

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§11.50 - 11.52 and §11.55, and new §11.56 relating to access connections to state highways, 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 §§11.50 - 11.52 and §11.55 and new §11.56 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.

Submitted and reviewed by:

mark a. mark  
Director, Design Division

Recommended by:

m. w. Behrens  
Executive Director

**110577 JUN 29 06**

Minute Number      Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §§11.50 - 11.52, 11.55 and new 11.56 concerning  
4 access driveways to state highways.

5

6 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

7 Transportation Code, Chapter 203 provides that the Texas  
8 Transportation Commission (commission) may lay out, construct,  
9 maintain, and operate a modern state highway system. Access  
10 management is one method of preserving the substantial  
11 investment in the ground transportation system by preserving the  
12 roadway level of service.

13

14 Due to the significant cost associated with the construction and  
15 maintenance of highways, it is imperative that the highway  
16 system provide maximum traffic handling capacity and reasonable  
17 access for as long as practical. Adjacent development and  
18 uncontrolled access points along highways can contribute to  
19 congestion and early deterioration of the operation of the  
20 highway, thereby reducing the ability of the state highway  
21 system to safely and efficiently move higher volumes of traffic.

22

23 Access management is an engineering and planning method of  
24 balancing the needs of mobility and safety on a highway system  
25 with the needs of access to adjacent land. Access management  
26 can significantly enhance traffic safety by reducing traffic

1 accidents, personal injury, and property damage. Access  
2 management promotes a more coordinated intergovernmental, long  
3 term approach to land use and transportation decisions in the  
4 context of quality of life, economic development, livable  
5 communities, and public safety.

6  
7 Existing §§11.50 - 11.55 provide the current regulations for  
8 access driveways to state highways. Section 11.50 describes the  
9 purpose and need for access management. Section 11.51 includes  
10 definitions for public, commercial and private access driveways.  
11 Section 11.52 outlines the delegation of access permit authority  
12 to municipalities. Section 11.53 outlines the procedures for  
13 new access connection requests where the adjacent property has  
14 no existing right of access. Section 11.54 provides for the  
15 construction and maintenance of access connection facilities.  
16 Section 11.55 describes the procedures for the restoration of  
17 access using local access roads.

18  
19 Section 11.50 is amended to clarify those prior commitments that  
20 will qualify specific access connection requests for exceptions.

21  
22 Section 11.51 is amended to include definitions for "eligible  
23 counties," "executive director," and "regionally significant  
24 highways," and revisions to the definitions of "local access  
25 management plan" and "public driveway."

26

1 Transportation Code, §203.032 authorizes a county with a  
2 population of 3.3 million or more or a county adjacent to a  
3 county with a population of 3.3 million or more to adopt certain  
4 access-related orders applicable to state highways. Section  
5 11.52 is amended to include eligible counties in the delegation  
6 of access permit authority. In addition, subsection 11.52(f) is  
7 amended to require compliance with the department's  
8 environmental review rules to address those situations in which  
9 federal law does not allow the department to delegate its  
10 environmental review requirements.

11

12 To expedite the process for providing local access roads, §11.55  
13 is amended to change approval from the commission to the  
14 executive director for the department to enter into agreements  
15 to provide local access roads in conjunction with department  
16 projects.

17

18 New §11.56 is added to provide a uniform means by which public  
19 and private entities with the authority to construct, maintain,  
20 and operate regionally significant highway facilities may obtain  
21 permission to connect those facilities to the state highway  
22 system. While most such entities are required to obtain  
23 commission approval to construct regionally significant  
24 highways, certain entities with independent authority may  
25 construct regionally significant highways that do not  
26 necessarily conform to the Transportation Improvement Program

1 (TIP). Adding regionally significant highways that are not in  
2 the TIP, especially in non-attainment areas, can threaten the  
3 entire area's transportation conformity under the federal Clean  
4 Air Act, resulting in sanctions that could severely hamper the  
5 state's federal highway program. The current rules govern  
6 connection to the state highway system, but do not give the  
7 department the ability to deny connections based on these  
8 conformity concerns, design and construction issues, or  
9 noncompliance with federal requirements. This new rule will  
10 ensure that proper statewide planning is employed in the  
11 construction of major highway facilities that connect to the  
12 state highway system, that the facilities are properly designed  
13 and constructed in compliance with federal laws, and that  
14 environmental impacts are adequately considered.

