

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on October 30, 2008 in Dallas, Texas. The meeting opened at 9:10 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

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 4:17 p.m. on October 22, 2008, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

Receive comments from area public officials, community and civic leaders, and private citizens. Report by the Dallas District.

Note: The commission received comments from Dallas District Engineer Bill Hale, State Senator Royce West; Dallas Councilmembers Carolyn Davis and Linda Koop; Dallas County Commissioner John Wiley Price; Regional Transportation Council Director Michael Morris; North Texas Tollway Authority Executive Director Paul Wageman.

Note: TxDOT Executive Director Amadeo Saenz, Jr. presented a Road Hand Award to Dallas County Commissioner John Wylie Price.

ITEM 1. RESOLUTIONS

a. Resolution to extend sympathy to the relatives of Charles L. English, a 23-year department veteran in the Dallas District, who died while performing his duties as an employee of the Texas Department of Transportation

b. Resolution to extend sympathy to the relatives of Delbert L. Gann, a 24-year department veteran in the Paris District, who died while performing his duties as an employee of the Texas Department of Transportation

ITEM 2. Approval of Minutes of the September 24, 2008 special meeting and the September 25, 2008 regular meeting of the Texas Transportation Commission

Commissioner Holmes made a motion, seconded by Commissioner Underwood, and the commission approved the minutes of the September 24, 2008 special meeting and the September 25, 2008 regular meeting of the Texas Transportation Commission.

ITEM 3. AVIATION

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

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

111546
AVN

The Texas Department of Transportation (commission) is authorized under the federal Aviation Development Act and the state Aviation Facilities Development and Financial Assistance Act to award federal and state 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 and state grant funds for the improvements.

On Thursday, September 18, 2008, and Tuesday September 30, 2008, public hearings were held. No comments were received at either hearing.

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 \$15,904,205.

Note: Exhibit A on file with minute order clerk.

ITEM 4. PUBLIC TRANSPORTATION

Taylor County – Award transportation development credits to the City of Abilene to match federal funds for transit fleet replacement (MO)

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

111547
PTN

The Texas Transportation Commission (commission) desires to award 73,304 Transportation Development Credits (TDC) to the City of Abilene, to be used as the local match for a federal funding award for vehicle capital replacement.

The commission recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission.

On December 14, 2006, the commission passed Minute Order 110771, expressing its intent to award TDC for projects that promote public transportation: fleet replacement, fleet expansion, maintenance facilities; and capital projects that support regional coordination and further the goals of the Texas Department of Transportation (department), which are: reduce congestion; expand economic opportunity; enhance safety; improve air quality; and increase the value of transportation assets.

The commission finds that the City of Abilene’s project to replace public transportation vehicles reduces congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access; enhances safety by reducing mechanical breakdowns; improves air quality by reducing emissions with technological advances in the bus industry; and increases 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 award to the City of Abilene and enter into the necessary contract in accordance with the priorities established in this minute order.

ITEM 5. PROMULGATION OF ADMINISTRATIVE RULES Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Proposed Adoption (to be published in the Texas Register for public comment)

(1) Chapter 5 – Finance (MO)

Amendments to §5.53, Proposal; Repeal of §5.54, Commission Approval to Negotiate, §5.55, Proposals from Private Entities, §5.56, Final Approval, §5.57, Calculation of Pass-Through Fares and Tolls, §5.58, Project Development by Public or Private Entity, and §5.59, Operation; and New §5.54, Participation in the Program, §5.55, Commission Approval to Negotiate, §5.56, Proposals from Private Entities, §5.57, Final Approval, §5.58, Calculation of Pass-Through Fares and Tolls, §5.59, Project Development by Public or Private Entity, and §5.60, Operation (Pass-Through Fares and Tolls)

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

111548
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §5.53, new §5.54, the repeal of §§5.55-5.59 and simultaneous new §§5.55-5.60 relating to pass-through fares and tolls to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, 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 amendments to §5.53, new §5.54, the repeal of §§5.55-5.59 and simultaneous new §§5.55-5.60 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.

b. Rule Review

In accordance with Government Code, §2001.039, Readoption of 43 Texas Administrative Code Chapter 24, Trans-Texas Corridor, and Chapter 26, Regional Mobility Authorities (MO)

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

111549
OGC

Government Code, §2001.039 requires state agencies to readopt their rules every four years and, prior to readopting, to consider whether the reason for adopting each rule continues to exist.

During September and October 2008, the Texas Department of Transportation reviewed Title 43 Texas Administrative Code, Part 1, Chapter 24, Trans-Texas Corridor, and Chapter 26, Regional Mobility Authorities. The Notice of Intent to review was published in the *Texas Register* on September 12, 2008 (33 TexReg 7753).

No comments were received regarding this rule review.

The Texas Transportation Commission (commission) finds that the reasons for adopting these rules continue to exist.

IT IS THEREFORE ORDERED by the commission that the reviewed rules are readopted and that the executive director provide for filing with the Office of the Secretary of State, Texas Register Division, a notice readopting these rules.

ITEM 6. STATE HIGHWAY FUND REVENUE FINANCING PROGRAM

Approval of projects to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)

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

111550
ADM

Section 49-n, Article III, of the Texas Constitution (constitutional provision) provides that the Texas Legislature may authorize the Texas Transportation Commission (commission) to issue bonds and other public securities and enter into bond enhancement agreements that are payable from revenue deposited to the credit of the state highway fund to fund state highway improvement projects.

Pursuant to the constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code (Enabling Act), which authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund.

The Enabling Act, as amended, provides that (i) the aggregate principal amount of such bonds and other public securities may not exceed \$6 billion, (ii) the commission may issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion each year, (iii) \$1.2 billion of the aggregate principal amount of such bonds or other public securities must be issued to fund safety projects that reduce accidents or correct or improve hazardous locations on the state highway system, and (iv) bonds and other public securities and credit agreements may not have a principal amount or terms that are expected to cause annual expenditures with respect thereto to exceed 10 percent of the amount deposited to the credit of the highway fund in the preceding year. The commission has issued approximately \$3.1 billion in bonds and other public securities pursuant to the terms of the Enabling Act, leaving approximately \$2.9 billion in bonds and other public securities to be issued.

