

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on January 29, 2004, in San Antonio, Texas. The meeting opened at 9:34 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
John W. Johnson	Commissioner
Robert L. Nichols	Commissioner
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner

Administrative Staff:

Michael W. Behrens, Executive Director
 Richard Monroe, General Counsel
 Tammy Stone, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation's 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 3:52 p.m. on January 21, 2004, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the December 18, 2003, regular meeting of the Texas Transportation Commission

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the December 18, 2003, regular meeting of the Texas Transportation Commission.

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

The commission received comments from San Antonio District Engineer, David Casteel; San Antonio Mayor, Ed Garza; Representative Ruth McClendon; Representative Ken Mercer; City Council Member, Carol Schubert; City Council Member, Richard Perez; Bexar County Judge, Nelson Wolff; Greater San Antonio Chamber of Commerce, Mike Novak; Chairman, San Antonio Mobility Coalition, Sam Dawson.

ITEM 2. 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 2 - Environmental Policy

Amendments to §2.21, Purpose; and Repeal of §2.24 and New §2.24, Memorandum of Understanding with the Texas Historical Commission

Commissioner Johnson made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Environmental Affairs Division Deputy Director Ann Irwin:

109542
ENV

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §2.21, relating to purpose, the repeal of §2.24 and to simultaneously propose new §2.24, relating to memorandum of understanding with the Texas Historical Commission, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, repeal, and new section, attached to this minute order as Exhibits A, B, C, and D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §2.21, the repeal of §2.24 and new §2.24 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, B, C, and D on file with chief minute clerk.

(2) Chapter 5 - Finance

New Subchapter E, §§5.51-5.59, Pass-Through Tolls

Commissioner Nichols made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Finance Division Director James Bass:

109543
FIN

The Texas Transportation Commission (commission) finds it necessary to propose new §§5.51-5.59, relating to pass-through tolls, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §§5.51-5.59 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

The commission received comments from Representative Larry Phillips.

(3) Chapter 9 - Contract Management

Amendments to §9.87, Selection (Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services)

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by General Counsel Richard Monroe:

109544
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.87, relating to selection of contracts for scientific, real estate appraisal, right of way acquisition, and landscape architectural services, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.87 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

b. Final Adoption

(1) Chapter 15 - Transportation Planning and Programming

(B) New Subchapter M, §§15.150-15.153, Rail Facilities (Acquisition of Abandoned Rail Facilities)

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Division Deputy Director Wayne Dennis:

109545
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt new §§15.150-15.153, relating to the acquisition of abandoned rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §§15.150-15.153 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

2.a. Proposed Adoption

(4) Chapter 15 - Transportation Planning and Programming

Amendments to §15.150 and §15.151 and New §15.154 and §15.155, Rail Facilities

Commissioner Johnson made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Transportation Planning and Programming Division Deputy Director Wayne Dennis:

109546
TPP

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §15.150 and §15.151 and new §15.154 and §15.155, relating to the acquisition, construction, maintenance, and operation of rail facilities, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new sections, attached to this minute order as Exhibits A, B, and C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §15.150 and §15.151 and new §15.154 and §15.155 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, B, and C on file with chief minute clerk.

(5) Chapter 25 - Traffic Operations

Amendments to §§25.40-25.43 and New §§25.44-25.47, Congestion Mitigation Facilities

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

109547
TRF

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§25.40-25.43 and new §§25.44-25.47, relating to congestion mitigation facilities to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new sections, attached to this minute order as Exhibits A, B, and C, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments and new sections 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, B, and C on file with chief minute clerk.

2.b. Final Adoption

(1) Chapter 15 - Transportation Planning and Programming

(A) Amendments to §§15.100, 15.101, and 15.105 (Border Colonia Access Program)

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Transportation Planning and Programming Division Deputy Director Wayne Dennis:

109548
TPP

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§15.100, 15.101, and 15.105, relating to the Border Colonia Access Program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§15.100, 15.101, and 15.105 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(2) Chapter 24 - Trans-Texas Corridor

New §24.12, Environmental Review and Public Involvement

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

109549
TTA

The Texas Transportation Commission (commission) finds it necessary to adopt new §24.12, relating to environmental review and public involvement for facilities on the Trans-Texas Corridor, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the new section, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that new §24.12 is adopted and is authorized for filing with the Office of the Secretary of State.

