Rio/Ciudad Acuña	None
13	La Linda	Western-city-limits of Del Rio	East boundary of Big Bend National Park	La Linda Bridge	None
14	Big Bend National Park	Big Bend National Park east boundary	Big Bend National Park west boundary	1. Boquillas Ferry 2. Santa Elena Ferry	None
15	Terlingua	Big Bend National Park west boundary	Eastern boundary of Presidio	None	None
16	Presidio/Ojinaga	Eastern-city-limits of Presidio	Western-city-limits of Presidio	Presidio/Ojinaga	None
17	Ft. Hancock/El Provenir	Western-city-limits of Presidio	Fabens Bridge	Ft. Hancock/El Provenir	None
18	El Paso/Ciudad Juárez	Fabens Bridge	Texas/Chihuahua/ New Mexico tri-state border	1. Fabens 2. Ysleta 3. BOTA 4. GNB 5. PDN	1. Fabens Replacement 2. Socorro 3. BOTA Replacement

1

2 §15.74. Application. To secure approval of a project, an  
 3 applicant must file an application and 20 copies of the  
 4 application with the department's [~~deputy~~] executive director  
 5 [~~for transportation planning and development~~] or his or her  
 6 designee who shall serve as department liaison for the project.  
 7 The application shall be in a form prescribed by the department,  
 8 and must include [~~be accompanied by~~]:

- 9 (1) a description of the applicant, including:
- 10 (A) form of organization under the laws of this state;
- 11 and
- 12 (B) history of operations and/or business conducted;

1 (2) a definition of major financial, operating, and  
2 business policies of the applicant that will affect operations  
3 or the conduct of business, including:

4 (A) key operating conditions; and

5 (B) compliance with existing federal, state, and local  
6 laws and regulations;

7 (3) the preliminary study completed in accordance with  
8 §15.73 of this subchapter [~~title~~] (relating to Preliminary  
9 Studies); and

10 (4) any written commitments from the appropriate federal  
11 jurisdictions of the United Mexican States to provide adequate  
12 roadway connections to the bridge, and similar commitments from  
13 state and municipal transportation agencies for any state  
14 highway or local street infrastructure necessary to make the  
15 bridge fully operational.

16

17 §15.75. Department Action.

18 (a) Coordination.

19 (1) Upon the receipt of a complete application, the  
20 department will submit a copy of the application and request  
21 views and comments from the:

22 (A) Department of Public Safety of the State of Texas;

23 (B) Texas Commission on Environmental Quality [~~Natural~~

1 ~~Resource Conservation Commission];~~

2 (C) Texas Historical Commission;

3 (D) Department of Agriculture;

4 (E) Texas Alcoholic Beverage Commission;

5 (F) Texas Parks and Wildlife Department [~~Texas~~

6 ~~Department of Commerce~~];

7 (G) Office of the Governor;

8 (H) any other state agency the department determines is  
9 appropriate considering the nature of the project; and

10 (I) any entity which may be significantly affected by  
11 the project.

12 (2) The department will also seek the advice of the local  
13 metropolitan planning organization, if any, as to whether the  
14 project will be consistent with the regional transportation  
15 plan.

16 (3) The department will allow an agency or entity 20 days  
17 from the date the agency or entity receives a copy of the  
18 application for the submission of views and comments under this  
19 subsection.

20 (b) Process and analysis of application.

21 (1) The department reserves the right to return, or hold,  
22 pending corrections submitted by the applicant, an application  
23 that the department determines is not in full compliance with

1 the requirements of §15.74 of this subchapter [~~title~~] (relating  
2 to Application). The department, when returning an application,  
3 will identify in writing all areas deemed to be deficient.

4 (2) The department and the commission will not perform  
5 work to recast, redraw, calculate, construct, reconstruct, or  
6 otherwise produce any element of the preliminary study which is  
7 not adequately presented by the applicant.

8 (3) The commission may consider missing, ambiguous,  
9 uncertain, or unclear elements in the financial feasibility  
10 study as tending to the conclusion that the project has  
11 substantial speculative elements in its financing and should not  
12 be approved.

13 (4) The commission will consider the impact of a  
14 competing bridge, whether proposed, approved, or constructed.  
15 The commission will consider information provided by a competing  
16 bridge applicant only to the extent the competing bridge  
17 applicant timely submitted the information to the applicant  
18 under §15.73 of this subchapter. The commission will consider  
19 any other information provided by the department.

