

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on November 20, 2008 in Austin, Texas. The meeting opened at 9:05 a.m. with the following commissioners present:

Texas Transportation Commission:

Deirdre Delisi	Chair
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner
Bill Meadows	Commissioner

Administrative Staff:

Amadeo Saenz, Jr., Executive Director
 Steve Simmons, Deputy Executive Director
 Bob Jackson, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Clerk

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:22 p.m. on November 12, 2008, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. PUBLIC HEARING – Project Selection – Receive data, comments, views and testimony concerning the commission’s highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions relating to the 2010 Unified Transportation Program.

This item was presented by Finance Division Director Brian Ragland.

ITEM 2. Approval of Minutes of the October 30, 2008 regular meeting of the Texas Transportation Commission

Commissioner Holmes made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the October 30, 2008 regular meeting of the Texas Transportation Commission.

ITEM 3. REPORTS

a. Grand Parkway Association – Annual report on the status of projects and activities undertaken during the preceding 12 months

This item was presented by David Gornet.

b. Implementation of Sunset Commission staff recommendations

This item was presented by Deputy Executive Director Steve Simmons.

ITEM 4. AVIATION

a. Tarrant County – Approve request by the City of Arlington for a prohibition and limitation of seaplane operations on Lake Arlington (MO)

Commissioner Meadows made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Aviation Division Director David Fulton:

111578
AVN

Transportation Code, Chapter 26, requires the Texas Transportation Commission (commission), under certain conditions, to review requests from governmental entities in this state to prohibit or limit the operation of seaplanes on navigable waters within the entities' jurisdiction.

Title 43, Texas Administrative Code, §§30.401-30.405, allow the commission to consider only safety concerns as they relate to five specific areas: topography, obstacles, traffic, homeowner interest, and other factors relating to the safe operation of aquatic aircraft.

On June 19, 2008, the City of Arlington formally requested certain restrictions to seaplane operations on Lake Arlington.

The Aviation Division of the Texas Department of Transportation investigated the issue and recommends approval of the restriction.

IT IS THEREFORE ORDERED that the request of the City of Arlington to restrict seaplanes to daytime operations and to prohibit touch-and-go landings of seaplanes on Lake Arlington is approved.

b. Various Counties – Award federal and state grant funding for airport improvement projects at various locations (MO)

Commissioner Underwood made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Aviation Division Director David Fulton:

111579
AVN

The Texas Department of Transportation (commission) is authorized under the Federal Airport and Airway Improvement Act to award federal funding for capital improvement projects and to assist in the development and establishment of airports in the state of Texas.

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. The department recommends the award of federal grant funds for the improvements.

On Thursday, October 23, 2008, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$17,036,747.

Note: Exhibit A on file with minute order clerk.

ITEM 5. PUBLIC TRANSPORTATION

Various Counties – Adjustment to the previous award of federal §5310, Elderly Individuals and Individuals with Disabilities Program, funding and transportation development credits for FY 2008 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Public Transportation Division Director Eric Gleason:

111580
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities (49 U.S.C. §5310), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that grant funds are distributed fairly and equitably within the state.

The commission passed Minute Order 110771, on December 14, 2006 expressing its intent to award Transportation Development Credits (TDC) that will promote public transportation capital infrastructure projects: fleet replacement, fleet expansion, maintenance facilities; and capital projects that support regional coordination. Title 43, TAC §5.73 establishes the process by which TDC may be awarded at the discretion of the commission.

On May 29, 2008, Minute Order 111364 was approved by the commission for the FY 2008 program of projects for the §5310 elderly individuals and individuals with disabilities grant program, in accordance with the formula prescribed in 43 TAC §31.31(g) and other requirements of the Federal Transit Act. Two projects approved for the San Antonio District need revisions to both funding and TDC. The commission finds that the projects in Exhibit A are eligible for funding and awards \$605,465 in federal Formula Grants for Special Needs of Elderly Individuals and Individuals with Disabilities funds and 106,360 in TDC for providers in the San Antonio District.

The projects receiving TDC awards will reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access for the transit dependent populations to jobs and other necessary activities; enhance safety by reducing mechanical breakdowns; improve air quality by reducing emissions with technological advances in the bus industry; and increase the value of the transportation assets by investing into the replacement of depreciated rolling stock thus yielding savings or efficiencies which can be reinvested into additional trips.

Transportation Code, Chapter 455 assigns a broad spectrum of public transportation roles and missions to the department.

Transportation Code, Chapter 456 authorizes the commission to administer funds appropriated for public transportation.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the adjustment of the allocation of these §5310 elderly individuals and individuals with disabilities grant program funds as identified in Exhibit A, submit the necessary grant amendments to FTA, and enter into the necessary contracts for the FY 2008 program of projects.

Note: Exhibit A on file with minute order clerk.

ITEM 6. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption

(1) Chapter 1 – Management (MO)

New §1.700, Digital Certificates (Electronic Signatures)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by General Counsel Bob Jackson:

111581
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt new Subchapter I, concerning electronic signatures, §1.700, digital certificates to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §1.700 is adopted and is authorized for filing with the Office of the Secretary of State.

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

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

ITEM 6. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Final Adoption (continued)

(2) Chapter 4 – Employment Practices (MO)

Amendments to §4.31, Definitions, §4.34, Illegal Drugs, §4.37, Test Results, §4.39, Refusal to Test, §4.42, Recurrence of Substance Abuse, §4.43, Employees Who Drive for the Department, and §4.44, Commercial Drivers, Safety-Sensitive Employees, and Vessel Crewmembers (Substance Abuse Program)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Human Resources Interim Division Director Debbie Moore:

111582
HRD

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§4.31, 4.34, 4.37, 4.39, 4.42, 4.43, and 4.44 relating to the employee substance abuse 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 verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§4.31, 4.34, 4.37, 4.39, 4.42, 4.43, and 4.44 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(3) Chapter 9 – Contract Management (MO)

Amendments to §9.11, Definitions, §9.12, Qualification of Bidders, §9.13, Notice of Letting and Issuance of Proposals, §9.14, Submittal of Proposal, §9.15, Acceptance, Rejection, and Reading of Proposals, §9.16, Tabulation of Bids, §9.17, Award of Contract, §9.18, After Contract Award, and §9.19, Emergency Contract Procedures (Highway Improvement Contracts)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Construction Division Section Director Ken Barnett:

111583
CST

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§9.11-9.19 relating to highway improvement contracts 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 verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the commission that the amendments to §§9.11-9.19 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(4) Chapter 9 – Contract Management (MO)

Repeal of §9.100, Purpose, §9.101, Definitions, §9.102, Procedure, §9.103, Opportunity for Hearing, §9.104, Application of Sanctions, §9.105, Suspension, and §9.106, Sanctions (Contractor Sanctions) and New §9.100, Purpose, §9.101, Definitions, §9.102, Grounds for Sanctions, §9.103, Notification of Rules, §9.104, Referral to Executive Director, §9.105, Determinations Related to Sanction, §9.106, Responsibility for Acts of Others, §9.107, Sanction Levels, §9.108, Application of Sanctions, §9.109, Notice of Sanctions, §9.110, Suspension, §9.111, Contractual Obligations Unaffected, §9.112, Opportunity for Informal Hearing, §9.113, Informal Hearing on Indirect Sanction, §9.114, Opportunity for Formal Hearing, §9.115, Stay of Sanctions, §9.116, List of Debarred or Suspended Contractors, and §9.117, Request for Review (Contractor Sanctions)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Construction Division Section Director Ken Barnett:

111584
CST

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §§9.100-9.106 and new §§9.100-9.117, all relating to contractor sanctions to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted repeals and new sections, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the commission that the repeal of §§9.100-9.106 and new §§9.100-9.117 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(5) Chapter 21 – Right of Way (MO)

Amendments to §21.31, Definitions, §21.35, Exceptions, §21.37, Design, §21.38, Construction and Maintenance, §21.39, Ownership/Abandonment/Idling, §21.40, Underground Utilities, §21.52, Forms-General, §21.53, Use and Occupancy Agreement Forms, §21.54, Notice Forms, and §21.55, Abandoned Interests (Utility Accommodation) and §21.902, Definitions, and §21.905, Requests (Utility Accommodation for Rail Facilities)

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

111585
ROW

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.31, §21.35, §§21.37-21.40, §§21.52-21.55, §21.902, and §21.905 all relating to utility accommodation 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 - C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.31, §21.35, §21.37, §21.38, §21.39, §21.40, §21.52, §21.53, §21.54, §21.55, §21.902, and §21.905 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

b. Proposed Adoption

(to be published in the Texas Register for public comment)

(1) Chapter 1 – Management, Chapter 15 – Transportation Planning and Programming, and Chapter 27 – Toll Projects (MO)

New §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program (New Subchapter C, Other Entities' Internal Ethics and Compliance Procedures); §15.92, Miscellaneous Powers and Duties of Corporations (Transportation Corporations); and §27.53, Request (Financial Assistance for Toll Facilities)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by General Counsel Bob Jackson:

111586
OGC

The Texas Transportation Commission (commission) finds it necessary to propose new §1.8 and §1.9 and amendments to §15.92 and §27.53, all relating to the internal compliance program 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 - F, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §1.8 and §1.9 and amendments to §15.92 and §27.53 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(2) Chapter 2 – Environmental Policy (MO)
Amendments to §2.1, General; Emergency Action Procedures (Environmental Review and Public Involvement for Transportation Projects)

Commissioner Meadows made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations John Barton:

111587
ENV

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §2.1, relating to the applicability of the Texas Department of Transportation's environmental review and public involvement requirements to certain transportation projects that are not on the state highway system, 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 verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §2.1 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(3) Chapter 5 – Finance (MO)
Amendments to §5.10, Collection of Debts (Collection of Debts)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111588
FIN

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §5.10 relating to collection of debts 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 verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §5.10 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(4) Chapter 21 – Right of Way (MO)
Amendments to §21.142, Definitions, §21.149, Licenses, §21.150, Permits, §21.151, Local Control, §21.155, Directional Signs, §21.160, Relocation (Regulation of Signs Along Interstate and Primary Highways), §21.411, Definitions, §21.431, Registration of Existing Off-Premise Signs, §21.441, Permit for Erection of Off-Premise Sign, §21.521, On-Premise Sign Erectors, §21.531, Board of Variance, §21.541, Revocation of Permits, §21.561, Removal of Sign, and §21.572, Notice and Appeal (Control of Signs Along Rural Roads)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Right of Way Division Director John Campbell:

111589
ROW

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 relating to regulation of signs along interstate and primary highways and rural roads 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 -C, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.142, §21.149, §21.150, §21.151, §21.155, §21.160, §21.411, §21.431, §21.441, §21.521, §21.531, §21.541, §21.561, and §21.572 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

Note: The commission received comments from Mark Chancellor citizen.

ITEM 7. TRANSPORTATION PLANNING

Various Counties – Approve the Border Trade Advisory Committee Report (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Transportation Planning and Programming Division Director Jim Randall:

111590
TPP

Transportation Code, Section 201.114 requires the Texas Transportation Commission (commission) to appoint members of the Border Trade Advisory Committee (committee) to define and develop a strategy and make recommendations to the commission and governor for addressing the highest priority border trade transportation challenges.

The committee met in 2006 and formally adopted the Border Trade Advisory Committee Report (report) which lists strategies, implementation actions, measures, and responsible parties regarding trade transportation corridors, coordination with Mexico, safety and security measures, and economic benefits of international trade. The commission accepted the 2006 report on November 16, 2006 by Minute Order 110754. The committee continued to meet in 2007 and 2008 to address the strategies and implementation actions in the report. The presiding officer of the committee also requested each member to provide challenges and successes they have encountered relating to border trade. An update to the report (Exhibit A) summarizes these challenges and successes and also details actions taken by entities represented on the committee to address the implementation actions.

Transportation Code, Section 201.6011 requires the Texas Department of Transportation to update the International Trade Corridor Plan (plan) biennially and report to the presiding officer of each house of the legislature no later than December 1 of each even-numbered year. The plan must address implementation of the recommendations made by the committee.

IT IS THEREFORE ORDERED that the Border Trade Advisory Committee Report, as shown in Exhibit A, is accepted by the commission and will be further incorporated into the International Trade Corridor Plan as required by Transportation Code, Section 201.6011.

Note: Exhibit A on file with minute order clerk.