Pursuant to the Enabling Act, the commission has adopted rules, codified as 43 TAC §§15.170-15.174, that prescribe criteria for selecting projects (including safety projects) eligible for funding under the Enabling Act.

On August 19, 2008, Governor Rick Perry, Lieutenant Governor David Dewhurst and Speaker of the House Tom Craddick sent a letter to Commission Chair Deirdre Delisi strongly encouraging the immediate sale of up to \$1.5 billion of bonds to assure greater road funding levels are maintained while they work with other elected officials to provide additional solutions.

On August 29, 2008, the commission adopted Minute Order 111514, which authorized, subject to the approval of the Texas Bond Review Board, the issuance of additional bonds and other public securities pursuant to and in accordance with the terms of the Enabling Act, in an aggregate principal amount not to exceed \$1.5 billion.

The Texas Department of Transportation (department) has evaluated projects throughout the state for funding with the proceeds of bonds and other public securities issued pursuant to Minute Order 111514 and the additional bonds and other public securities to be issued pursuant to the terms of the Enabling Act, considering the criteria prescribed in 43 TAC §§15.73-15.74. Exhibit A to this order contains a list of candidate projects throughout the state listed by department district which have been proposed by the department for development and construction.

IT IS THEREFORE ORDERED by the commission that the projects listed in Exhibit A are approved for funding with the proceeds of bonds and other public securities issued pursuant to Minute Order 111514 and the additional bonds and other public securities to be issued pursuant to the terms of the Enabling Act.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Regional Transportation Council Director Michael Morris.

ITEM 7. REPORTS

a. Implementation of Sunset Commission staff recommendations

This report was presented by Deputy Executive Director Steve Simmons.

b. Annual report on the status of derivative transactions outstanding

This report was presented by Chief Financial Officer James Bass.

ITEM 8. TRANSPORTATION CORPORATION

Authorize the creation of the Texas Private Activity Bond Surface Transportation Corporation pursuant to Transportation Code, Chapter 431, approve the corporation's articles and bylaws, and appoint the initial directors (MO)

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

111551
FIN

Pursuant to the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (the Act) enacted by the United States Congress up to \$15 billion in private activity bonds (PABs) can be issued nationally for certain qualified highway or surface freight transfer facilities that receive volume cap allocation from the United States Department of Transportation.

The authorization by the Act of the issuance of PABs is for the purpose of lowering the cost of financing of qualified facilities, thereby lowering the overall cost of providing such facilities.

The Texas Transportation Commission (commission) is currently undertaking competitive procurement processes pursuant to Transportation Code, Chapter 223, Subchapter E, for various projects within the state including the North Tarrant Express and the I-635 Managed Lanes projects, among others.

It is anticipated that the financing methodology proposed for one or more of the comprehensive development agreements for such projects may include the use of PABs to finance or refinance the project costs.

The commission is authorized pursuant to the authority in Transportation Code, Chapter 431, Subchapters A through C (Chapter 431) to create a transportation corporation to assist and act on behalf of the commission to promote and develop new and expanded public transportation facilities and systems including the issuance of bonds for comprehensive development agreement proposers approved by the commission.

The creation by the commission of a transportation corporation is further authorized by Title 43, Texas Administrative Code, Chapter 15, §15.94 adopted by the commission on August 28, 2008.

The commission has received, from three qualified voters in the state, an application for incorporation of a transportation corporation pursuant to Chapter 431 including the suggested forms of articles of incorporation and bylaws for the corporation.

The creation of a separate corporation with statewide jurisdiction will help avoid possible confusion in the bond market regarding bonds issued for commission funded projects and PABs issued for projects funded through the Texas Department of Transportation (department) sponsored comprehensive development agreement arrangements.

The commission has determined that creation of the corporation pursuant to Chapter 431 is advisable and in the best interest of the state to assist the commission in fulfilling the purposes of Chapter 431, including promoting and developing public transportation facilities and systems by new and alternative means, reducing burdens and demands on the limited funds available to the commission, and increasing the effectiveness and efficiency of the commission.

Chapter 431 provides that the corporation may be created only if the commission adopts a resolution authorizing the creation of the corporation and approving the articles of incorporation and bylaws of the corporation, and further provides that the commission shall appoint the initial directors of the corporation.

IT IS THEREFORE ORDERED by the commission that the resolution creating the corporation, approving its articles of incorporation and bylaws, and appointing the initial directors, attached as Exhibit A, is adopted.

IT IS FURTHER ORDERED by the commission that the Chief Financial Officer is authorized and directed to perform all such acts and execute such documents necessary to carry out the intent of this minute order.

Note: Exhibit A on file with minute order clerk.

ITEM 9. TRANSPORTATION PROGRAMMING

a. Various Counties – Authorize the 2009 Unified Transportation Program fiscal years 2009-2013 annual programming amounts for allocation programs in funding categories 1 (Preventive Maintenance and Rehabilitation) and 11 (District Discretionary), and authorize additional develop authority under work program 11BL (project back log) (MO)

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

111552
FIN

The UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is an 11-year plan that authorizes project planning and development, and is submitted to the Transportation Commission (commission) for approval on an annual basis.

Transportation Code, §201.103 requires the commission to plan and make policies for the location, construction and maintenance of a comprehensive system of state highways and public roads.

Transportation Code, §203.002 requires the commission to lay out, construct, maintain and operate a modern state highway system, with emphasis on the construction of controlled access highways, and to plan for future highways.

Pursuant to Transportation Code, §201.602, the commission conducted a public hearing on December 13, 2007 to receive testimony concerning the highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. There were no oral comments provided at the public hearing. Written comments were accepted through January 18, 2008, but none were received.

The commission adopted Minute Order 111333 on April 24, 2008 authorizing the executive director to utilize the highway project selection process for developing the 2009 UTP. To make corrections to Exhibit A of Minute Order 111333, the commission rescinded and withdrew Minute Order 111333 dated April 24, 2008 and approved the project selection process in Minute Order 111370 on May 29, 2008 for developing the 2009 UTP.