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

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

ITEM 3. Transportation Planning

a. Various Counties - Authorize the project selection process for the 2005 Statewide Preservation Program and the Statewide Mobility Program

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Deputy Director Wayne Dennis:

109550
TPP

Pursuant to Transportation Code, §201.602, the Texas Transportation Commission (commission) conducted a public hearing on November 24, 2003 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.

In order to clearly distinguish between preservation and enhancement of the state's transportation system, the Unified Transportation Program encompasses two documents. The Statewide Preservation Program (SPP) consists of funding strategies used to maintain the existing transportation system, and the Statewide Mobility Program (SMP) includes funding strategies used to enhance the transportation system.

Six participants provided oral comments at the public hearing. Written comments were accepted through January 5, 2004, but none were received. Exhibit A contains a summary of comments and responses to the oral comments received as a result of the public hearing. Exhibit B contains a summary of Unified Transportation Program categories and their current funding criteria, along with the proposed programming levels for Fiscal Year 2008.

The commission is satisfied that the proposed highway project selection process is consistent with the Texas Department of Transportation's objectives to provide reliable mobility, improved safety, responsible system preservation, streamlined project delivery and economic vitality.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to utilize the project selection process and proposed programming levels for developing the 2005 SPP and SMP under the Unified Transportation Program.

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

b. Various Counties - Authorize a variance in the manner in which federal-aid highway construction funds are distributed to parts of the state versus the manner in which they are distributed by the federal government to Texas

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Transportation Planning and Programming Division Deputy Director Wayne Dennis:

109551
TPP

Transportation Code, §222.034, requires the Texas Transportation Commission (commission) to distribute federal-aid transportation funds to various parts of the state for a funding cycle through the selection of highway projects in a manner consistent with the federal formulas that determine the amount of federal-aid the state of Texas receives, unless the commission issues a minute order or ruling that identifies the variance and provides particular justification for the variance. A distribution under §222.034 does not include deductions made for the state infrastructure bank or other federal-aid funds reallocated by the federal government.

Various metropolitan planning organizations and elected officials advised the Texas Department of Transportation on revisions to commission funding categories and formulas for the distribution of transportation funds in the Unified Transportation Program. After the receipt of public comments, the commission adopted the project selection process for the 2005 Unified Transportation Program.

Exhibit A contains an individual evaluation of each federal-aid apportionment program, including particular justification for any variance from the federal-aid apportionment formula and the proposed distribution of the transportation funds through the 2005 Unified Transportation Program.

IT IS THEREFORE ORDERED that Exhibit A shall serve as the commission's identification and justification of variances, as required by Transportation Code, Section 222.034.

Note: Exhibit A on file with chief minute clerk.

ITEM 4. Finance

a. Accept the Quarterly Investment Report as of November 30, 2003 as required by the Public Funds Investment Act, Government Code, Chapter 2256

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Finance Division Director James Bass:

109552
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, 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 (2002 Project) of the Central Texas Turnpike System. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, and Minute Order 109339, dated July 31, 2003. The commission has designated the department's Director of Finance and Deputy Director of Finance as investment officers.

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 period ending November 30, 2003, 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 chief minute clerk.

b. Accept the audited financial statements of the Central Texas Turnpike System and the annual report of financial information and operating data relating to the Central Texas Turnpike System, as required by the indenture of trust governing the obligations issued for the 2002 Project of the Central Texas Turnpike System

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Finance Division Director James Bass:

109553
FIN

Transportation Code, Chapter 361 and other applicable law authorizes the Texas Transportation Commission (commission) to issue turnpike revenue bonds, bond anticipation notes, and other obligations to finance turnpike projects on the state highway system, and to enter into trust agreements and indentures of trust governing matters relating to the issuance of such obligations.

The commission issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike System (System), a turnpike project composed initially of the SH 130 (Segments 1 through 4), SH 45 North, and Loop 1 project elements (2002 Project). The commission also authorized the execution of an indenture of trust and four supplemental indentures to secure revenue bonds and other

obligations issued for the 2002 Project. The Indenture of Trust dated July 15, 2002 (indenture) prescribes the terms, provisions and covenants related to the issuance of turnpike revenue bonds and obligations to finance a portion of the costs of the 2002 Project.