ITEM 8. PASS-THROUGH TOLL

a. Bexar County – Authorize the executive director to negotiate the financial terms of a pass-through toll agreement with Bexar County for the development of a segment of SH 211 (Hill Country Parkway) from 1.33 miles south of FM 1957 to FM 471 and improvements to FM 1957 (Potranco Road) from Loop 1604 to the Medina County Line; this minute order corrects Minute Order 111558, which inadvertently failed to describe the complete project limits of SH 211 and FM 1957 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Assistant Executive Director for Innovative Project Development Phillip Russell:

111591
ADM

On October 20, 2008 Bexar County (county) submitted a proposal for a pass-through toll agreement. The county's proposal provided for development of a segment of SH 211 (Hill Country Parkway) from 1.33 miles south of FM 1957 to FM 471 and improvements to FM 1957 (Potranco Road) from Loop 1604 to the Medina County Line.

Pursuant to Minute Order 111558, dated October 30, 2008, the Texas Transportation Commission (commission) considered the proposal and authorized the executive director to negotiate a pass-through agreement with Bexar County. That Minute Order failed to identify the limits of the SH 211 project and a short extension of the FM 1957 project from SH 211 to the Medina County Line. This Minute Order corrects the description of the SH 211 and FM 1957 projects and restates all other terms of Minute Order 111558.

Section 222.104(b), Transportation Code, authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using a facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

After considering factors described by §5.54 of the commission's rules, it is determined that: (1) the proposal has the potential to provide significant financial benefits to the state; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) the projects are in the current UTP; (4) the projects demonstrate the potential to relieve congestion on the state highway system; (5) the projects appear to provide potential benefits to regional air quality but must be quantified and documented by the county through the air quality conformity process in accordance with all state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) the entity has experience in developing highway projects.

Before the projects in this proposal are planned, developed, or constructed using funds administered by the department, the projects: (1) prior to construction, must be included in the department's Statewide Transportation Improvement Program; and (2) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with Bexar County. If the negotiations are successful, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

b. El Paso County – Authorize the executive director to issue a request for competing proposals to private entities to design, construct, and finance the I-10 Interchange at Schuster Avenue (University of Texas at El Paso's main entrance) Safety, Congestion Relief and Mobility Project under a pass-through toll agreement. The request for competing proposals relates to a proposal for a project to be developed under a pass-through toll agreement received from Miner Express Highway Developers, LLC (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Assistant Executive Director for Innovative Project Development Phillip Russell:

111592
ADM

On October 31, 2008, Miner Express Highway Development, LLC, a private entity, submitted a proposal for a pass-through toll agreement. Miner Express Highway Development, LLC's proposal provides for the design, construction and financing of multiple improvements to the existing IH 10 interchange at Schuster Avenue (University of Texas at El Paso's main entrance) that will increase safety, provide congestion relief, and improve mobility in El Paso County.

Section 222.104(b), Transportation Code authorizes the Texas Department of Transportation (department) to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, construction, maintenance, or operations of a tolled or non-tolled facility on the state highway system by the public or private entity. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

The commission previously adopted rules, codified as 43 TAC §§5.51-5.59, that prescribe the policies and procedures governing the department's implementation of Section 222.104(b), Transportation Code.

Sections 5.54 and 5.55 of the commission's rules provide that the commission may authorize the department's executive director, upon receipt of a pass-through toll proposal from a private entity, to solicit competing proposals for the project after considering the : (1) financial benefits to the state; (2) local public support for the project; (3) for a highway project, whether the project is in the department's Unified Transportation Program (UTP); (4) the extent to which the project will relieve congestion on the state highway system; (5) potential benefits to regional air quality that may be derived from the project; (6) the compatibility of the proposed project with existing and planned transportation facilities; and, (7) the entity's experience in developing highway projects, if the proposer is a public entity and if the proposal is for the development of a highway project by that entity.

After considering factors described in §5.54 of the commission's rules, it is determined that (1) the proposal has the potential to provide significant financial benefits to the state; (2) Miner Express Highway Development, LLC's proposal indicated broad public support for the projects and did not identify any opposition; (3) the projects are in the current UTP; (4) the projects demonstrate the potential to relieve congestion on the state highway system, the extent of which will be quantified and documented in consultation with the El Paso Metropolitan Planning Organization (EPMPO); (5) the projects appear to provide potential benefits to regional air quality but those benefits will be quantified and documented in consultation with EPMPO and in accordance with state and federal regulations; (6) the projects are compatible with existing and planned transportation facilities; and (7) Miner Express Highway Development, LLC proposed team for implementation, management and completion of the project appears qualified to accomplish the proposed work.

Pursuant to Section 5.55 of the commission's rules, the department will publish notice of the request for competing proposals in the Texas Register and in one or more newspapers of general circulation. The notice will state that the department has received a proposal for a pass-through toll agreement from a private entity, that the department intends to evaluate the proposal, and that the department may negotiate a pass-through toll agreement with the proposer.

The notice will state that the department will accept for simultaneous consideration any competing proposals received within 45 days of the publication of the notice in the Texas Register, or such additional time as authorized by the commission. The notice will summarize the proposed project, identify its location, and specify the general criteria that will be used to evaluate all proposals and the relative weight given to the criteria.

After evaluation of properly submitted proposals, the department will rank the proposals and may select the private entity whose proposal provides the best value to the department. The department will attempt to negotiate a pass-through toll agreement with that proposer.

Before the project in this proposal is planned, developed or constructed using funds administered by the department, the projects: (1) must be included in the EPMPO's Transportation Plan; (2) must be included in the department's UTP, thereby identifying committed funding for the project; (3) prior to construction, must be included in the EPMPO's Transportation Improvement Program and the department's Statewide Transportation Improvement Program; and (4) will be subject to any and all applicable planning and environmental processes and approvals as mandated by state and federal regulations regarding such matters.

IT IS THEREFORE ORDERED that the executive director or his designee is authorized and directed to issue a notice of request for competing proposals to private entities to design, construct and finance multiple improvements to the existing IH 10 interchange at Schuster Avenue, under a pass-through toll agreement. In this regard, staff shall consider that it is the intent of the commission that staff considers all forms of financing.