The commission desires to approve these listed allocation program amounts for the 2009 UTP. The remaining programs of the 2009 UTP will be considered for approval at a later time.

The commission also desires to authorize additional district discretionary programming authority to assist the districts of the department in developing back log projects in the instance the department receives funds in addition to the funding levels previously approved by Minute Order 111335 on April 24, 2008. This will provide additional DEVELOP programming authority and it is understood that the projects developed using district discretionary programming authority will not be funded for construction until authorized funds are identified from one of the department's funding categories. It is also understood that each project identified by the district will be programmed for the entire construction estimate.

IT IS THEREFORE ORDERED by the commission that the 2009 UTP allocation program amounts and additional district discretionary programming authority for back log projects listed in the following exhibits are approved, and that the projects will be developed in these programs consistent with applicable state and federal laws, regulations, and procedures.

Exhibit A - Highway Construction Programs Policy and Restrictions

Exhibit B - Allocation Program Amounts for Category 1 - Preventive Maintenance and Rehabilitation

Exhibit C - Allocation Program Amounts for Category 11 - District Discretionary

Exhibit D - Additional District Discretionary Programming Authority for Backlog Projects (Category 11BL)

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

b. Collin, Dallas and Denton Counties – Approval to authorize additional projects with CONSTRUCT authority under work program created by Minute Order 111215 and concurrence in the selection of those projects by the Regional Transportation Council. Projects are to be funded with payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (MO)

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

111553
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA), the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0111(g)(2) and (i)(2).

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which a project or system is located. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount. The department may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization (MPO) in which the region is located.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air quality project within a department district in which any part of the SH 121 toll project is located. The SH 121 toll project is located in the Dallas District. An air quality project is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved, and authorized the department's executive director to enter into, a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), a federally designated MPO, concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by the NCTCOG. The SH 121 toll project is located in the region served by the NCTCOG.

Responsibility for allocating the SH 121 payments has already been assigned, to a degree, to the RTC under the MOU. The MOU provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence. The projects are to be selected in a cooperative department-RTC selection process which considers the desires of the cities and counties in which the project is located. The RTC has developed a plan for regional sharing of surplus toll revenue and CDA concession payments, based on the location of the toll project from which these revenues are derived and the residential location of toll users in the region served by the NCTCOG.

The department has established a work program to account for and track projects in the Dallas District that are to be funded with the SH 121 payments. In Minute Order 111215, dated January 31, 2008, Minute Order 111439, dated July 31, 2008, and Minute Order 111528, dated September 25, 2008, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional projects in the Dallas District to be funded with the SH 121 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A are transportation or highway projects, or air quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments.

IT IS FURTHER ORDERED that, unless otherwise approved by the commission, all direct costs associated with the projects for which federal and state funds have not been allocated shall be charged to this work program, including the costs of right of way acquisition, preliminary engineering, and construction engineering, and the costs of department staff incurred in the development, procurement, and construction of the projects.

Note: The commission received comments from Regional Transportation Council Director Michael Morris.

c. Various Counties – Approve an agreement with the North Central Texas Council of Governments (NCTCOG) for the transfer to the NCTCOG of money in the SH 121 subaccounts in the state highway fund to be used to pay for the costs of approved projects that are not on the state highway system under project agreements the NCTCOG enters into with the local governmental entities responsible for implementing the projects or, for projects to be implemented by the NCTCOG, after the execution of the agreement with the NCTCOG (MO)

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

111554
FIN

Transportation Code, §228.012 requires the Texas Department of Transportation (department) to create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement (CDA), the surplus revenue of a toll project or system, and payments received under Transportation Code, §§228.0111(g)(2) and (i)(2).

The department is required to create subaccounts in the account for each project, system, or region, and to hold money in a subaccount in trust for the benefit of the region in which a project or system is located. The department may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization (MPO) in which the region is located. With certain exceptions, money in a subaccount must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable.

The department has created subaccounts in the state highway fund to hold the payments received from the North Texas Tollway Authority (NTTA) for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (SH 121 payments).

In Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (commission) approved a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), the transportation policy council of the North Central Texas Council of Governments (NCTCOG), concerning the administration, sharing, and use of surplus toll revenue and CDA concession payments in the region served by NCTCOG, including the SH 121 payments.

Responsibility for allocating the SH 121 payments has already been assigned to the RTC under the MOU, which provides that the selection of projects to be financed using those funds shall be made by the RTC, subject to commission concurrence.

The SH 121 payments may be used to pay the costs of transportation, highway, or air quality projects as defined by law that are located within a department district in which any part of the SH 121 toll project is located, and which may be on the state highway system or off the state highway system.

The NCTCOG has requested that the department allow the NCTCOG to utilize funding from the SH 121 payments for eligible projects that are not on the state highway system (Projects) that will be implemented under agreements with the local governments with jurisdiction over those projects (implementing agencies), or by the NCTCOG.

The RTC has selected Projects to be funded from the SH 121 payments, and the commission has concurred in the selection of those Projects and has authorized the expenditure of funds for the Projects from the SH 121 payments that are held in project subaccounts in the state highway fund (SH 121 subaccounts).

A proposed agreement with the NCTCOG prescribing the conditions for the transfer of money from the SH 121 subaccounts to the NCTCOG for the purpose of funding the costs of the Projects, and conditions for the development of the Projects, is attached as Exhibit A to this order. The agreement provides for the transfer of funds from the SH 121 subaccounts to pay for a fixed amount of the cost of an off-system project after the department receives a fully executed project agreement between the NCTCOG and an implementing agency or, for projects to be implemented by the NCTCOG, after the execution of the agreement with the NCTCOG. The fixed amount transferred by the department shall not exceed the amount of funds authorized in the RTR Work Program for that project by the commission.

Execution of this agreement will facilitate the timely expenditure of money in the SH 121 subaccounts on the development of eligible projects that are not on the state highway system, thereby reducing congestion, enhancing safety and improving air quality.