Under Section 712 of the indenture, the commission covenants to prepare or cause to be prepared, no more than 120 days after the last day of each fiscal year, a financial report of the results of operations of the System for such fiscal year. The financial report is required to be certified by a certified public accountant, and contain an audited balance sheet, an audited statement of operations, and an audited statement of cash flows for such fiscal year. Audited financial statements, contained in Exhibit B of the attached Exhibit 1, have been prepared for the fiscal year ending August 31, 2003.

Section 716 of the indenture requires the commission to provide annually, within 6 months after the end of each fiscal year, updated financial information and operating data with respect to the commission and the System of the general type included in specified sections of the final official statement relating to the Series 2002 First Tier Obligations and Series 2002 Second Tier Bond Anticipation Notes issued for the 2002 Project (annual report). The annual report is required to include a copy of the General Engineering Consultant's construction progress report for the last quarter of the fiscal year and investment earnings on funds in the Construction Fund, as defined in the indenture, for such fiscal year. The initial annual report is attached as Exhibit 1. In addition to the annual report, the commission is required to furnish the audited annual financial statements of the System prepared under Section 712 of the indenture.

IT IS THEREFORE ORDERED by the commission that the audited annual financial statements of the System, and the annual report of financial information and operating data with respect to the commission and the System, attached as Exhibit 1, are accepted.

Note: Exhibit I on file with chief minute clerk.

ITEM 5. Contracts

a. Award or Reject Highway Improvement Contracts

(1) Maintenance

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commission approved the following minute order presented by Construction Division Director Thomas Bohuslav:

109554
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 January 8 and 9, 2004.

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.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance 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 highway maintenance 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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with chief minute clerk.

(2) Highway and Building Construction

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Construction Division Director Thomas Bohuslav:

109555
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 January 8 and 9, 2004.

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.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway improvement contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the highway improvement 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, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with chief minute clerk.

b. Maintenance Contracts

(1) Kent County - RMC 6105-43-001 - Accept the withdrawal of a bid on a routine maintenance contract and award the contract to the second lowest bidder

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

109556
MNT

Project RMC 6105-43-001 (Mowing Highway Right of Way) was let on October 21, 2003, in the Abilene District. Austimpactors, L.L.C. was the low bidder but was not able to obtain the necessary bonds. The second lowest bidder, D & D Enterprises, has indicated in writing that it is willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$100,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

The memorandum attached as Exhibit A and incorporated in this order by reference contains the executive director's recommendation and written determination, required by 43 TAC §9.17(d), that the contract is eligible for award to the second lowest bidder in accordance with the law and the rules.

The commission concurs with the executive director's determinations as set forth in attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that Austimpactors, L.L.C. be allowed to withdraw its bid for the contract for Project RMC 6105-43-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6105-43-001 be and is hereby awarded to D & D Enterprises in the low bid amount of \$63,024.00.

Note: Exhibit A on file with chief minute clerk.

(2) Shackelford County - RMC 6105-47-001 - Accept the withdrawal of a bid on a routine maintenance contract and award the contract to the second lowest bidder

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

109557
MNT

Project RMC 6105-47-001 (Mowing Highway Right of Way) was let on October 21, 2003, in the Abilene District. Austimpactors, L.L.C. was the low bidder but was not able to obtain the necessary bonds. The second lowest bidder, H & A Mowing Company, has indicated in writing that it is willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$100,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

The memorandum attached as Exhibit A and incorporated in this order by reference contains the executive director's recommendation and written determination, required by 43 TAC §9.17(d), that the contract is eligible for award to the second lowest bidder in accordance with the law and the rules.

The commission concurs with the executive director's determinations as set forth in attached Exhibit A.

IT IS THEREFORE ORDERED by the commission that Austimpactors, L.L.C. be allowed to withdraw its bid for the contract for Project RMC 6105-47-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6105-47-001 be and is hereby awarded to H & A Mowing Company in the low bid amount of \$62,032.00.

Note: Exhibit A on file with chief minute clerk.