IT IS FURTHER ORDERED that the executive director or his designee is authorized to attempt negotiation of a pass-through toll agreement with the private entity selected by the department whose proposal, based on the department's evaluation, provides the best value to the department. If negotiations are unsuccessful, the department may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party. Upon completion of successful negotiations, the executive director shall submit to the commission a summary of the final terms of the agreement so that the commission may consider final approval under §5.56 of its rules.

ITEM 9. FINANCE

Approve the issuance of bonds and/or other obligations to refund the Central Texas Turnpike System First Tier Revenue Bonds, Series 2002-B (Weekly Rate Demand Bonds) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111593
FIN

On August 28, 2008, the Texas Transportation Commission (commission) approved Minute Order No. 111493 authorizing the refunding of its previously issued \$150 million Central Texas Turnpike System First Tier Revenue Bonds, Series 2002-B (Weekly Rate Demand Bonds) (Series 2002-B Bonds) issued to finance a portion of the costs of the Central Texas Turnpike System (System), composed initially of the SH 130, SH 45, and Loop 1 project elements, pursuant to an Indenture of Trust (Indenture) and four supplemental indentures. Any terms not otherwise defined herein have the meaning given in the Indenture.

On October 30, 2008, because then current market conditions made the previously authorized refunding impractical, the commission approved Minute Order No. 111559 authorizing an amendment of the bond documents so that the Series 2002-B Bonds could be privately placed with sophisticated investors.

Because of continuing market changes and rating downgrades of both DEPFA plc, New York Branch (DEPFA) as the liquidity provider and Ambac Assurance Corporation (Ambac) as the bond insurer of the Series 2002-B Bonds, the various financing options to address interest rate variations as well as accelerated amortization on the Series 2002-B Bonds pursuant to the terms of the existing Standby Bond Purchase Agreement with DEPFA have changed.

Pursuant to the existing Standby Bond Purchase Agreement with DEPFA, upon the occurrence of an Insurer Adverse Change (i.e., the rating of Ambac's claims paying ability is reduced below "AA-", "AA-" or "Aa3" by any two of Fitch, S&P or Moody's, respectively), DEPFA is authorized to provide the commission a notice of termination of the Standby Bond Purchase Agreement which triggers a mandatory tender of the remaining Series 2002-B Bonds held in the open market and triggers the covenant of the commission in Section 7.02(b) of the standby bond purchase agreement to use best efforts within 90 days of such notice of termination to obtain an alternate liquidity agreement or refund the Series 2002-B Bonds. Additionally, if the Series 2002-B Bonds are not refunded or an alternate liquidity agreement obtained, the Series 2002-B Bonds held by DEPFA as bank bonds must be amortized at least 21 years earlier than originally scheduled. Ambac's current ratings are "Baa1" and "AA" by Moody's and Standard and Poor's, respectively. Fitch has withdrawn Ambac's rating.

Pursuant to the authority delegated by the commission to the Chief Financial Officer in Minute Order No. 111493, the Chief Financial Officer has been pursuing the possible option of obtaining a new letter of credit and/or liquidity agreement in connection with the issuance of refunding bonds to refund the Series 2002-B Bonds. The refunding will terminate the insurance policy with Ambac and the standby bond purchase agreement with DEPFA related to the Series 2002-B Bonds, however, due to current market conditions the Chief Financial Officer has not been able to effectuate obtaining new credit and/or liquidity agreements for such refunding bonds.

Pursuant to the authority delegated to the Chief Financial Officer in Minute Order No. 111559, the Chief Financial Officer has also been pursuing the consent of DEPFA, Ambac and the remarketing agent to the amendment of the Second Supplemental Indenture and private placement of the Series 2002-B Bonds. With the recent additional downgrade of Ambac, DEPFA has not consented to the amendment. Additionally, the potential termination by DEPFA of the Standby Bond Purchase Agreement has made the private placement option less feasible.

In order to terminate and defease onerous bond covenants the Chief Financial Officer is authorized to proceed with a refunding with or without credit enhancement and/or liquidity support and with or without debt service savings in any mode as further provided in the Fifth Supplemental Indenture attached hereto.

IT IS THEREFORE ORDERED by the commission that the Fifth Supplemental Indenture attached hereto is hereby approved with such changes as approved by the TTA Representative executing the same may approve, such approval to be conclusively evidenced by execution and delivery of the amendment.

IT IS FURTHER ORDERED by the commission that the preliminary official statement is hereby approved for use in connection with the marketing of the refunding bonds with such changes as the TTA Representative executing the same may approve, such approval to be conclusively evidenced by execution of such document.

IT IS FURTHER ORDERED by the commission that any necessary ancillary documents in connection with refunding of the Series 2002-B Bonds are hereby approved and the TTA Representative is authorized and directed to execute and deliver such documents.

IT IS FURTHER ORDERED by the commission that the Chief Financial Officer is hereby authorized to proceed with obtaining the services of an underwriter and other related services for the refunding alternative which provides the best value to the Commission as determined by the most acceptable terms and conditions and the lowest cost as determined by the Chief Financial Officer.

IT IS FURTHER ORDERED by the commission that each member of the commission and each TTA Representative is authorized and directed to perform all such acts and execute such documents, including execution of certifications to the underwriter, the Attorney General, and other parties, as may be necessary to accomplish the refunding of the Series 2002-B Bonds.

IT IS FURTHER ORDERED that except with respect to the approval of the Fifth Supplemental Indenture, which is governed by this Minute Order, the provisions of Minute Order 111493 and Minute Order 111559 remain in full force and effect.

ITEM 10. STATE INFRASTRUCTURE BANK

El Paso County - City of El Paso and Camino Real Regional Mobility Authority – Consider granting preliminary approval of an application from the City of El Paso and the Camino Real Regional Mobility Authority to borrow \$3,075,000 from the State Infrastructure Bank to pay certain costs necessary for preliminary studies and implementation of the Authority's proposed highway improvement project for the interchange at I-10 and Loop 375 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Finance Division Director Brian Ragland:

111594
FIN

The Camino Real Regional Mobility Authority (RMA) and the City of El Paso (city) submitted a joint application for financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the RMA and the city of resolutions authorizing submission of the application to the Texas Department of Transportation (department). The RMA intends to use the financial assistance to pay for costs necessary for both preliminary studies and the proper implementation of the RMA's proposed I-10 at Loop 375 interchange project.