IT IS THEREFORE ORDERED by the commission that the executive director is authorized to enter into an agreement with the NCTCOG on substantially the same terms as those included in the agreement attached as Exhibit A to this order, providing for the transfer to the NCTCOG of money in the SH 121 subaccounts in the state highway fund to be used to pay for the costs of approved projects that are not on the state highway system, provided that any changes approved by the executive director do not materially change the obligations of the parties under the agreement attached as Exhibit A.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Regional Transportation Council Director Michael Morris; Denton County Judge Mary Horn; City of Arlington Assistant Director of Public Works and Transportation Jill House; and Dallas County Assistant Director Public Works Antoinette Bacchus.

ITEM 10. TOLL ROAD PROJECTS**a. Travis and Williamson Counties – Accept the General Engineering Consultant quarterly progress report as of August 31, 2008 for the Central Texas Turnpike System (MO)**

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

111555
ADM

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 130 has been designated a toll project and a controlled access state highway from I-35 north of Georgetown to a southern terminus at US 183.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 45N has been designated a toll project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY LOOP 1 has been designated a toll project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

The Texas Transportation Commission (commission) has issued toll revenue bonds and other obligations to finance a portion of the costs of the 2002 Project of the Central Texas Turnpike System, a toll project composed of the SH 130, SH 45N, and Loop 1 project elements, and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending August 2008, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

b. Bexar County – Consider the preliminary approval of a request for financing from the Alamo Regional Mobility Authority to pay for the costs of feasibility studies, environmental studies, public involvement, schematics, and preliminary financial plans associated with the addition of toll lanes on I-35 from the Bexar/Guadalupe county line south to I-37, and on Loop 1604 from SH 151 to I-35, including the costs of necessary administrative, legal, engineering, and other services

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

111556
ADM

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 (MPO) identifies several projects within the jurisdictional limits of the authority to be developed as toll projects, including I-35 from the Bexar/Guadalupe county line to I-37, and Loop 1604 from SH 151 to I-35.

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 for a total of \$21,585,000 to fund projects consisting of the addition of toll lanes on I-35 from the Bexar/Guadalupe county line south to I-37 (I-35 project), and on Loop 1604 from SH 151 to I-35 (Loop 1604 Project). The request seeks financial assistance in the amount of \$9,195,000 for the I-35 project and in the amount of \$12,390,000 for the Loop 1604 project.

The authority intends to use the funds to pay for certain costs necessary for the development, feasibility assessment, and related environmental clearance and public involvement, including necessary administrative, legal, and other expenses, for the projects. The authority requested that the financial assistance be in the form of a grant.

Information and data required by Section 27.53(b) is either contained in the request for financial assistance or in the petition for authorization to form the authority filed with the department on September 3, 2003. In accordance with Section 27.53(d), supplemental information and data required by Section 27.53(c) for the Loop 1604 project is contained in the request for financial assistance or is already in the department's possession. Additional information and data required under Section 27.53(c) is needed for the I-35 project.

The projects will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing mobility and safety within these busy corridors.

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

The projects are consistent with the approved Statewide Transportation Plan and the approved plan of the San Antonio-Bexar County MPO.

On June 28, 2007, in Minute Order 110974, the commission approved a corrected list of candidate projects for development, construction, and operation as toll projects and authorized the executive director of the department to initiate the process prescribed by Transportation Code, §228.0111 with the local toll-project entity within whose boundaries an approved candidate toll project is located. The projects are included in the list of approved candidate toll projects.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the authority for the Loop 1604 project meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of financial assistance in the amount of \$12,390,000, to be used to fund the costs of feasibility studies, environmental studies, public involvement, schematics, and preliminary financial plans associated with the addition of toll lanes on Loop 1604 from SH 151 to I-35, including the costs of necessary administrative, legal, engineering, and other services, and directs the executive director to implement the actions authorized and required by those provisions and the toll equity rules.

Note: The commission received comments from Alamo Regional Mobility Authority Executive Director Terry Brechtel; and TURF Director Hank Gilbert.

c. Dallas, Johnson, and Tarrant Counties – Consider (1) the preliminary approval of a request for financing from the North Texas Tollway Authority (NTTA) to pay for eligible costs associated with the development, construction, operation, and maintenance of the SH 161 toll project from SH 183 south to I-20, and (2) the approval of a term sheet for (a) providing financial assistance to the NTTA, (b) the repayment of the financial assistance, and (c) the NTTA's financing and delivery of the SH 121 toll project from the Fort Worth Central Business District in Tarrant County to US 67 in Johnson County (Southwest Parkway/Chisholm Trail), subject to NTTA establishing the project's feasibility, and authorize the executive director to negotiate and enter into a project agreement for the SH 161 toll project (MO)

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

111557
FIN

The Texas Department of Transportation (department) has been proceeding with the development of a toll project that will extend SH 161 from SH 183 south to I-20 through the cities of Irving and Grand Prairie (SH 161 Project).

The department and the North Texas Tollway Authority (NTTA) have been proceeding with the preliminary development of the SH 121 toll project from the Fort Worth Central Business District in Tarrant County to US 67 in Johnson County (Southwest Parkway/Chisholm Trail Project).

The SH 161 Project and a portion of the Southwest Parkway/Chisholm Trail Project are located within the boundaries of the NTTA, and the SH 161 Project and the southern section of the Southwest Parkway/Chisholm Trail Project are subject to the market valuation provisions set forth in Transportation Code, §228.0111. The NTTA is authorized to construct, operate, maintain, expand, or extend the portion of the Southwest Parkway/Chisholm Trail Project extending into Johnson County as it would be a continuation of the NTTA's turnpike project extending from an adjacent county.

The department and the NTTA have been working together to identify an approach to provide for the funding and development of these projects and other transportation improvements within the boundaries of the NTTA and adjacent counties.

The department and the NTTA entered into an Agreement Regarding a Negotiated Value for SH 161 dated April 19, 2008 (Negotiated Value Agreement), pursuant to which the NTTA and the department waived the requirement under Transportation Code, §228.0111 to develop a market valuation for the SH 161 Project and agreed to a negotiated value of \$1.068 billion for the SH 161 Project, with a \$458 million upfront payment (acquisition payment).