ITEM 6. Routine Minute Orders

Commissioner Nichols made a motion, seconded by Commissioner Johnson, and the commission approved, Commissioner Houghton abstained from voting, the following minute order, presented by Executive Director Michael W. Behrens :

e. Right of Way Dispositions and Donations

(3) Fort Bend County - SH 99 north of SH 90A west of Sugar Land - Authorize the sale of surplus right of way

109558
ROW

In FORT BEND COUNTY, on STATE HIGHWAY 99, the State of Texas (state), acting through the State Highway and Public Transportation Commission, now the Texas Transportation Commission (commission), acquired certain land for highway purposes needed by the Texas Department of Transportation (department) by instrument recorded in Volume 1884, Page 492, Deed Records of Fort Bend County, Texas.

A portion of the land (surplus land), shown on Exhibit A, is no longer needed for highway or public transportation purposes.

In accordance with V.T.C.A., Natural Resources Code, Section 31.0671, the commission may recommend the sale of surplus land to the Permanent School Fund if the sale is for market value.

The School Land Board has requested that the surplus land be sold to the Permanent School Fund for \$1,009,503.

The commission finds \$1,009,503 to be a fair and reasonable value of the department'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 department's rights, title and interest in the surplus land to the State of Texas, by and through the School Land Board for the use and benefit of the Permanent School Fund, for \$1,009,503; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the department'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 this recommendation and finding is subject to the School Land Board providing an acceptable survey within 120 days of this order to specifically describe and locate the surplus land, as generally shown on Exhibit A.

Note: Exhibit A on file with chief minute clerk.

Executive Director Michael W. Behrens stated that Item 6.g. Traffic Operations, Brazos County was deferred. Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commissioners approved the remaining routine minute orders.

a. Donations to the Department

(1) Travis County - Acknowledge a donation from GCC Rio Grande for a department employee's travel expenses to make a presentation at the University of New Mexico's 41st Paving and Transportation Conference in Albuquerque, NM

109559
OGC

Transportation Code, §201.206, authorizes the Texas Department of Transportation (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 90th 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.

Grupo Cementos de Chihuahua Rio Grande has donated \$706.22 for travel expenses for a department employee to make a presentation at the University of New Mexico's 41st Paving and Transportation Conference in Albuquerque, New Mexico, on January 5 and 6, 2004. This donation was accepted by the department in accordance with 43 Texas Administrative Code §1.503(d).

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation will further 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 finds that the donor is interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. The commission has determined that acceptance of the donation would nonetheless provide significant public benefits and would 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 \$706.22 for travel expenses is acknowledged.

(2) Travis County - Accept a donation from the Louisiana Transportation Research Center for a department employee's travel expenses to make a presentation at the 2004 Louisiana Transportation Engineering Conference in Baton Rouge, LA

109560
OGC

Transportation Code, §201.206, authorizes the Texas Department of Transportation (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 90th 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 Louisiana Transportation Research Center has donated \$761.76 for travel expenses for a department employee to make a presentation at the 2004 Louisiana Transportation Engineering Conference in Baton Rouge, Louisiana, on February 17 – 19, 2004.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation will further 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 finds that the donor is not interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department and that the donor is not subject to department regulation or oversight.

IT IS THEREFORE ORDERED by the commission that the donation of \$761.76 by the Louisiana Transportation Research Center 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 acceptance of the donation.

(3) Travis County - Accept a donation from Colorado State University for a department employee's travel expenses to make a presentation at the 31st Annual Rocky Mountain Asphalt Conference in Denver, CO

109561
OGC

Transportation Code, §201.206, authorizes the Texas Department of Transportation (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 90th 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.

Colorado State University has donated \$1,009.96 for travel expenses for a department employee to make a presentation at the 31st Annual Rocky Mountain Asphalt Conference in Denver, Colorado on February 19 – 21, 2004.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that acceptance of the donation is in the best interest and welfare of the traveling public.

The commission finds that the donation will further 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 finds that the donor is not interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of \$1,009.96 by Colorado State University 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 acceptance of the donation.

b. Eminent Domain Proceedings

(1) Travis and Williamson Counties - controlled access turnpike projects

109562
ROW

The Texas Transportation Commission (commission) has determined that 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 construction, expansion, enlargement, extension, or operation of the following turnpike projects in this state as a part of the state highway system (highway system), as described in this order.