20 (c) Public hearing. If the department finds that the  
21 application meets the requirements of this section [~~§15.74 of~~  
22 ~~this title (relating to Application)]], it shall notify the  
23 applicant of its findings, forward a copy of the findings to the~~

1 Office of the Governor, and shall conduct a public hearing to  
2 receive public comment on the project. A public hearing held by  
3 the department under this subsection shall be conducted by the  
4 executive director of the department or the director's designee  
5 in accordance with §1.5 of this title (relating to Public  
6 Hearings). Any persons, including, but not limited to, official  
7 representatives of a county, municipality, metropolitan planning  
8 organization, or other governmental entity, and any individual,  
9 group, or association may provide comment.

10 (d) Report to commission. Subsequent to the public  
11 hearing, the department will submit the application together  
12 with its findings and recommendations to the commission for  
13 appropriate action. The department will consider the views and  
14 comments received under subsection (a) of this section prior to  
15 making its findings and recommendations.

16

17 §15.76. Commission Action.

18 (a) Commission analysis.

19 [~~1~~] The commission may consider the advice of the staff  
20 of the department and consultants that the commission may choose  
21 regarding the sufficiency of the information, the probable  
22 accuracy of projections, the anticipated financial condition of  
23 the application and the project, the impact of the project on

1 the economy and free trade, and any other information the  
2 commission determines appropriate.

3 ~~[(2) The commission may use the Texas-Mexico Toll Bridge~~  
4 ~~Study as the initial basis for evaluating the demand, impact on~~  
5 ~~the economy and the potential impact on the free flow of trade~~  
6 ~~anticipated by the project. An applicant may submit additional~~  
7 ~~information which supports, amplifies, or rebuts data in the~~  
8 ~~Texas-Mexico Toll Bridge Study in the applicant's feasibility~~  
9 ~~study.]~~

10 (b) Comments and commitments of other entities. Prior to  
11 granting approval of a project, the commission shall consider,  
12 but is not bound by:

13 (1) the nature and extent of any commitments from Mexican  
14 authorities provided in accordance with §15.74(4) of this  
15 subchapter [~~title~~] (relating to Application); and

16 (2) the views and comments of an agency or entity listed  
17 in §15.75 of this subchapter [~~title~~] (relating to Department  
18 Action).

19 (c) Project requirements. The commission will not approve  
20 a project unless it finds that:

21 (1) the project will provide for all reasonable and  
22 feasible measures to avoid, minimize, or mitigate for adverse  
23 environmental impacts;

1 (2) the project is consistent with the state  
2 transportation plan and, if appropriate, with the regional  
3 transportation plan developed by a metropolitan planning  
4 organization having jurisdiction over the project; and

5 (3) the future transportation infrastructure, at the time  
6 of the bridge operations, on both sides of the border will be of  
7 sufficient capacity to support the new structure.

8 (d) Financial requirements. The commission will not  
9 approve a project if it finds that the project's financial  
10 prospects over the expected financing period of the project are  
11 likely to categorize the project as being of less than  
12 investment quality due to one or more of the following  
13 conditions:

14 (1) the project has more than minimal speculative  
15 elements in its prospective finances;

16 (2) the financial future of the project cannot be  
17 considered as well assured;

18 (3) protection of any lenders or bond holders is not well  
19 safeguarded over the expected financing period of the project;  
20 or

21 (4) the project will probably cause negative impacts on  
22 the economy or the free flow of trade that are greater than any  
23 probable positive impacts in the study area [~~Texas-Mexico Toll~~

1 ~~Bridge Study sector where the project is located and adjacent~~  
2 ~~sectors~~].

3 (e) Final action.

4 (1) Approval or disapproval of the project shall be by  
5 written order of the commission, and shall include the  
6 rationale, findings, and conclusions on which approval or  
7 disapproval is based.

8 (2) The commission will approve or disapprove the  
9 application within 120 days of the date of receipt of a complete  
10 application. If an application is returned under §15.75 of this  
11 subchapter [~~title relating to Department Action~~], the  
12 commission will approve or disapprove the application within 120  
13 days of the date that re-submitted complete application has been  
14 received by the department.

15 (3) If the commission does not approve the application,  
16 the applicant shall withdraw the request for approval from the  
17 United States.

18 (4) The department will provide written notification of  
19 the commission's action to the applicant and the Office of the  
20 Governor.