Transportation Code, §228.0111(g) grants the NTTA the first option to develop, finance, construct and operate the SH 161 Project, and gives the NTTA six months after the date the negotiated value for the SH 161 Project was mutually approved to decide whether to exercise that option.

The department and the NTTA have negotiated a term sheet for providing financial assistance to the NTTA for the SH 161 Project, for the NTTA delivery of the SH 161 Project, and for the disposition of the Southwest Parkway/Chisholm Trail Project (Term Sheet) by which the department and the NTTA outlined a transaction to, among other things, strengthen the ability of the NTTA to undertake additional projects if the NTTA elects to undertake the SH 161 Project.

Under the Term Sheet, attached as Exhibit A to this order, the department would provide a loan to the NTTA for the SH 161 Project, which could be drawn upon only under certain circumstances. The loan would be limited to payment of mutually approved projected facility costs eligible to be paid from the state highway fund under applicable law, including the costs of construction, design, operations, and maintenance.

The maximum available amounts that could be borrowed each year would not exceed 100 percent of the projected toll revenue stream for that period in the mutually approved investment grade traffic and revenue study. The borrowed funds could be used by the NTTA for debt service payments and for budgeted operations and maintenance expenses if toll revenue, money in certain reserve accounts, and other revenue derived from the SH 161 Project were insufficient to make those payments.

Under the Term Sheet, the NTTA would be obligated to design, construct, operate, maintain and finance development of the SH 161 Project in accordance with the Negotiated Value Agreement, except as modified by the Term Sheet. However, after exercising its option for the SH 161 Project, the NTTA retains the discretion, as allowed under Transportation Code, §228.0111(g), to not proceed for any reason, including negative rating impacts to the NTTA System, with entering into a contract for the construction of the SH 161 Project and making the acquisition payment to the department, in which case, after the expiration of the two-year time frame prescribed in Transportation Code, §228.0111(g), or earlier as agreed by the department and the NTTA, the right to design, construct, operate, maintain and finance development of the SH 161 Project will revert to the department, as provided in Transportation Code, §228.0111(i).

The Term Sheet also provides for the NTTA's development of the Southwest Parkway/Chisholm Trail Project as a single project, subject to the NTTA establishing its feasibility and to potential phasing of development. To support the delivery of the Southwest Parkway/Chisholm Trail Project, the department and the NTTA would waive the requirement to develop a market valuation for the southern section of the Southwest Parkway/Chisholm Trail Project, and will cooperatively develop and evaluate strategies to support and accelerate the financial feasibility of the combined project.

On October 15, 2008, the NTTA's Board of Directors (1) accepted the Term Sheet without qualification or condition, (2) elected to exercise the NTTA's option to develop, finance, construct, and operate the SH 161 Project pursuant to the Negotiated Value Agreement, as modified by the Term Sheet, and (3) authorized the executive director of the NTTA to negotiate with the department the project agreement for the SH 161 Project.

Transportation Code, §366.301 authorizes the department to provide for or contribute to the payment of costs of financial or engineering and traffic feasibility studies and the design, financing, acquisition, construction, operation, or maintenance of a turnpike project or system by the NTTA on terms agreed to by the department and the NTTA. 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 Texas Transportation Commission (commission).

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

In accordance with 43 TAC §27.53, the NTTA has submitted a request for financial assistance in an aggregate amount in nominal dollars no greater than the facility costs associated with the SH 161 Project over 52 years, under mutually approved projections set forth in the official statement and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, (3) major maintenance, (4) capital expenditures, and (5) the acquisition payment. Based on NTTA's estimates of facility costs, included in Attachment C to the request, the maximum amount of the loan could be up to approximately \$3.5 billion.

Information and data required by Section 27.53(b) is contained in the request for financial assistance. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance or has already been provided to the department.

Section 27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by Section 27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; or (2) the department already possesses information or data in a format that may be substituted for the required information or data.

The department previously conducted environmental studies and analyses of the SH 161 Project, and has secured environmental clearance in the form of a Re-evaluation of the Supplemental Final Environmental Impact Statement for SH 161, which was approved by the Federal Highway Administration on February 29, 2008. Information and data relating to any known environmental, social, economic, or cultural resource issue is contained in the environmental documents prepared by the department.

Development of the SH 161 Project is a crucial element in responding to considerable population increases and associated development that have resulted in traffic increases that have created significant congestion in the SH 161 area and across the region. The SH 161 Project is designed to improve the transportation network and level of service in the SH 161 area and region, particularly by serving as a reliever route to SH 360. The SH 161 Project is included in the Dallas-Fort Worth Metropolitan Transportation Plan known as Mobility 2030 and has been in previous metropolitan transportation plans as well, dating back to the 1950s.

The timely extension of SH 121 south and west from I 30 in Fort Worth to US 67 in Cleburne is a crucial element in the development of the cities of Fort Worth and Cleburne, Johnson and Tarrant counties, and the surrounding region. Development of the Southwest Parkway/Chisholm Trail Project will benefit the region by reducing congestion and improving air quality in those areas.

The financial assistance for the SH 161 Project is critical to the NTTA's overall plan of finance. The successful funding of the SH 161 Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by providing for the timely completion of the NTTA's portion of the construction of the SH 161 Project, which will enhance mobility and operational efficiency, decrease congestion,

increase safety, increase economic development opportunities, decrease travel time, decrease air pollution, and enhance quality of life in the SH 161 corridor. Without the department's assistance, the timeline to complete the SH 161 Project and realize those benefits could be delayed.

The financial assistance for the SH 161 Project should lower the NTTA's capital costs, which will reduce the amount of equity from the NTTA System that will be necessary to complete the SH 161 Project. This will allow the NTTA to use that equity for other toll projects within its region, such as the Southwest Parkway/Chisholm Trail Project and the Trinity River project. By allowing the NTTA to maximize its leverage from the NTTA System, some of the current funding pressures on the department will be lessened. The SH 161 Project will expand the availability of funding for transportation projects or reduce direct state costs through the NTTA's issuance of bonds to finance project costs, and the potential payment of certain project expenses by the NTTA System's Capital Improvement Fund. The SH 161 Project and the NTTA are likely to have sufficient revenues to assure repayment of any loan from the department.