15

16 FISCAL NOTE

17 James Bass, Chief Financial Officer, has determined that for  
18 each of the first five years the amendments and new section as  
19 proposed are in effect, there will be no fiscal implications for  
20 state or local governments as a result of enforcing or  
21 administering the amendments and new section. There are no  
22 anticipated economic costs for persons required to comply with  
23 the sections as proposed.

24

25 Mark A. Marek, Director, Design Division, has certified that  
26 there will be no significant impact on local economies or

1 overall employment as a result of enforcing or administering the  
2 amendments and new section.

3

4 PUBLIC BENEFIT

5 Mr. Marek has also determined that for each year of the first  
6 five years the amendments and new section are in effect, the  
7 public benefits anticipated as a result of enforcing or  
8 administering the amendments and new section will be improved  
9 safety, mobility, and efficiency due to a more coordinated  
10 approach to land use and transportation decisions. There will  
11 be no adverse effect on small businesses.

12

13 SUBMITTAL OF COMMENTS

14 Written comments on the proposed amendments and new section may  
15 be submitted to Mark A. Marek, Director, Design Division, 125  
16 East 11th Street, Austin, Texas 78701-2483. The deadline for  
17 receipt of comments is 5:00 p.m. on August 14, 2006.

18

19 STATUTORY AUTHORITY

20 The amendments and new section are proposed under Transportation  
21 Code, §201.101, which provides the commission with the authority  
22 to establish rules for the conduct of the work of the  
23 department, and more specifically Transportation Code, §203.032,  
24 which provides the commission with the authority to control  
25 access to highways.

26

- 1 CROSS REFERENCE TO STATUTE
- 2 Transportation Code, §203.032.

1 SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

2 §11.50. Access Management.

3 (a) Purpose and need. Access management is an engineering  
4 and planning method of balancing the needs of mobility and  
5 safety on a highway system with the needs of access to adjacent  
6 land uses. Access management is one method of preserving the  
7 substantial public investment in the ground transportation  
8 system by preserving the roadway level of service. Further,  
9 access management can significantly enhance traffic safety by  
10 reducing traffic accidents, personal injury, and property  
11 damage. It has been noted that access management practices can  
12 promote a more coordinated intergovernmental, long term approach  
13 to land use and transportation decisions in the context of  
14 quality of life, economic development, livable communities, and  
15 public safety. Given the benefits to the ground transportation  
16 system and public safety, it is the intention of the department  
17 to promote the use of access management on the state highway  
18 system.

19 (b) Applicability. This subchapter applies to all new  
20 access connections constructed on highways on the state highway  
21 system. It also applies to existing access connections that may  
22 be reconstructed or otherwise modified as part of a department  
23 project.

1 (c) Effective date. The provisions of this subchapter are  
2 effective January 1, 2004.

3 (d) Transition period. Exceptions [~~Prior to January 1,~~  
4 ~~2005, exceptions~~] to the provisions of this subchapter may be  
5 granted for specific access connection requests where  
6 significant prior commitments have been made, prior to January  
7 1, 2005, based on previous department policy.

8  
9 §11.51. Definitions. The following words and terms, when used  
10 in this subchapter, shall have the following meanings, unless  
11 the context clearly indicates otherwise.

12 (1) Access connection--Facility for entry and/or exit  
13 such as a driveway, street, road, or highway that connects to a  
14 highway on the state highway system.

15 (2) Commercial driveway--An entrance to, or exit from,  
16 any commercial, business, or similar type establishment.

17 (3) Commission--The Texas Transportation Commission.

18 (4) Department--The Texas Department of Transportation.

19 (5) Eligible county--a county with a population of 3.3  
20 million or more or a county adjacent to a county with a  
21 population of 3.3 million or more.

22 (6) Engineering study--An appropriate level of analysis  
23 as determined by the department, which may include a traffic

1 impact analysis, that determines the expected impact that  
2 permitting access will have on mobility, safety, and the  
3 efficient operation of the state highway system.

4 (7) Executive director--the executive director of the  
5 department, or a designee not below the level of deputy  
6 executive director or assistant executive director.

7 (8) [~~+6~~] Local access management plan--A plan or  
8 guideline in a formally adopted [~~municipality~~] rule or ordinance  
9 that is related to the application of access management within  
10 the municipality's or eligible county's jurisdiction.

11 (9) [~~+7~~] Local access road--A local public street or  
12 road, generally one parallel to a highway on the state highway  
13 system to which access for businesses or properties located  
14 between the highway and the local access road is provided as a  
15 substitute for access to the highway. A local access road may  
16 also be called a lateral road or reverse frontage road,  
17 depending on individual location and application.

18 (10) [~~+8~~] Permittee--A property owner or its authorized  
19 representative who receives an access connection permit from the  
20 department to construct or modify an access connection from the  
21 property to a highway on the state highway system.

22 (11) [~~+9~~] Private driveway--An entrance to or exit from  
23 a residential dwelling, farm, or ranch for the exclusive use and

1 benefit of the permittee.

2           (12) [~~(10)~~] Public driveway--An approach from a publicly  
3 [~~county or city~~] maintained road or street or an entrance or  
4 exit from a public school, a publicly owned cemetery, or other  
5 publicly owned places or buildings that provide for public  
6 access.

7           (13) Regionally significant highway--A highway  
8 functionally classified as a minor arterial or higher.

9           (14) [~~(11)~~] Traffic impact analysis--A traffic  
10 engineering study to the level of analysis determined by the  
11 department that determines the potential current and future  
12 traffic impacts of a proposed traffic generator and is signed,  
13 sealed, and dated by an engineer licensed to practice in the  
14 state [State] of Texas.

15

16 §11.52. Delegation of Access Permit Authority to Municipalities  
17 or Eligible Counties.

18           (a) Intent. Except as provided in §11.56 of this  
19 subchapter (relating to Connection with Regionally Significant  
20 Highway, a [A] municipality or eligible county may include  
21 highways on the state highway system in its local access  
22 management plan. The intent of the department is to allow  
23 municipalities or eligible counties, upon request, to assume

1 responsibility for issuing permits for access connections to  
2 state highways within the jurisdiction of the municipality or  
3 eligible county under a local access management plan when the  
4 municipality or eligible county has the ability to issue  
5 permits.

6 (b) Precedence. A local access management plan supersedes  
7 an order of the commission under Transportation Code,  
8 §203.031(a)(2) or (4) to the extent that they conflict, unless:

9 (1) the United States Department of Transportation  
10 Federal Highway Administration notifies the department that  
11 enforcement of the local access management plan would impair the  
12 ability of the state or the department to receive funds for  
13 highway construction or maintenance from the federal government;  
14 or

15 (2) the department owns the access rights.

16 (c) Application. The department will apply a local access  
17 management plan under this section when the municipality or  
18 eligible county provides its local access management plan to the  
19 department with an indication of its desire that the plan be  
20 applied within its jurisdiction and an implementation date. The  
21 department will implement any subsequent changes to the local  
22 access management plan when the municipality or eligible county  
23 submits the changes to the department with a proposed

1 implementation date for the changes.

2 (d) Local access permitting function. A municipality or  
3 eligible county that desires to undertake the access permitting  
4 process on highways on the state highway system shall submit its  
5 proposed permitting procedures to the department. If the  
6 department determines that the proposed procedures adequately  
7 address the requirements in subsection (f) of this section, it  
8 will transfer to the municipality or eligible county the access  
9 permitting function within the municipality's or eligible  
10 county's jurisdiction. The municipality or eligible county  
11 shall submit to the department a copy of each approved access  
12 permit on the state highway system within ten working days of  
13 its approval.

14 (e) Assumption of permitting function optional.  
15 Municipalities or eligible counties are not required to take  
16 over the access permitting function for state highways within  
17 their jurisdiction.

18 (f) Engineering. Granting access location permit authority  
19 to municipalities or eligible counties does not preclude the  
20 need to properly engineer access locations. Any impacts to  
21 drainage or hydraulics on highways on the state highway system  
22 resulting from access connections must be coordinated with the  
23 department prior to any local access approval. Issuance of

1 access permits by a municipality or eligible county must address  
2 driveway geometrics, utility location or relocation, compliance  
3 with the Americans with Disabilities Act (ADA) and Texas  
4 Accessibility Standards (TAS), [~~environmental requirements,~~  
5 ~~wetland considerations if appropriate,~~] and all other applicable  
6 state and federal laws, rules, and regulations. In addition,  
7 each access connection must comply with the applicable  
8 environmental review requirements in Chapter 2 of this title  
9 (relating to Environmental Policy).

10

11 §11.55. Local Access Roads.

12 (a) If local access roads are necessary to restore  
13 circulation or to resolve a landlocked [~~landlock~~] condition on a  
14 remaining parcel of land, or will otherwise benefit the state  
15 highway system, local access roads may be included in a  
16 department project on a standard participation basis as  
17 established in Appendix A of §15.55 of this title (relating to  
18 Construction Cost Participation).

19 (b) Except as provided in §11.56 of this subchapter  
20 (relating to Connection with Regionally Significant Highway),  
21 executive director [~~Commission~~] approval must be obtained prior  
22 to the department entering into any agreements to provide local  
23 access roads in conjunction with a department project.

1 (c) Local access roads will not be considered service  
2 projects as defined in §15.56 of this title (relating to Local  
3 Financing of Highway Improvement Projects on the State Highway  
4 System).

5  
6 §11.56. Connection with Regionally Significant Highway.

7 (a) Purpose. A public or private entity may not connect a  
8 regionally significant highway to a segment of the state highway  
9 system without the approval of the commission. This section  
10 prescribes the procedure by which the commission will consider  
11 approval.

12 (b) Request. An entity seeking approval under this section  
13 shall send a written request to the executive director. The  
14 request shall include a detailed schematic indicating the  
15 location of interchanges and mainlanes.

16 (c) Approval criteria.

17 (1) The commission will approve a connection requested  
18 under this section if:

19 (A) the highway is identified in a conforming  
20 Transportation Improvement Program;

21 (B) the requestor agrees to design and construct the  
22 project in compliance with subsection (d) of this section; and

23 (C) the requestor agrees to conduct public involvement

1 and a study of the social, environmental, and economic impacts  
2 of the project in compliance with subsection (e) of this  
3 section.

4 (2) The commission may waive the requirements of  
5 paragraph (1)(B) of this subsection as they apply to the portion  
6 of the project that is not the connection if the commission  
7 determines that the past performance of the requestor on  
8 previous projects developed in collaboration with the department  
9 indicates that the requestor will design and construct a safe  
10 and durable highway. For purposes of this paragraph, the term  
11 "connection" includes an overpass, underpass, intersection, and  
12 interchange.

13 (3) The commission may waive the requirements of  
14 paragraph (1)(C) of this subsection if the commission determines  
15 that the requestor has a written policy that adequately provides  
16 for:

17 (A) public involvement, including public hearings on an  
18 environmental review;

19 (B) an evaluation of direct and indirect effects of the  
20 highway project;

21 (C) analysis of project alternatives; and

22 (D) a written report that briefly explains the

23 requestor's decision on the project and that specifies the

1 measures to mitigate environmental harm on which the project is  
2 conditioned.

