

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

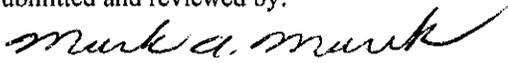
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§11.50 - 11.52 and §11.55, and new §11.56 relating to access connections to state highways, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new section, 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 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, Design Division

Recommended by:



Executive Director

110696 SEP 28 06

Minute
Number

Date
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §§11.50 - 11.52, §11.55 and new §11.56 concerning
4 access driveways to state highways. The amendments to §§11.50-
5 11.52, §11.55 and new §11.56 are adopted without changes to the
6 proposed text as published in the July 14, 2006 issue of the
7 *Texas Register* (31 TexReg 5583) and will not be republished.

8
9 EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

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

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

25
26 Access management is an engineering and planning method of

1 balancing the needs of mobility and safety on a highway system
2 with the needs of access to adjacent land. Access management
3 can significantly enhance traffic safety by reducing traffic
4 accidents, personal injury, and property damage. Access
5 management promotes a more coordinated intergovernmental, long
6 term approach to land use and transportation decisions in the
7 context of quality of life, economic development, livable
8 communities, and public safety.

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

21
22 Section 11.50 is amended to clarify those prior commitments that
23 will qualify specific access connection requests for exceptions.

24
25 Section 11.51 is amended to include definitions for "eligible
26 counties," "executive director," and "regionally significant

1 highways," and revisions to the definitions of "local access
2 management plan" and "public driveway."

3

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

14

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

20

21 New §11.56 is added to provide a uniform means by which public
22 and private entities with the authority to construct, maintain,
23 and operate regionally significant highway facilities may obtain
24 permission to connect those facilities to the state highway
25 system. While most such entities are required to obtain
26 commission approval to construct regionally significant

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

18

19 COMMENTS

20 No comments on the proposed amendments and new section were
21 received.

22

23 STATUTORY AUTHORITY

24 The amendments and new section are adopted under Transportation
25 Code, §201.101, which provides the commission with the authority
26 to establish rules for the conduct of the work of the

1 department, and more specifically Transportation Code, §203.032,
2 which provides the commission with the authority to control
3 access to highways.

4

5 CROSS REFERENCE TO STATUTE

6 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.