The SH 161 Project is consistent with the approved Statewide Transportation Plan, the Statewide Transportation Improvement Program, and the approved plan of the North Central Texas Council of Governments (NCTCOG), the metropolitan planning organization for the Dallas-Fort Worth region, and will be consistent with the transportation improvement program of the NCTCOG and with the State Implementation Plan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway 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 financial assistance in an aggregate amount in nominal dollars no greater than the facility costs associated with the SH 161 Project over 52 years, under mutually approved projections set forth in the official statement and including a commercially reasonable contingency for design and construction cost overruns, eligible to be paid from the state highway fund under applicable law, and which may only include costs for (1) design and construction, (2) operations and maintenance, (3) major maintenance, (4) capital expenditures, and (5) the acquisition payment. The executive director is directed to implement the actions authorized and required by 43 TAC §27.54.

IT IS FURTHER ORDERED by the commission that the Term Sheet, attached as Exhibit A to this order, that has been negotiated by the department and the NTTA is approved.

IT IS FURTHER ORDERED that the executive director is authorized to negotiate a project agreement with the NTTA for the SH 161 Project.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Regional Transportation Council Director Michael Morris and Duncanville City Council Member Grady Smithey.

ITEM 11. PASS-THROUGH TOLL

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) and improvements to FM 1957 (Potranco Road) from Loop 1604 to SH 211 (MO)

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

111558
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) and improvements to FM 1957 (Potranco Road) from Loop 1604 to SH 211.

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 Texas Transportation Commission (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.

Note: The commission received comments from Bexar County Engineer Renee Green; and Bexar County Judge Nelson Wolff.

ITEM 12. FINANCE

Travis and Williamson Counties – Approve amendments to the supplemental indenture authorize the Central Texas Turnpike System First Tier Revenue Bonds, Series 2002-B (Weekly Rate Demand Bonds), an offering memorandum, and other necessary agreements and ancillary documents to enable the resale of the bonds at specified interest rate for a limited time period (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:

111559
FIN

The Texas Transportation Commission (commission) has previously issued \$2,199,993,781.80 in obligations (the 2002 Obligations) including the \$150 million First Tier Revenue Bonds, Series 2002-B (Weekly Rate Demand Bonds) (Series 2002-B Bonds) 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 including the Second Supplemental Indenture of Trust (Second Supplement) which authorized the Series 2002-B Bonds. Any terms not otherwise defined herein have the meaning given in the Indenture and in Minute Order 111493 adopted by the commission on August 28, 2008 (Authorizing Minute Order).

At least \$133 million of the Series 2002-B Bonds are now held by DEPFA plc, New York Branch (DEPFA) as the liquidity provider (Bank Bonds) due to the inability of the remarketing agent to remarket the Series 2002-B Bonds.

Pursuant to the Authorizing Minute Order, the commission authorized the issuance of the "Texas Transportation Commission Central Texas Turnpike System First Tier Revenue Refunding Bonds (Variable Rate Demand Bonds), Series 2008" (Series 2008 Bonds) as additional First Tier Obligations to refund the Series 2002-B Bonds and to achieve a debt service savings and authorized the Chief Financial Officer to proceed with obtaining the services of an underwriter, liquidity and credit provider and remarketing agent for the proposed Series 2008 Bonds; however, the final terms, conditions and service providers, along with the related program documents, are required to be presented to the commission for final approval.

The Chief Financial Officer has determined that the refinancing of the Series 2002-B Bonds including the Bank Bonds into the market is not practicable at this time due to current market conditions relating to the lack of credit and liquidity available on terms acceptable to the commission. However, the commission has received a proposal to place the Series 2002-B Bonds with sophisticated investors until February 2010. To accommodate the proposal it is necessary to amend the Second Supplement to establish a new interest rate period as well as add a term period to provide future flexibility.

Due to current market conditions, the Chief Financial Officer has determined that the proposal to privately place the Series 2002-B Bonds offers the best and most acceptable terms and lowest costs for the commission.

Prior to the effective date of the amendment to the Second Supplement the commission will obtain the consent of DEPFA, Ambac Assurance Corporation and the remarketing agent as well as provide notice to the rating agencies maintaining a rating on the Series 2002-B Bonds.

IT IS THEREFORE ORDERED by the commission that the first amendment to the Second Supplement 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 placement agreement is hereby approved with such changes as the TTA Representative executing the same may approve, such approval to be conclusively evidenced by execution and delivery of the placement agreement.

IT IS FURTHER ORDERED by the commission that a limited reoffering memorandum is approved for use in connection with such placement with such changes as the TTA Representative executing the same may approve, such approval to be conclusively evidenced by execution of such documents.

IT IS FURTHER ORDERED by the commission that any necessary ancillary documents in connection with changing the rate period of the Series 2002-B Bonds, redeeming any of the Series 2002-B Bonds held in the market and not tendered (including establishing an escrow pending redemption) and the related documents or any amendments thereto are hereby approved including any amendments to the Standby Bond Purchase Agreement and Remarketing Agreement. The TTA Representative is authorized and directed to execute and deliver such documents.

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 placement agent, the Attorney General, the Texas Bond Review Board and other parties, as may be necessary to carry out the intent of this order and other orders of the commission relating to the Series 2002-B Bonds.

ITEM 13. STRATEGIC PLAN**Approve the text to accompany the Texas Department of Transportation 2009-2013 Strategic Plan (MO)**

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Coby Chase:

111560
GPA

Texas Government Code, Chapter 2056, requires that each state agency prepare a five-year strategic plan every biennium. A formal version of the strategic plan was approved by the Texas Transportation Commission (commission) on June 26, 2008 and was submitted to the Legislative Budget Board (LBB) on July 11, 2008.

The Texas Department of Transportation (department) has developed a public strategic plan to complement the LBB-required 2009-2013 Strategic Plan, to more fully explain the agency's goals, strategies and initiatives to the public.

The strategic plan represents the commitment by the department to provide safe and productive movement of people and goods.

The vision, mission, goals, performance measures, strategies, and tactics in this plan focus on delivering the high quality, aesthetic, and accessible systems expected by the ultimate users of the Texas transportation system.

The public strategic plan is dynamic and the department will continuously monitor external and internal conditions and issues, for necessary refinements to strategies, tactics and performance measures.

IT IS THEREFORE ORDERED by the commission that the document as shown in Exhibit A is adopted and approved as the text for the agency's public 2009-2013 Strategic Plan; and the commission directs the executive director or his designee to proceed with the publication and distribution to the public of this document, including submission to the Governor's Office, the Legislative Budget Board, and other required officials.

Note: Exhibit A on file with minute order clerk.

ITEM 14. REPORT**Status report on the FY 2009 Obligation Limit and report on the actual October 2008 highway maintenance and construction contract letting and the proposed November 2008 highway maintenance and construction contract letting**

This report was presented by Chief Financial Officer James Bass. The commission received comments from Regional Transportation Council Director Michael Morris.

ITEM 15. CONTRACTS**a. Award or Reject Highway Improvement Contracts****(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)**

Commissioner Holmes made a motion, seconded by Commissioner Meadows and the commission approved the following minute order rejecting Project No. RMC 618585001 in Hidalgo County, as recommended by staff and presented by Assistant Executive Director Engineering Operations John Barton:

111561
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 October 15 and 16, 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.

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

Commissioner Holmes made a motion, seconded by Commissioner Meadows and the commission approved the following minute order rejecting Project No. STP 2009(071)HES in Crosby County, as recommended by staff and presented by Assistant Executive Director Engineering Operations John Barton:

111562
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 October 15 and 16, 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.

ITEM 16. ROUTINE MINUTE ORDERS

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute orders presented by Executive Director Amadeo Saenz:

a. Donations to the Department

(1) Bryan District – Consider a donation from Keep Brazos Beautiful for approximately \$14,000 worth of wildflower seeds to be planted within the state's right of way (MO)

111563
GSD

This minute order considers a donation to the Texas Department of Transportation (department) from Keep Brazos Beautiful for approximately \$14,000 worth of wildflower seeds. The wildflower seeds will be used to plant within the state's right of way to beautify the community.

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 \$14,000 worth of wildflower seeds by Keep Brazos Beautiful 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) **Bryan District** – Consider a donation from Walker County Proud Communities for approximately \$1,000 worth of wildflower seeds to be planted within the state's right of way (MO)

111564
GSD

This minute order considers a donation to the Texas Department of Transportation (department) from Walker County Proud Communities for approximately \$1,000 worth of wildflower seeds. The wildflower seeds will be used to plant within the state's right of way to beautify the community.

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 \$1,000 worth of wildflower seeds by Walker County Proud Communities 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) Texas Turnpike Authority Division – Acknowledge a donation from World Research Group for a department employee's travel expenses related to speaking at the Toll Roads South Conference, which was held in Orlando, Florida, from October 26 – 28, 2008 (MO)

111565
GSD

This minute order acknowledges a donation of an estimated \$547.75 from World Research Group for a Texas Department of Transportation (department) employee's travel expenses to attend the Toll Roads South Conference which was held in Orlando, Florida from October 26 – 28, 2008.

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 of an estimated \$547.75 by World Research 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.

b. Eminent Domain Proceedings

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

111566
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
Bell	FM 437	3	0590-04-035	10
Denton	FM 423	1	1567-02-029	6
Denton	FM 423	2	1567-02-029	11
Webb	US 83	4	0086-01-057	28

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Caldwell	SH 130	C	3583-01-002	484
Caldwell	SH 130	D	3583-01-002	485
Caldwell	SH 130	E	3583-01-002	497
Caldwell	SH 130	F	3583-01-002	616
Caldwell	SH 130	G	3583-01-002	1817
Caldwell	SH 130	H	3583-01-002	1837
Dallas	SH Loop 12	A	0581-02-115	18
Guadalupe	SH 130	I	3583-02-002	844
Guadalupe	SH 130	J	3583-02-002	849
Guadalupe	SH 130	K	3583-02-002	853
Guadalupe	SH 130	L	3583-02-002	854
Guadalupe	SH 130	M	3583-02-002	965
Guadalupe	SH 130	N	3583-02-002	1825
Tarrant	SH 121	B	0504-02-021	120
Travis	SH 130	O	0440-06-008	1513AC

Note: Exhibits 1 through 4 and A through N on file with minute order clerk.

c. Finance

(1) Accept the quarterly cash report for the period ending August 31, 2008 (MO)

111567
FIN

Texas Transportation Code, §201.107 requires the Texas Transportation Commission (commission) to prepare a quarterly statement containing an itemized list of all the money received by the Texas Department of Transportation (department) and the source of the money and of all money paid by the department and the purpose of the payment. The statement shall be filed in the records of the department and a copy submitted to the Governor. The report must comply with each reporting requirement applicable to financial reporting provided by the General Appropriations Act.

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for Fiscal Year 2008, ending August 31, 2008, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

IT IS THEREFORE ORDERED by the commission that the quarterly cash report attached as Exhibit A is approved.

Note: Exhibit A on file with minute order clerk.

(2) Accept the Quarterly Investment Report as of August 31, 2008 as required by the Public Funds Investment Act (MO)

111568
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission and the executive director, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, Minute Order 110087, dated May 26, 2005, Minute Order 110145, dated July 28, 2005, Minute Order 110617, dated July 27, 2006, Minute Order 111003, dated July 26, 2007, and Minute Order 111490, dated August 28, 2008. The commission has designated the department's Chief Financial Officer and Deputy Director of Finance as investment officers. The Debt Management Director is authorized to act as investment officer in the absence of the Chief Financial Officer and the Deputy Director of Finance.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period. Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending August 31, 2008, attached as Exhibit A, has been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

d. Load Zones & Postings

Various Counties – Revise load restrictions on the various bridges on the state highway system (MO)

111569
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., 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 or a bridge along 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 to determine and fix the maximum loads that may be moved over the state highway system.

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

IT IS THEREFORE ORDERED by the commission that the restrictions on maximum load limits which may be removed over the bridges described in Exhibit A be removed as set forth therein, superseding any portion of previous action in conflict.

Note: Exhibit A on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Blanco County – US 281, old location south of Johnson City – Consider the sale of surplus right of way (MO)

111570
ROW

In BLANCO COUNTY, on US 281, the State of Texas acquired certain land needed for state highway purposes by instruments recorded in Volume 47, Pages 94 and 111, and Volume 64, Page 379, Deed Records of Blanco 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.

The Real Lighthouse, L.P., is the abutting landowner and has requested that the surplus land be sold to the partnership for \$27,636.

The commission finds \$27,636 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 Real Lighthouse, L.P., for \$27,636; 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.

(2) Brown County – US 67 at US 377 in Brownwood – Consider the exchange of drainage easements (MO)

111571
ROW

In the city of Brownwood, BROWN COUNTY, on US 67, the State of Texas acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 279, Page 397, Deed Records of Brown 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 exchange of a surplus easement as partial or full consideration for other land needed by the state for highway purposes.

WG-Brownwood 07, L.P., a Texas limited partnership, (WG-Brownwood) and Ching Mei Tsai and Chi Wen Chou are the owners and have conveyed to the state the easements needed for highway drainage purposes (new easements), described in Exhibits B and C. WG-Brownwood is the owner of the fee underlying the surplus easement and has requested that the surplus easement be released. WG-Brownwood will pay to the state the \$2,560 difference in value between the value of the surplus easement and that of the new easements.

It is the opinion of the commission that it is proper and correct that the state release its interest in the surplus easement in exchange and as full consideration for the new easement and the cash payment of \$2,560 to the state.

NOW, THEREFORE, the commission finds that the surplus easement 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 releasing the state's rights and interest in the surplus easement to WG-Brownwood 07, L.P., a Texas limited partnership, in exchange and as consideration for the new easements and the cash payment of \$2,560 to the state.

Note: Exhibit A on file with minute order clerk.

(3) Collin County – FM 1378 from FM 544 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)

111572
ROW

In the city of Wylie, COLLIN COUNTY, on FARM TO MARKET ROAD 1378, 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 \$2.4 million, and the state's costs for maintenance and resurfacing over the next 20 years is estimated to be \$4.3 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 \$2.4 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 1378 from FM 544 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) Fort Bend County – SH 6 at FM 1092 in Missouri City – Consider the sale of surplus right of way (MO)

111573
ROW

In FORT BEND COUNTY, on STATE HIGHWAY 6, the State of Texas acquired certain land needed for state highway purposes by instrument described in Cause No. 5103, L.M. Rice vs. the State of Texas, County Court Records of Johnson 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.

SDI Missouri City Holdings, L.L.C., a Texas limited liability company, (SDI) the abutting landowner and has requested that the surplus land be sold to SDI for \$220,199.

The commission finds \$220,199 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 highway or public transportation purposes 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 SDI Missouri City Holdings, L.L.C., a Texas limited liability company, for \$220,199; 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.

(5) Harris County – I-45 at FM 528 in Webster – Consider the exchange of right of way (MO)

111574
ROW

In HARRIS COUNTY, on INTERSTATE 45, the State of Texas acquired certain land for state highway purposes by instruments recorded in Volume 2828, Page 283, Deed Records of Harris 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 exchange of surplus land as whole or partial consideration for other land needed for a state highway purpose.

Jim R. Smith, is the owner of land needed by the state for highway purposes (new land), described in Exhibit B, and has requested that the surplus land be conveyed to him. The state will pay the owner the \$189,424 cash difference in value between the values of the new land and the surplus land pursuant to an executed exchange agreement.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the owner in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment to the owner of \$189,424.

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 Jim R. Smith in exchange and as partial consideration for the conveyance of the new land to the state and the state's cash payment of \$189,424 to the owner; 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.

(6) Johnson County – FM 917 at FM 2738 south of Lillian – Consider the exchange of right of way (MO)

111575
ROW

In JOHNSON COUNTY, on FARM TO MARKET ROAD 917, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 377, Page 42, Deed Records of Johnson 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 exchange of surplus land as whole or partial consideration of other land needed for a state highway purpose.

Darrell Stone (owner) is the owner of land needed for a state highway purpose (new land), described in Exhibit B. He has conveyed the new land to the state and has requested that the surplus land be conveyed to him. He will pay the state the \$2,504 difference in value between the values of the surplus land and the new land.

It is the opinion of the commission that it is proper and correct that the state convey the surplus land to the owner in exchange and as consideration for the conveyance of the new land and the cash payment of \$2,504 to the state.

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 Darrell Stone in exchange and as consideration for the conveyance of the new land and the cash payment of \$2,504 to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, title and interest, 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: Exhibits A and B on file with minute order clerk.

(7) Wichita County – US 82 at Holiday Street in Wichita Falls – Consider the sale of surplus right of way (MO)

111576
ROW

In the city of Wichita Falls, WICHITA COUNTY, on US 82, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 1077, Page 45; Volume 1102, Page 445; Volume 1056, Page 331; Volume 1057, Pages 708 and 702; Volume 1060, Page 273; Volume 1073, Page 771; and Volume 1055, Page 676, Deed Records of Wichita 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 Department of Transportation advertised the surplus land for sale.

Ed Bond submitted a bid of \$70,600, which was the highest valid bid received.

The Texas Transportation Commission (commission) finds \$70,600 to be a fair and reasonable value of 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 Ed Bond for a cash consideration of \$70,600; 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)

111577
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.

17. Executive Session Pursuant to Government Code, Chapter 551
Consultation with and advice from legal counsel on any item on the agenda

Note: The commission did not meet in executive session. The commission adjourned at 12:23 p.m.

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.

Note: The commission received comments from Dallas Citizens Council President Donna Halstead; and Texas Rail Advocates Executive Administrator Peter LeCody.

The regular meeting of the Texas Transportation Commission adjourned at 12:23 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