The commission has determined that each of the following listed parcels of land, each being more particularly described in the exhibits attached to this order and being designated, identified, and listed by an alphabetical exhibit reference in this order under "CONTROLLED ACCESS", and such additional lesser estates or property interests described in the exhibits, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Transportation Code, §361.131, §361.132, §361.135, and §203.054, as a part of the highway system to be constructed, expanded, enlarged, extended, or operated thereon.

The commission has determined that in order to facilitate the flow of traffic and promote the public safety and welfare and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the turnpike projects to be constructed on said parcels of land are designated as controlled access highways, and on such parcels of land where there is remaining abutting private property, roads are to be built as a part of said turnpike projects whereby the right of ingress and egress to or from the remaining private property abutting on said turnpike project is to be permitted and/or denied, as designated and set forth on each of the exhibits attached to this order.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner of the parcels of land described in the attached exhibits and has been unable to agree with such owner as to the fair market value of said parcels of land 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 of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized and directed to transmit this request to the attorney general to file or cause to be filed against all owners, lienholders, and any owners of 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 following exhibits attached to this order, and such additional lesser estates or property interests as are more fully described in each of the following exhibits, save and excepting oil, gas and sulphur as provided by law:

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
A	Williamson	SH 130	0440-05-007	2
B	Williamson	SH 130	0440-05-007	6
C	Williamson	SH 130	0440-05-007	11

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>CSJ NO.</u>	<u>PARCEL</u>
D	Williamson	SH 130	0440-05-007	13
E	Williamson	SH 130	0440-05-007	27
F	Williamson	SH 130	0440-05-007	121F
G	Williamson	SH 130	0440-05-007	125
H	Travis	SH 130	0440-06-008	136
I	Travis	SH 130	0440-06-008	139
J	Travis	SH 130	0440-06-008	191

Note: Exhibits A through J on file with chief minute clerk.

(2) Various Counties - noncontrolled and controlled access highways

109563
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:

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Starr	US 83	0038-06-035	22
2	Starr	US 83	0038-06-035	23
3	Robertson	SH 6	0049-06-068	47
4	Robertson	SH 6	0049-06-068	48
5	Falls	SH 6	0049-06-068	60C
6	McLennan	US 84	0056-01-031	2
7	San Patricio	US 181	0101-04-100	10
8	Burleson	SH 21	0116-02-038	35
9	Tarrant	BU 287P	0172-01-043	60
10	Angelina	US 69	0200-01-067	26
11	McLennan	FM 933	0209-07-037	8
12	Bexar	Spur 421	0291-10-084	23
13	Bexar	Spur 421	0291-10-084	152A
14	Kerr	Spur 98	0526-01-016	7
15	Hidalgo	FM 495	0865-01-079	156
16	Johnson	FM 1718	1853-01-036	5Pts.1,2&3
17	Johnson	FM 1718	1853-01-036	42
18	Johnson	FM 1718	1853-01-036	43

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Harris	IH 10	0271-07-261	220
B	Harris	IH 10	0271-07-262	516
C	Harris	IH 10	0271-07-263	580
D	Harris	IH 10	0271-07-263	584

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
E	Harris	IH 10	0271-07-263	591
F	Harris	IH 10	0271-07-263	593
G	Harris	IH 10	0271-07-263	594
H	Lubbock	US 82	0380-01-053	337
I	Dallas	IH 30	1068-04-121	15A

Note: Exhibits 1 through 18 and A through I on file with chief minute clerk.

c. Highway Designations

(1) Fannin County - FM 273, FM 898, and FM 1396 - Redesignate a segment of FM 273 as FM 1396 from SH 78 to the intersection of FM 1396 and redesignate a segment of FM 898 as FM 273 from SH 78 to the intersection of FM 1396

109564
TPP

In FANNIN COUNTY (county), county officials have requested the redesignation of segments of FARM TO MARKET ROAD 273 and FARM TO MARKET ROAD 898 on the state highway system.