3 (d) Design and construction. Except as provided in  
4 subsection (c)(2) of this section, the requestor shall design  
5 and construct the highway in accordance with §26.33(d), (f), and  
6 (g)-(1) of this title (relating to Design and Construction).  
7 For purposes of this subsection, the term RMA as used in §26.33  
8 shall mean the requestor.

9 (e) Environmental review and public involvement.

10 (1) Environmental documentation.

11 (A) Subject to paragraph (4) of this subsection, a  
12 requestor shall prepare an environmental document in accordance  
13 with Chapter 2, Subchapter C, of this title (relating to  
14 Environmental Review and Public Involvement for Transportation  
15 Projects).

16 (B) The environmental document must describe all  
17 reasonable and feasible measures to avoid, minimize, or mitigate  
18 for adverse environmental impacts and all practicable measures  
19 to enhance the environment.

20 (C) The form and content of an environmental document  
21 prepared by a requestor and any decision by a requestor that an  
22 environmental impact statement is not necessary must be approved  
23 by the department.

1           (2) Public involvement. Subject to paragraph (4) of this  
2 subsection, a requestor shall provide for public involvement by:

3           (A) complying with §2.43(c) of this title (relating to  
4 Non Federal-Aid Transportation Projects);

5           (B) holding one or more public hearings following the  
6 completion of the studies required by this section as may be  
7 necessary to ensure participation by each community affected by  
8 the project; and

9           (C) notifying the department in writing not less than  
10 ten days in advance of all public meetings and public hearings  
11 held under this section.

12           (3) Revision to environmental document. Following the  
13 public hearing, a requestor shall revise the environmental  
14 document showing the proposed changes in the project location,  
15 design, and mitigation as a result of comments and the public  
16 involvement process for the project to address any issues or  
17 concerns identified during the public involvement process.

18           (4) Respective roles and responsibilities. The requestor  
19 shall request that the department make a determination of the  
20 respective roles and responsibilities of the requestor and the  
21 department under Chapter 2, Subchapter C, of this title  
22 (relating to Environmental Review and Public Involvement for  
23 Transportation Projects). The requestor shall comply with the

1 department's directives. The directives will specify who will  
2 conduct the following work, the requestor or the department:

3 (A) preparation and completion of environmental  
4 studies;

5 (B) submission of appropriate environmental  
6 documentation for department review;

7 (C) preparation of any document revisions;

8 (D) submission of copies of the environmental studies  
9 and documentation adequate for distribution;

10 (E) preparation of legal and public notices for  
11 department review and use;

12 (F) arrangements for appropriate public involvement,  
13 including court reporters and accommodations if requested for  
14 persons with special communication or physical needs related to  
15 public hearings;

16 (G) preparation of public meetings and hearing  
17 materials;

18 (H) preparation of any responses to comments;

19 (I) preparation of public meeting and public hearing  
20 summary and analysis, and the comment and response reports; and

21 (J) submission of documentation showing all  
22 environmental permits, issues, and commitments have been or will  
23 be completed, including copies of permits or other approvals

1 required prior to construction.

2 (5) Record. Subject to paragraph (4) of this subsection,  
3 a requestor shall provide the department:

4 (A) the appropriate environmental document;

5 (B) summary and comment and response reports for all  
6 meetings;

7 (C) summary and analysis and comment and response  
8 reports for all public hearings;

9 (D) a summary of the proposed changes in the project  
10 location and design and mitigation planned as a result of  
11 comments;

12 (E) the verbatim transcript of any public hearing;

13 (F) certification that all public hearings were held in  
14 accordance with §2.43 of this title (relating to Non Federal-Aid  
15 Transportation Projects), the Civil Rights Act of 1964, and the  
16 Civil Rights Restoration Act of 1987; and

17 (G) revised environmental document showing the proposed  
18 changes in project location, design, and mitigation as a result  
19 of comments and public involvement.

20 (6) This subsection does not apply if the commission has  
21 approved a waiver under subsection (c) (3) of this section.