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the city has offered its ad valorem tax revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project will be listed in the 2008-2011 Statewide Transportation Improvement Program November revision and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs; 6) the anticipated costs related to preliminary studies, including consultant and employee expenses that total \$950,000, are necessary to establish the viability of the project for the RMA and to continue preparation for development of the project ; 7) pending the RMA's submission of a pass-through toll application and the commission's final approval of a pass-through toll agreement under Title 43 Texas Administrative Code, Chapter 5 for development of the project by the RMA, or some other necessary authorization for the RMA to develop the project, the remaining balance of \$2,125,000 to pay anticipated costs related to selection of a design-contractor and oversight of construction will not be disbursed.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the Camino Real Regional Mobility Authority and the City of El Paso meets the requirements of commission rules and, in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$3,075,000 from the State Infrastructure Bank, with an initial disbursement of \$950,000 and any further or additional disbursements being subject to proper authorization for the RMA to develop the project, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

ITEM 11. REPORT

Status report on the FY 2009 Obligation Limit and report on the actual November 2008 highway maintenance and construction contract letting and the proposed December 2008 highway maintenance and construction contract letting

This report was presented by Chief Financial Officer James Bass.

ITEM 12. CONTRACTS**a. Award or Reject Highway Improvement Contracts**

(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order rejecting Project No. RMC 6185-29-001 in Brown County, as recommended by staff and presented by Construction Division Section Director Ken Barnett:

111595
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on November 4 and 5, 2008.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from CKORP LLC owner Clayton Kalisch.

(2) Highway and Transportation Enhancement Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Meadows and the commission approved the following minute order as recommended by staff and presented by Assistant Executive Director Engineering Operations John Barton:

111596
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on November 4 and 5, 2008.

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

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

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

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

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

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

Note: Exhibit A on file with minute order clerk.

b. Establish statewide annual participation goals for the Small Business Enterprise Program (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order as recommended by staff and presented by Office of Civil Rights Section Director Elizabeth Boswell:

111597
OCR

The Texas Department of Transportation (department), under its authority in Transportation Code, §201.702 to develop programs for disadvantaged businesses, chose to develop the Small Business Enterprise (SBE) Program to assist disadvantaged businesses in the specialized fields of highway construction and maintenance. A SBE is defined as a firm (including its affiliates) whose annual gross receipts do not exceed the U.S. Small Business Administration's size standards for four consecutive years. The U.S. Small Business Administration's size standards are categorized by four-digit Standard Industrial Classification (SIC) codes as stated in 13 CFR §121.201. A firm must meet the size standard for the SIC code designated by the principal business of the firm. The department considers those firms that meet these size standards to be disadvantaged. The program is open to all small businesses that meet the required size limitation.

Pursuant to Title 43, Texas Administrative Code, §9.55, the commission will establish annual SBE goals based on the availability of ready, willing and able SBE firms.

The SBE goal methodology consists of defining a percentage of ready, willing and able SBE firms in relationship to the total number of ready, willing and able prime contractors and subcontractors who bid or quoted on department proposals for the previous fiscal year. This percentage does not include awards to material suppliers due to the unavailability of data regarding suppliers.

IT IS THEREFORE ORDERED that the SBE goal of 5 percent is effective for FY 2009.

ITEM 13. DEVELOPMENT AND EXCHANGE AGREEMENT

Property Exchange – Bell County, authorize the department to award a Development and Exchange Agreement (DEA) to the private entity that offers the best value to the state on the construction of new equipment storage buildings and other facility-support structures in exchange for property no longer needed (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order as recommended by staff and presented by Maintenance Division Director Zane Webb:

111598
MNT

Transportation Code, Chapter 201, Section 201.1055, authorizes agreements with private entities for the acquisition, design, construction or renovation of buildings for the Texas Department of Transportation (department) by various methods. The methods

include the exchange of existing department-owned property and improvements in return for the design and construction of a building or other facility required to support department operations on department-owned property.

Under that authority, the department, pursuant to Minute Order 111375 issued a Request for Proposal, to select, rank, commence and negotiate a development and exchange agreement with the first-ranked proposer that offers the best value to the state to procure the construction of new equipment storage buildings and other facility-support structures on department-owned property in exchange for the Killeen maintenance facility.

The department's Killeen maintenance facility is no longer needed for the purpose for which it was acquired. This facility located at 2102 Martin Luther King Boulevard, Killeen, Bell County, with an appraised value of \$900,000, is more particularly described in Exhibit A.

FAI Killeen Partners, Ltd. was the successful proposer to the RFP issued on July 21, 2008. The department proposes to finalize a development and exchange agreement with the first-ranked proposer, FAI Killeen Partners, Ltd., to procure the new equipment storage buildings and other facility-support structures at a total combined cost of \$889,605. The difference between the cost estimate of executing the plans and the value of the Killeen maintenance property shall be tendered in cash at the conclusion of the project.

The construction of the new equipment storage buildings and other facility-support structures are to be completed on department property located at the new Belton and Waco area engineer and maintenance facilities in Belton, Bell County, and Waco, McLennan County, more particularly described by metes and bounds in Exhibit B and C, respectively. The new construction to the latest standards will benefit the traveling public and support the departments operations.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the determination that the proposal submitted by FAI Killeen Partners, Ltd., provided the apparent best value to the department is approved, and the department is authorized and directed to commence and complete discussions necessary to finalize the terms and documents concerning the development and exchange agreement. This allows the construction of new equipment storage buildings and other facility-support structures on department-owned property in exchange for the existing Killeen maintenance facility.

IT IS FURTHER ORDERED that the Executive Director execute a Special Warranty Deed granting the Killeen property and improvements to FAI Killeen Partners, Ltd., upon satisfactory completion of the construction at the Belton and Waco area engineer and maintenance facilities.

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

ITEM 14. REGIONAL MOBILITY AUTHORITY

Bexar County – Consider preliminary approval of a request for financing from the Alamo Regional Mobility Authority to pay for the costs of environmental and feasibility studies necessary for the development of the proposed 281 North Toll Project within the right of way of the US 281 corridor from north of Loop 1604 to the Bexar/Comal county line (MO)

Commissioner Underwood made a motion, seconded by Commissioner Meadows and the commission approved the following minute order as recommended by staff and presented by Texas Turnpike Authority Division Director Mark Tomlinson:

111599
TTA

In Minute Order 109523, dated December 18, 2003, the Texas Transportation Commission (commission) authorized the creation of the Alamo Regional Mobility Authority (authority), formerly known as the Bexar County Regional Mobility Authority, with the boundaries of the authority to be the entire geographic area of Bexar County, Texas.

The Texas Department of Transportation (department) and the authority have worked together to identify an approach to provide for the funding and development of certain transportation system improvements within the jurisdictional limits of the authority.

The Metropolitan Transportation Plan of the San Antonio-Bexar County Metropolitan Planning Organization identifies several projects within the jurisdictional limits of the authority to be developed as toll projects, including US 281 from Loop 1604 to the Bexar/Comal County line.

On February 28, 2008, by Minute Order 111257, the commission authorized the removal from the state highway system and transfer to the authority of the portion of US 281 comprising the roadway and associated right of way from Loop 1604 to the Bexar/Comal County line, subject to the approval of the Governor, to be utilized by the authority under Transportation Code, Chapter 370 for the design, financing, construction, operation, and maintenance of a turnpike project.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission.

Pursuant to Transportation Code, §222.103, the commission adopted Title 43, Texas Administrative Code, §27.50-27.58 (toll equity rules) to prescribe conditions for the commission's financing of a toll facility of a public or private entity.

In accordance with Section 27.53 of the toll equity rules, the authority has submitted a request to use a portion of the \$19.8 million in financial assistance previously approved in Minute Order 111359, dated May 29, 2008 to pay for the costs of

environmental studies and other applicable related costs that are necessary for the development of the authority's 281 North Project from Loop 1604 to the Bexar/Comal county line. The 281 North Project is planned to include construction of a six lane tolled expressway with shoulders, ramps, and auxiliary lanes. Four to six lanes of new non-tolled frontage roads are anticipated to be constructed.

Information and data required by Section 27.53(b) is either contained in the request for financing, the previous request for financial assistance associated with the 281 North Project that was submitted on February 5, 2008, or in the petition for authorization to form the authority filed with the department on September 3, 2003. Supplemental information and data required by Section 27.53(c) is contained in the request for financing or has already been provided to the department.

The department previously conducted environmental studies and analyses of the portion of US 281 comprising the 281 North Project and has received a Finding of No Significant Impact (FONSI). The Federal Highway Administration retracted the FONSI on October 1, 2008, and by letter dated November 10, 2008 directed that an environmental impact statement (EIS) be prepared.

The authority has submitted a description of the environmental, social, economic, or cultural resource issues warranting special attention and focus in the EIS, as well as a binding commitment that the environmental consequences of the 281 North Project will be fully considered in accordance with, and that the 281 North Project will comply with, all applicable local, state, and federal environmental laws, regulations, and requirements.

The authority has experience performing work in collaboration with the department that is associated with the environmental review of projects within its jurisdictional limits and the preparation of environmental documents.

The 281 North Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing mobility and safety within this busy corridor.

The 281 North Project will expand the availability of funding for transportation projects or reduce direct state costs by the authority's planned issuance of bonds to finance other project costs.

The 281 North Project is consistent with the approved Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved plan of the San Antonio-Bexar County Metropolitan Planning Organization.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Alamo Regional Mobility Authority meets the requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the use of the financial assistance approved in Minute Order 111359 to fund the costs of environmental studies and other applicable related costs that are necessary for the development of the 281 North Project, and directs the executive director to implement the actions authorized and required by those provisions.

ITEM 15. ROUTINE MINUTE ORDERS

Commissioner Holmes made a motion, seconded by Commissioner Houghton and the commission with the exception of 15.c.(2) approved the following minute orders presented by Executive Director Amadeo Saenz:

a. Donations to the Department

(1) Construction Division – Acknowledge a donation from Southeastern Asphalt User/Producer Group for a department employee’s travel expenses to participate in the Southeastern Asphalt User/Producer Group Meeting. The meeting is being held in Birmingham, Alabama from November 17 – 20, 2008 (MO)

111600
GSD

This minute order acknowledges a donation of approximately \$735.31 to the Texas Department of Transportation (department) from Southeastern Asphalt User/Producer Group (SEAUPG) for a department employee’s travel expenses to participate in the Southeastern Asphalt User/Producer Group Meeting. The meeting is being held in Birmingham, Alabama from November 17 – 20, 2008. The department employee is assisting with technical production during the meeting, functioning as the Technical Program Coordinator, and is also participating in technical sessions, where presentations for more than 25 pertinent hot-mix topics are being presented.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for approximately \$735.31 from Southeastern Asphalt User/Producer Group is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) Construction Division – Acknowledge a donation from Texas Asphalt Pavement Association for a department employee's travel expenses to participate in the Southeastern Asphalt User/Producer Group Meeting. The meeting is being held in Birmingham, Alabama from November 17 – 20, 2008 (MO)

111601
GSD

This minute order acknowledges a donation of approximately \$1001.40 to the Texas Department of Transportation (department) from Texas Asphalt Pavement Association (TxAPA) for a department employee's travel expenses to participate in the Southeastern Asphalt User/Producer Group Meeting. The meeting is being held in Birmingham, Alabama from November 17 – 20, 2008. The department employee is sharing information about its experiences using warm mix asphalt by serving as the moderator over the Warm Mix Asphalt Session. The department employee is also participating in technical sessions, where presentations for more than 25 pertinent hot-mix topics are being presented.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for approximately \$1001.40 from Texas Asphalt Pavement Association is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) Houston District – Consider a donation from Apache Corporation for approximately \$250,000 worth of plant material seedlings to be planted along I-45 and US 59 in Harris and Montgomery Counties (MO)

111602
GSD

This minute order considers a donation to the Texas Department of Transportation (department) from Apache Corporation for approximately \$250,000 worth of plant material seedlings to be planted along INTERSTATE 45 and US 59 in Harris and Montgomery Counties.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation for approximately \$250,000 worth of plant material seedlings from Apache Corporation is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(4) Lubbock District – Consider a cash donation from Market Lubbock Inc. for fabrication and installation costs of new guide signs that meet the requirements of the Texas Manual on Uniform Traffic Control Devices for Lubbock Business Development Park Boulevard along I-27 north of Lubbock (MO)

111603
GSD

This minute order considers a cash donation of approximately \$18,685.86 to the Texas Department of Transportation (department) from Market Lubbock Inc. for fabrication and installation costs of new guide signs that meet the requirements of the Texas Manual of Uniform Traffic Control Devices for Lubbock Business Development Park Boulevard along I-27 north of Lubbock, Texas in Lubbock County. These signs will provide the traveling public with advance notification of the proper exits that will direct them to the new business park area.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

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

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

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

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the cash donation for approximately \$18,685.86 from Market Lubbock Inc. is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. Eminent Domain Proceedings

Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)

111604
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

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

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

laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

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

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

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Dallas	SH 183	11	0094-03-098	20
Dallas	SH 183	1	0094-03-099	25
Dallas	SH 183	2	0094-03-099	50
Denton	FM 423	5	1567-02-029	10
Denton	FM 423	6	1567-02-029	16
Denton	FM 720	3	1567-01-032	8
Denton	FM 720	4	1567-01-032	12
El Paso	FM 76	7	0674-01-058	27
Guadalupe	FM 1979	8	1898-01-005	1
Guadalupe	FM 1979	9	1898-01-005	2
Lee	FM 696	10	1078-02-028	3

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Caldwell/Travis	SH 130	D	3583-01-002	476 & 476 MNT
Caldwell	SH 130	E	3583-01-002	486
Caldwell	SH 130	F	3583-01-002	506B & 506BE

CONTROLLED ACCESS (continued)

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Caldwell	SH 130	G	3583-01-002	509
Caldwell	SH 130	H	3583-01-002	524
Caldwell	SH 130	I	3583-01-002	636
Caldwell	SH 130	J	3583-01-002	1545
Dallas	SH 183	C	0094-03-098	37
Dallas	SH 183	B	0094-03-099	20
Dallas	SH 183	A	0094-03-099	45
Travis	SH 130	K	0440-06-008	454B

Note: Exhibits 1 through 11 and A through K on file with minute order clerk.

c. Load Zones & Postings

Various Counties – Revise load restrictions on the state highway system:

(1) Roadways (MO)

111605
CST

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

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

An engineering and traffic investigation has been made on the state highway system to determine and fix the maximum loads to be transported or moved on, over or upon the roads of the highway system.

It has been determined from this investigation that the load restrictions on certain sections of roads of the state highway system should be removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the roads described in Exhibit A be removed for the month of November 2008, as set forth therein, superseding any portion of a previous action in conflict. The executive director shall proceed with the removal of signs as appropriate, making the removal of this load limitation effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) Bridges (MO)

There was no bridge minute order for this month.

e. Right of Way Dispositions and Donations

(1) Bexar County – SL 1604 at NW Military Drive in San Antonio – Consider the sale of a surplus drainage easement (MO)

111606
ROW

In the city of San Antonio, BEXAR COUNTY, on STATE HIGHWAY LOOP 1604, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 4335, Page 72, Real Property Records of Tarrant County, Texas.

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

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

Rogers Shavano Park Unit 18/19, Ltd., a Texas limited partnership, is the underlying fee owner and has requested that the surplus easement be sold for \$14,879.

The commission finds \$14,879 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval of the attorney general, that the Governor of Texas execute a proper instrument releasing the state's rights and interest in the surplus easement to Rogers Shavano Park Unit 18/19, Ltd., a Texas limited partnership, for \$14,879.

Note: Exhibit A on file with minute order clerk.

(2) Brazos County – FM 2818 at FM 1179 in Bryan – Consider the sale of a surplus drainage easement (MO)

111607
ROW

In the city of Bryan, BRAZOS COUNTY, on FARM TO MARKET ROAD 2818, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 266, Page 660, Deed Records of Bexar County, Texas.

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

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

1439 W. Villa Maria, L.L.P., a Texas limited partnership, is the underlying fee owner and has requested that the surplus easement be sold for \$2,439.

The commission finds \$2,439 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for a state highway purpose and that the value of the surplus easement is less than \$10,000 and authorizes the executive director to execute a proper instrument releasing all of the state's rights and interest in the surplus easement to 1439 W. Villa Maria, L.L.P., a Texas limited partnership, for a cash consideration of \$2,439.

Note: Exhibit A on file with minute order clerk.

(3) Collin County – FM 3412 from FM 1378 to FM 2514 in Wylie – Consider the transfer of right of way to the City of Wylie and removal from the state highway system (MO)

111608
ROW

In the city of Wylie, COLLIN COUNTY, on FARM TO MARKET ROAD 3412, the State of Texas acquired certain land needed for highway purposes by instruments recorded in the Deed Records of Collin County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land has been determined to be \$1.047 million, and the state's costs for maintenance and resurfacing over the next 20 years is estimated to be \$4.1 million.

The City of Wylie (city) has requested that the surplus land be transferred to the city in consideration of the savings to the state of future maintenance costs, since the future maintenance costs exceed the value of the surplus land.

The commission finds \$1.047 million to be a fair and reasonable value of the state's rights, title and interest in the surplus land and recommends that the state transfer the surplus land to the city.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument transferring all of the state's rights, title and interest in the surplus land to the City of Wylie, Texas, in consideration of the savings to the state of future maintenance costs; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

IT IS FURTHER ORDERED by the commission that FM 3412 from FM 1378 to FM 2514 is removed from the state highway system and transferred to the city for control, jurisdiction and maintenance.

Note: Exhibit A on file with minute order clerk.

(4) Dallas County – SH 356 from Trinity River Levee to I-35E in Dallas – Consider the transfer of surplus right of way to the City of Dallas and removal from the state highway system (MO)

111609
ROW

In the city of Dallas, DALLAS COUNTY, on STATE HIGHWAY 356, the State of Texas acquired certain land needed for highway purposes by instruments recorded in the Deed Records of Dallas County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The fair value of the surplus land has been determined to be \$1.9 million, and the state's costs for maintenance and resurfacing over the next 20 years is estimated to be \$22.1 million.

The City of Dallas (city) has requested that the surplus land be transferred to the city in consideration of the savings to the state of future maintenance costs, since the future maintenance costs exceed the value of the surplus land.

The commission finds \$1.9 million to be a fair and reasonable value of the state's rights, title and interest in the surplus land and recommends that the state transfer the surplus land to the city.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument transferring all of the state's rights, title and interest in the surplus land to the City of Dallas, Texas, in consideration of the savings to the state of future maintenance costs; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

IT IS FURTHER ORDERED by the commission that SH 356 from the Trinity River Levee to I-35E in Dallas is removed from the state highway system and transferred to the city for control, jurisdiction and maintenance.