In order to facilitate the flow of traffic, promote public safety, and maintain continuity on the state highway system, the county requests the redesignations of a segment of FM 273 from SH 78 to FM 1396 as FM 1396, and a segment of FM 898 from SH 78 to FM 1396 as FM 273.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director recommends the redesignations of a segment of FM 273 as FM 1396 and a segment of FM 898 as FM 273.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that:

1. A segment of FARM TO MARKET ROAD 273 is redesignated on the state highway system as FARM TO MARKET ROAD 1396 from SH 78 eastward to the intersection of FM 273 and FM 1396, a distance of approximately 2.22 miles.
2. A segment of FARM TO MARKET ROAD 898 is redesignated on the state highway system as FARM TO MARKET ROAD 273 from SH 78 northward to the intersection of FM 1396 and FM 273, a distance of approximately 6.13 miles.

(2) Llano County - FM 1659 - Remove FM 1659 from the state highway system from SH 71 eastward and southward to another point of SH 71 and return jurisdiction and maintenance to the county

109565
TPP

In LLANO COUNTY (county), county officials have requested the removal of FARM TO MARKET ROAD 1659 from the state highway system.

The county would like to incorporate the roadway into its county road system and has requested control, jurisdiction, and maintenance of FM 1659 from SH 71 eastward and southward through Valley Spring to another point on SH 71.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended the removal of FM 1659 from the state highway system and returned to the county.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that FARM TO MARKET ROAD 1659 is removed from the state highway system from SH 71 eastward and southward through Valley Spring to another point on SH 71 and returned to the county for control, jurisdiction, and maintenance, a distance of approximately 0.60 mile.

d. Load Zones & Postings

Various Counties - Revise load restrictions on various bridges on the state highway system

109566
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 the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over those bridges described in Exhibits A and B be removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the removal of signs as appropriate, making the removal of these load limitations effective and operative.

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

e. Right of Way Dispositions and Donations

(1) Anderson County - SH 155 south of US 175 in Frankston - Authorize the sale of surplus right of way

109567
ROW

In the city of Frankston, ANDERSON COUNTY, on STATE HIGHWAY 155, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 368, Page 453, Deed Records of Anderson County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for highway or public transportation purposes.

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

Leslie J. Boles, Jr. and wife, Rebecca Boles, are the abutting landowners and have requested that the surplus land be sold to them for \$3,888.

The commission finds \$3,888 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 that the value of the surplus land is less than \$10,000. The executive director is authorized to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land for \$3,888; 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 chief minute clerk.

(2) Comal County - IH 35 south of New Braunfels - Authorize the exchange of a surplus drainage easement for needed right of way

109568
ROW

In COMAL COUNTY, on INTERSTATE HIGHWAY 35, the State of Texas (state) acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 107, Page 399, Deed Records of Comal County, Texas.

A portion of the easement (surplus easement), described in Exhibit A, is no longer needed for highway or public transportation purposes.

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.

Corbin Snow (owner) has conveyed to the state land needed for highway purposes (new right of way), described in Exhibit B. The owner is also the owner of the fee underlying the surplus easement. The owner has requested that the surplus easement be released and will pay to the state the \$11,430 difference in value between the value of the surplus easement and that of the new land, pursuant to an executed exchange agreement.

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 conveyance of the new right of way and the cash payment of \$11,430 to the state.

NOW, THEREFORE, the commission finds that the surplus easement 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 releasing the state's rights and interest in the surplus easement in exchange and as full consideration for the conveyance of the new right of way and the cash payment of \$11,430 to the state.

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

(4) Fort Bend County - US 59 west of SH 99 - Authorize the exchange of drainage easements

109569
ROW

In FORT BEND COUNTY, on US HIGHWAY 59, the State of Texas (state) acquired certain land for highway drainage purposes by instrument recorded in Volume 479, Page 273, Deed Records of Fort Bend County, Texas.

A portion of the land (surplus easement), described in Exhibit A, is no longer needed for highway or public transportation purposes.

Devtex Land, L.P. (owner) has conveyed to the state land needed for highway drainage purposes (new easement), described in Exhibit B, and desires to make a partial donation to the state of the value of the new easement.

V.T.C.A., Transportation Code, Chapter 201, Subchapter D, authorizes the Texas Department of Transportation (department) to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept by majority vote at an open meeting any gift or donation valued at more than \$500, and the commission hereby finds that acceptance of the donation will provide a significant public benefit and will not influence or reasonably appear to influence the department in the performance of its duties.

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new easement, which is \$47,255, exceeds the value of the surplus easement, which is \$44,611.

The owner has requested that the state's rights and interest in the surplus easement be released.

It is the opinion of the commission that it is proper and correct that the state release its rights and interest in the surplus easement in exchange and as full consideration for the owner's conveyance of the new easement to the state and the donation of the difference in value.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new easement and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner in accordance with Title 43, Texas Administrative Code, Chapter 1, Subchapter G.

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for highway or public transportation purposes and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument releasing all of the state's rights and interest in the surplus easement in exchange and as full consideration for the owner's donation and conveyance of the new easement to the state.

This order is contingent upon the title to the new easement being acceptable to the state.

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

(5) Lavaca County - US 77 at Auction Ring Road in Hallettsville - Authorize the sale of surplus right of way

109570
ROW

In the city of Hallettsville, LAVACA COUNTY, on US HIGHWAY 77, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 119, Page 192, Deed Records of Lavaca County, Texas.

A portion of the land (surplus land), described in Exhibit A, and the improvements are no longer needed for highway or public transportation purposes.

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

Lavaca County has requested that the surplus land and improvements be sold to the county for \$90,000.

The commission finds \$90,000 to be a fair and reasonable value of the state's rights, title and interest in the surplus land and the improvements.

NOW, THEREFORE, the commission finds that the surplus land and improvements are 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 and improvements to Lavaca County for \$90,000; 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 chief minute clerk.

(6) Parmer County - US 60 at Third Street in Bovina - Authorize the exchange of surplus right of way for needed right of way

109571
ROW

In the city of Bovina, PARMER COUNTY, on US HIGHWAY 60, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 49, Page 658, Deed Records of Parmer County, Texas.

A portion of the land (surplus right of way), described in Exhibit A, is no longer needed for highway or public transportation purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the exchange of surplus right of way for needed right of way.

AGP Grain Marketing, Inc., an Iowa corporation, (owner) has conveyed to the state a parcel needed for highway right of way (new right of way), described in Exhibit B, and has requested that the state's rights, title and interest in the surplus right of way be conveyed to owner.

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus right of way to the owner in exchange and as full consideration for the conveyance of the new right of way to the state.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for highway or public transportation purposes and recommends that the executive director execute a proper instrument conveying all of the state's rights, title and

interest in the surplus right of way to AGP Grain Marketing, Inc., an Iowa corporation, in exchange and as full consideration for the conveyance of the new right of way to the state; 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 right of way.

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

(7) Smith County - FM 16 west of FM 849 in Lindale - Accept the donation of 0.258 acres for a school bus turn lane

109572
ROW

In SMITH COUNTY, on FM 16, from 0.2 miles west of FM 849 in Lindale to FM 849. The Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Lindale Independent School District (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at \$1,800 to the department for a highway improvement project to construct a school bus turn lane.

The owner is not subject to department regulations or oversight, is not currently a party to a contested case before the department, and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, Texas Administrative Code, §1.504.

Note: Exhibit A on file with chief minute clerk.

f. Speed Zones

Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state

109573
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 speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

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, B, and C on file with chief minute clerk.

g. Traffic Operations

Brazos County - Authorize the construction of a railroad spur track crossing the SH 6 frontage roads south of FM 2154, to be funded 100 percent by the Texas Municipal Power Authority

This item was deferred.

OPEN COMMENT PERIOD - The commission received comments from Kathleen Trenchard, President, Scenic San Antonio, concerning trees and billboards in the San Antonio area; and Manuel Benavides, President, BPB Consulting, regarding commuter rail.

ITEM 7. Executive Session Pursuant to Government Code, Chapter 551

a. Section 551.071 - Consultation with and advice from legal counsel

b. Section 551.072 - Discussion of real property purchase, exchange, lease, donations

c. Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

At 12:55 p.m. the chair recessed the regular meeting for executive session

At 1:22 p.m. chairperson Williamson reconvened the meeting and stated that no action was taken during the executive session.

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commissioners approved adjourning the meeting. The regular meeting of the Texas Transportation Commission adjourned at 1:23 p.m.

APPROVED:

Ric Williamson, 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 January 29, 2004, in San Antonio, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation