

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 §15.101, definitions, §15.103, application procedures, and §15.105, apportionment, relating to the Border Colonia Access Program, 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 amendments to §15.101, §15.103, and §15.105 are adopted and 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:

Recommended by:

Director, Transportation Planning and
Programming Division

Executive Director

Minute Number Date Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §15.101, definitions, §15.103, application
4 procedures, and §15.105, apportionment, concerning the Border
5 Colonia Access Program. The amendments to §15.101, §15.103, and
6 §15.105 are adopted without changes to the proposed text as
7 published in the September 7, 2007 issue of the *Texas Register*
8 (32 TexReg 6105) and will not be republished.

9

10 EXPLANATION OF ADOPTED AMENDMENTS

11 Senate Bill 99, enacted by the 80th Legislature, Regular Session,
12 2007, amended Government Code, §1403.002 and Transportation
13 Code, §201.116. The amendment to Government Code, §1403.002
14 directs the Texas Transportation Commission (commission) to
15 adopt a new definition for the term "border colonia." The
16 amendment to Transportation Code, §201.116 requires an applicant
17 for funds administered by the commission to submit a colonia
18 classification number, if one exists, as part of the application
19 process. In addition, the department has independently
20 determined that the maximum allowable cost for a project should
21 be increased to \$500,000 per mile.

22

23 The definition of "border colonia" contained in §15.101,
24 Definitions, has been amended as required by Senate Bill 99.
25 Future program calls will use the minimum dwelling number set

1 forth in the definition as a requirement for program
2 eligibility.

3
4 Section 15.103(b) has been amended by adding new paragraph (5),
5 which requires applicants to submit a colonia classification
6 number, if one exists, on applications for funding. This will
7 enable the department to readily identify eligible colonias for
8 program funding.

9
10 Section 15.105(8) has been amended to increase the maximum
11 amount of funding available for each project from \$200,000 to
12 \$500,000 per mile. The increase in funding is needed to account
13 for transportation project inflation costs that have occurred
14 since the \$200,000 limit was adopted.

15
16 COMMENTS

17 No comments on the proposed amendments were received.

18
19 STATUTORY AUTHORITY

20 The amendments are adopted under Transportation Code, §201.101,
21 which provides the commission with the authority to establish
22 rules for the conduct of the work of the department, and more
23 specifically, Government Code, Chapter 1403, which grants the
24 commission the authority to establish guidelines for the
25 administration of the Border Colonia Access Program.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 Government Code, §1403.002 and Transportation Code, §201.116.

1 SUBCHAPTER I. BORDER COLONIA ACCESS PROGRAM

2 §15.101. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

5 (1) AASHTO--The American Association of State Highway and
6 Transportation Officials.

7 (2) Border colonia--A geographic area that consists of 11
8 or more dwellings that are located in close proximity to each
9 other in an area that may be described as a community or
10 neighborhood and [community,] located in an eligible county,
11 that is identified as a colonia in the Texas Water Development
12 Board's colonia database.

13 (3) Border districts--The El Paso, Laredo, Pharr, and
14 Odessa department districts.

15 (4) Commission--The Texas Transportation Commission.

16 (5) County road--A road owned and maintained by a county.

17 (6) Department--The Texas Department of Transportation.

18 (7) Eligible costs--The cost of constructing,
19 administering, or providing drainage for a project, including
20 the cost of leasing equipment used substantially in connection
21 with a project, or acquiring materials used solely in connection
22 with a project.

23 (8) Eligible county--A county located in the El Paso,

1 Laredo, or Pharr department districts, and Terrell County, that
2 has adopted the model rules promulgated by the Texas Water
3 Development Board under Water Code, §16.343.

4 (9) Executive director--The executive director of the
5 department.

6 (10) Minimum colonia access road standards--Road
7 standards for the applicable transportation facility, as
8 described in:

9 (A) the latest editions of appropriate AASHTO design
10 guidelines; or

11 (B) road standards adopted by a county under Local
12 Government Code, §232.025 and approved by the executive director
13 or designee as sufficient to protect the safety of the traveling
14 public.

15 (11) Public road--A road owned and maintained by a
16 municipality, county, or the department.

17 (12) Rural border county--An eligible county that:

18 (A) has a population of less than 55,000, as determined
19 by the latest decennial census; and

20 (B) is adjacent to an international border.

21

22 §15.103. Application Procedures.

23 (a) The department, through the border district offices,

1 will issue a program call to the eligible counties to prepare an
2 application for each project that a county would like to submit
3 for consideration. A separate application must be prepared for
4 each project. The border district offices will have application
5 forms available for the counties.

6 (b) The department will establish a deadline for
7 applications to be received. In order to be considered for the
8 program call, the application must provide:

9 (1) a clear and concise description of the work proposed;

10 (2) an implementation plan, including a schedule of
11 proposed activities and a detailed estimate of project costs;

12 (3) a map delineating project location and termini; ~~and~~

13 (4) documentation addressing the criteria prescribed in
14 §15.104 of this subchapter; and

15 (5) a colonia classification number, if one exists, for
16 each colonia that may be served by the project.

17 (c) The department will evaluate the applications, and if
18 determined to be in compliance with this section, will submit
19 the applications to the commission for approval under §15.105 of
20 this subchapter.

21
22 §15.105. Apportionment. The department will apportion and
23 distribute available funds in the manner described by this

1 section.

2 (1) Each county will receive a minimum of \$100,000 in
3 funding during each program call.

4 (2) In addition to funds distributed under paragraph (1)
5 of this section, an amount equal to 10% of the funding available
6 during each program call shall be set aside and distributed to
7 rural border counties to fund projects in which a colonia access
8 road serving a border colonia located in that county is paved
9 for the first time.

10 (3) The first 50% of the remaining available funds after
11 the distributions under paragraphs (1) and (2) of this section
12 will be distributed to a county in proportion to its border
13 colonia population, based on the latest estimates from the Texas
14 Water Development Board. The commission will fund the highest
15 ranked projects as evaluated and scored under §15.104 of this
16 subchapter.

17 (4) The remaining 50% of the remaining available funds
18 will then be distributed to individual counties on a project by
19 project basis. All projects submitted by the counties and not
20 funded under paragraphs (1), (2), and (3) of this section will
21 be funded in descending rank order as determined under §15.104
22 of this subchapter as available funding permits.

23 (5) If a county did not submit sufficient eligible

1 projects to expend funds available under paragraphs (1), (2),
2 and (3) of this section, the remaining funds will be distributed
3 in accordance with paragraph (4) of this section. If the
4 remaining funds are not distributed under paragraph (4) of this
5 section because of insufficient eligible projects, the county
6 may use those funds for project cost overruns.

7 (6) Funds available as a result of a county being
8 prohibited from continued participation in the program under
9 §15.106(e) of this subchapter or because of county
10 reimbursements under §15.106(f) of this subchapter will be
11 distributed in accordance with paragraph (4) of this section.

12 (7) Projects will be funded based on the project cost
13 estimates provided by a county under §15.103 of this subchapter.
14 Except as provided in paragraph (5) of this section, project
15 costs above that estimate are the responsibility of the county.
16 A county may seek additional funds for a project if the
17 department issues subsequent program calls.

18 (8) The maximum amount of funding that is available for
19 each project is \$500,000 [~~\$200,000~~] per mile, unless the
20 executive director or designee not below the level of assistant
21 executive director grants a waiver due to exceptional drainage
22 costs.

23 (9) Projects partially funded under prior program calls

1 are eligible for funding under this subchapter.

2 (10) A county may use unexpended funds from a project on

3 any other commission-selected county colonia project.