Note: Exhibit A on file with minute order clerk.

(5) Fort Bend County – SH 6 at FM 1092 in Missouri City - Consider the correction of MO 111573 (MO)

111610
ROW

In FORT BEND COUNTY on STATE HIGHWAY 6, the State of Texas acquired certain land needed for state highway purposes.

The Texas Transportation Commission (commission) approved Minute Order 111573 on October 30, 2008, authorizing the sale of surplus land. The minute order made incorrect reference to the instruments of conveyance to the state. The reference is being corrected by this minute order.

The land was conveyed to the state by instruments recorded in Volume 1071, Page 631, and Volume 2241, Page 471, Deed Records of Fort Bend County, Texas.

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

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

NOW, THEREFORE, IT IS ORDERED that Minute Order 111573 be amended only with respect to the incorrect reference to the instruments of conveyance to the state, and all other provisions of Minute Order 111573 are to remain unchanged.

FURTHER, the commission recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying of all of the state's rights, title and interest in the surplus land to SDI Missouri City Holdings, L.L.C., a Texas limited liability company.

Note: Exhibit A on file with minute order clerk.

(6) Harris County – I-10 at Westgreen Drive – Consider the correction of MO 111352 (MO)

111611
ROW

In HARRIS COUNTY, on INTERSTATE 10, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instrument recorded under County Clerk's File No. P019476. The state owns and controls certain access rights to the highway facility to and from the abutting lands.

The Texas Transportation Commission (commission) approved Minute Order 111352 on April 24, 2008, authorizing the sale of surplus access rights, described in Exhibit A. The minute order incorrectly identified the abutting landowner. The actual name of the abutting landowner is Westgreen I-10, LP, and is being corrected by this minute order.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission may recommend the sale of surplus access rights to the abutting landowner.

NOW, THEREFORE, IT IS ORDERED that Minute Order 111352 be amended only with respect to the incorrect identification of the abutting landowner, and all other provisions of Minute Order 111352 are to remain unchanged.

FURTHER, the commission recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state's interest in the surplus access rights to Westgreen I-10, LP.

Note: Exhibit A on file with minute order clerk.

(7) Harris County – US 290 at Fry Road – Consider the sale of surplus access rights (MO)

111612
ROW

In HARRIS COUNTY, on US 290, a designated controlled access highway, the State of Texas acquired certain land for highway purposes by instrument recorded under County Clerk's File No. M413992. The state owns and controls certain access rights to the highway facility to and from the abutting lands.

Portions of the access rights (surplus access rights), shown on Exhibit A, are no longer needed for a state highway purpose.

Corinthian Fry Road Investors, LP, a Texas limited partnership (Corinthian), owner of a 7.004-acre tract of land conveyed by deed recorded under County Clerk’s File No. Z304379, Official Public Records of Real Property, Harris County, Texas (Corinthian Tract), is the landowner abutting the property line along which access is proposed to be released and has requested that the state sell the surplus access rights to Corinthian for \$87,120.

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

The Texas Department of Transportation has determined that the sale of the surplus access rights is not expected to compromise the safety or add traffic volume in an amount to exceed the capacity of the existing highway.

It is the opinion of the commission that it is proper and correct that the state sell the surplus access rights to Corinthian for a cash consideration of \$87,120.

NOW, THEREFORE, the commission finds that the surplus access rights are no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument granting the state’s interest in the surplus access rights to Corinthian Fry Road Investors, LP, a Texas limited partnership, for a cash consideration of \$87,120.

IT IS FURTHER ORDERED that the surplus access rights will be exclusive to the Corinthian Tract, and nothing in this order shall be construed to directly or indirectly approve conveyance of access rights to the properties abutting the Corinthian Tract.

Note: Exhibit A on file with minute order clerk.

(8) Hidalgo County – US 83 at Mile 6 West in Weslaco – Consider the sale of two tracts of surplus right of way (2 MOs)

111613
ROW

In the city of Weslaco, HIDALGO COUNTY, on US 83, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 1019, Page 174, Deed Records of Hidalgo County, Texas.

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

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

Juanita Montes and husband, Martin Montes, are the abutting landowners and have requested that the surplus land be sold to them for \$10,235.

The commission finds \$10,235 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Juanita Montes and husband, Martin Montes, for \$10,235; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

111614
ROW

In the city of Weslaco, HIDALGO COUNTY, on US 83, the State of Texas acquired certain land needed for state highway purposes by instruments recorded in Volume 1027, Page 292, Deed Records of Hidalgo County, Texas, and in Document No. 791959, Official Records of Hidalgo County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to a governmental entity with the authority to condemn the property.

The City of Weslaco has requested that the surplus land be sold to the city for \$74,470.

The commission finds \$74,470 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the City of Weslaco, Texas, for \$74,470; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(9) Houston County – SH 19 South of Lovelady at Missouri Pacific Railroad – Consider the sale of surplus right of way (MO)

111615
ROW

In HOUSTON COUNTY, on STATE HIGHWAY 19, the State of Texas acquired certain land for state highway purposes by instrument recorded in Volume 360, Page 95, Deed Records of Houston County, Texas.

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

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

Lee Holsey is an abutting landowner and has requested that the surplus land be sold to him for \$1,407.

The commission finds \$1,407 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Lee Holsey for a cash consideration of \$1,407; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

Various Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

111616
TRF

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

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

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

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

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

It has also been determined that the speed limit on one segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

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

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portion of the minute order establishing the speed zones shown on the attached Exhibit C are canceled.

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

16. Executive Session Pursuant to Government Code, Chapter 551, Section 551.071

a. Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda

b. Section 551.074 – Evaluate the performance of the executive director

Note: The commission met in executive session. The executive session adjourned at 12:06 p.m. and the commission resumed its open meeting.

OPEN COMMENT PERIOD – At the conclusion of all other agenda items, the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the commission. No action will be taken. Each speaker will be allowed a maximum of three minutes. Speakers must be signed up prior to the beginning of the open comment period.

The regular meeting of the Texas Transportation Commission adjourned at 12:06 p.m.

APPROVED:

Deirdre Delisi, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on October 30, 2008, in Dallas, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation