

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on October 28, 2004, in Austin, Texas. The meeting opened at 9:09 a.m. with the following commissioners present:

Texas Transportation Commission:

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

Administrative Staff:

Michael W. Behrens, Executive Director
 Steven E. Simmons, Deputy Executive Director
 Richard Monroe, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director
 Dee Hernandez, Chief Minute Clerk

Registration sheets listing others in attendance are on file with the Texas Department of Transportation'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 10:51 a.m. on October 20, 2004, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 2. AVIATION

a. Various Counties - Various Sponsors - Approve funding for airport improvement projects at various locations

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

109828
 AVN

The Texas Department of Transportation (department) is authorized under Transportation Code, Chapter 21 and Chapter 22, 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. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Friday, September 24, 2004, a public hearing was held and no comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$4,116,444.

Exhibit A on file with minute order clerk.

ITEM 1. Approval of Minutes of the September 30, 2004, regular meeting of the Texas Transportation Commission

Commissioner Houghton made a motion, seconded by Commissioner Nichols, and the commission approved the minutes of the September 30, 2004, regular meeting of the Texas Transportation Commission.

ITEM 3. DISCUSSION ITEM

Commission recommendations to the Texas Legislature regarding potential statutory changes that would improve the operations of the department

The discussion item began with comments from Director of Legislative Affairs Office Coby Chase.

ITEM 4. REGIONAL MOBILITY AUTHORITY

Smith and Gregg Counties - Authorize creation of a regional mobility authority

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

109829
TTA

Pursuant to Chapter 370 of the Transportation Code, and 43 TAC Chapter 26 (RMA rules), Smith and Gregg Counties (counties) petitioned the Texas Transportation Commission (commission) for authorization to form a Regional Mobility Authority (RMA). The petition was filed on June 23, 2004.

By letter dated July 30, 2004, the Texas Department of Transportation (department) notified the county that the petition met the requirements of §26.11 of the RMA rules.

The petition identifies the continuation and completion of Loop 49 in Smith County as a four-lane divided highway, including an eastern corridor to extend into Gregg County, as the potential candidate project for development by the RMA. When completed, Loop 49 will span approximately 45-50 miles (depending on the eastern route) and link three separate NHS/Truck System highways (US 69, SH 31, IH 20). This project will improve traffic flow throughout the region and eliminate the need to make connection through Tyler's urban center.

The board of directors of the RMA, as set forth in the petition, will be composed of seven members, with six directors appointed by the Smith and Gregg Counties Commissioners Court, and one director, who will serve as chairperson, appointed by the Governor.

On September 7, 2004, the department conducted a public hearing in Smith County and on September 8, 2004, the department conducted a public hearing in Gregg County, pursuant to §26.12 of the RMA rules, to receive public comment on the proposed formation of the RMA. An additional public hearing was held on October 7, 2004 in Smith County. Notice of the public hearing was published in the *Texas Register* and in a newspaper of general circulation in the region.

At the public hearings, the majority of individuals spoke in favor of the creation of the RMA. Five individuals submitted written comments, four in favor of and one opposing the development of toll roads.

The commission finds that the creation of the RMA has sufficient public support. The commission bases this finding on: (1) the support indicated at the public hearing; (2) resolutions of support from the Commissioners Court of Smith County and the Commissioners Court of Gregg County; and (3) joint resolution of support from the City of Tyler and the City of Longview.

The commission finds that creation of the RMA will result in direct benefits to the state, local governments, and the traveling public, and will improve the efficiency of the state's transportation systems. The RMA will benefit the state by constructing needed roadway projects, such as the network identified in the county's petition as the county's potential candidate project. The RMA will benefit local governments by increasing local control over transportation planning and through additional transportation projects that may be funded through surplus revenue earned by the RMA. The traveling public will also benefit through improved mobility and traffic safety throughout the region encompassed by the RMA. The RMA will improve the efficiency of the state's transportation systems through the construction of the potential candidate project, which will enhance mobility and safety within these segments of the state highway system and through the development and financing of additional projects in the future.

The commission finds that the potential candidate project is: consistent with the approved Texas Transportation Plan; included in the Statewide Transportation Improvement Program; and included in the approved plan of the Metropolitan Planning Organization. Subject to commission approval of the project under §26.31 of the RMA rules, the commission also finds that the project will benefit the traveling public.

IT IS THEREFORE ORDERED that the commission authorizes the creation of the RMA.

IT IS FURTHER ORDERED that the potential candidate project to be developed, maintained, and operated by the RMA shall be the facility identified above. This order does not constitute final commission approval of the project, which must be obtained pursuant to Chapter 370 of the Transportation Code and the applicable provisions of the RMA rules.

IT IS FURTHER ORDERED that the initial board of directors shall be composed of seven members, with six members appointed by the Smith and Gregg Counties Commissioners Court, two of which will specifically represent the interests of the urbanized areas of each county, and the presiding officer appointed by the Governor.

The commission received comments from Smith County Judge Becky Dempsey; resident of Smith County, Sue Cooper; and Chairman, Tyler Area Chamber of Commerce, Jeff Austin III.

ITEM 2. DELEGATION

TEXARKANA METROPOLITAN PLANNING ORGANIZATION

Discuss the improvements to the I-30 corridor through the Texarkana urban area

The commission received comments from Bowie County Judge James Carlow; Senator Kevin Eltife; and Texarkana city manager, George Shackelford.

ITEM 7. TRANSPORTATION PLANNING

Various Counties - Concur with the Texas Metropolitan Mobility Plans for metropolitan areas

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

109830
TPP

In March, 2003, Governor Rick Perry asked the Texas Department of Transportation (department) to work with local urban leaders to develop a long-range plan focused on relieving congestion in the metropolitan areas of Texas. "The Texas Metropolitan Mobility Plan: Breaking the Gridlock" (report), outlines planning activities, funding strategies, and an action plan for the department together with the eight metropolitan transportation management areas to follow and provide multimodal transportation projects to improve the mobility and safety of Texans living and working in the metropolitan areas.

The Texas Transportation Commission (commission) adopted the report by Minute Order 109370, dated August 28, 2003.

One of the actions in the report calls for the development and implementation of the Texas Metropolitan Mobility Plan (TMMP). The TMMP focuses on the mobility needs of each area in order to address the funding shortfalls that exist between the total resources available to each region through traditional funding sources, and the amount needed to reduce congestion to locally acceptable levels. The TMMP balances the goals of regions through a diversified approach of short and long-range modal strategies.

The process that drives the TMMP was developed through a joint coordinated effort and was based on the guidance issued by the department. The TMMP includes the following eight planning goals which serve as a guide: (1) relieve congestion; (2) improve safety; (3) improve air quality; (4) improve quality of life; (5) improve

opportunities for enhanced economic development; (6) enhance infrastructure maintenance; (7) streamline project delivery; and (8) achieve department strategic goals.

The TMMP shown in Exhibit A is a culmination of locally conceived, comprehensive regional mobility plans that will be used to improve traffic flow by utilizing all modes of transportation.

IT IS THEREFORE ORDERED that the commission accepts and concurs with the Texas Metropolitan Mobility Plan shown in Exhibit A and encourages continued partnerships with local entities in the eight metropolitan areas.

Note: Exhibit A on file with minute order clerk.

The commission received comments from Senator Gonzalo Barrientos; Mayor of Austin, Will Wynn; Travis County Commissioner Karen Sonleitner; Randall Stephens; Travis County Libertarian Party member, Vincent May; Theresa Woodsong; Roger Baker; Travis County Libertarian Party candidate, Rob Fritsche; candidate for State Representative, Karen Felthouser; Communications Director, Save Our Springs Alliance, Colin Clark; PETPAC, Sal Costello; and Chris Baker.

ITEM 9. DELEGATION

GULF COAST REGIONAL MOBILITY PARTNERS

Discussion on highest priority regional mobility projects in the Houston-Galveston area

The commission received comments from Harris County Judge Robert Eckels; and Chairman, Gulf Coast Regional Mobility Partners, Jim Royer.

ITEM 5. DISCUSSION ITEM

Follow-up report regarding transit operator interest in financing alternatives, including State Infrastructure Bank and toll credits for public transportation projects

The discussion item began with comments from Public Transportation Division Director Sue Bryant. The commission also received comments from General Counsel, Texas Transit Association, Sam Russell.

ITEM 8. DISCUSSION ITEMS

a. Discussion of the types of safety bond projects eligible for funding with the proceeds of bonds and other public securities issued under Transportation Code, §222.003 and criteria for selecting projects for funding

The discussion item began with comments from Traffic Operations Division Director Carlos Lopez.

b. Interoperability of toll roads in Texas

The discussion item began with comments from Texas Turnpike Authority Division Director Phil Russell.

ITEM 10. PUBLIC TRANSPORTATION

a. Various Counties - Award Trailer to Central Texas Rural Transit District

Commissioner Johnson made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Public Transportation Division Director Sue Bryant:

109831
PTN

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

Transportation Code, Chapter 456 authorizes the Texas Transportation Commission (commission) to administer public transportation programs.

The commission desires to award a 2001 trailer (Vehicle Identification Number: 5BKUF2024ZT408069) to Central Texas Rural Transit District (CTRTD) to provide equipment needed for the provision of public transportation service in the CTRTD's service area. This trailer was repossessed from People for Progress, Inc.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to transfer title of the trailer as listed above. The executive director or the director's designee is also authorized to notify the recipient in writing and enter into any necessary contracts and agreements with the local recipient.

b. Various Counties - Reallocation of §5310, Elderly and Persons with Disabilities Program, Funds for the Houston and Tyler Districts

Commissioner Nichols made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Public Transportation Division Director Sue Bryant:

109832
PTN

Transportation Code, Chapter 455, assigns a broad spectrum of public transportation roles and missions to the Texas Department of Transportation and Transportation Code, Chapter 456, authorizes the Texas Transportation Commission (commission) to administer funds appropriated for public transportation.

On March 25, 2004, Minute Order 109612 was approved by the commission for the FY 2004 program of projects for the §5310 elderly and persons with disabilities grant program, in accordance with the formula prescribed in 43 TAC §31.31(g) and other requirements of the Federal Transit Act. Two districts' programs need to be revised to reflect the correct funding amounts:

<u>Houston District</u>	
Colorado Valley Transit	\$ 47,500
Fort Bend County Judge's Office	\$ 257,625
Gulf Coast Community Services	\$ 134,552
Montgomery County Committee On Aging	\$ 196,400
The Gulf Coast Center	\$ 270,000
Total	<u>\$ 906,077</u>

Tyler District

City of Tyler	\$ 45,000
East Texas Council of Governments	\$ 159,917
Total	<u>\$ 204,917</u>

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the allocation of these §5310 elderly and persons with disabilities grant program funds as identified above, notify the entities in writing, and enter into the necessary contracts for the FY 2004 program of projects.

ITEM 11. 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 1 - Management and Chapter 9 - Contract Management

Amendments to §§1.21-1.24, §1.26, and §1.30, (Procedures in Contested Cases) and §9.2 (Contract Claim Procedures)

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

109833
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§1.21-1.24, §1.26 and §1.30 concerning procedures in contested cases, and §9.2, concerning contract claim procedure, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and proposed amendments, attached to this minute order as Exhibits A - 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 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 D on file with minute order clerk.

(2) Chapter 9 - Contract Management

Amendments to §§9.30-9.39, §9.41 and §9.42, the Repeal of §9.40 and §9.43, and New §9.43, Contracting for Architectural, Engineering, and Surveying Services

Commissioner Nichols made a motion, seconded by Commissioner Johnson, and the commission approved the following minute order presented by Design Division Director Mark Marek:

109834
DES

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§9.30-9.39, 9.41, and 9.42, the repeal of §9.40 and §9.43, and new §9.43, relating to contracting for architectural, engineering, and surveying services, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, repeals, and new section, attached to this minute order as Exhibits A - 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, repeals, and new section 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 D on file with minute order clerk.

(3) Chapter 21 - Right of Way

Repeal of §§21.31-21.51 and New §21.31-21.41, Utility Accommodation

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

109835
ROW

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §§21.31-21.51 and simultaneously propose new §21.31-21.41, relating to utility accommodation, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - 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 repeal of §§21.31-21.51 and new §21.31-21.41 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.

(4) Chapter 27 - Toll Projects

Amendments to §27.32, Preliminary Studies (Private Toll Roads), Amendments to §27.43 and §27.44, Transfer of Existing Public Highways (Regional Tollway Authorities), Amendments to §27.72 and §27.73, Project Approval (County Toll Roads)

This item was deferred.

b. Final Adoption**(1) Chapter 3 - Public Information**

Amendments to §3.12, Public Access, and §3.13, Cost of Copies of Official Records

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

109836
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §3.12 and §3.13, relating to access to official records, 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 §3.12 and §3.13 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(2) Chapter 9 - Contract Management

Amendments to §§9.102-9.105, Repeal of §§9.106-9.110, and New §9.106, Contractor Sanction

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

109837
CST

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§9.102-9.105, the repeal of §§9.106-9.110, and new §9.106, relating to contractor sanctions, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals, and new section, attached to this minute order as Exhibits A - 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, repeals, and new section are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(3) Chapter 21 - Right of Way

Amendments to §21.441, Permit for Erection of Off-Premise Sign

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

109838
ROW

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.441, relating to permit for erection of off-premise sign, 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 §21.441 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

ITEM 12. TURNPIKE PROJECTS

a. Tarrant and Dallas Counties - Authorize publication of a Request for Detailed Proposals for development of the proposed tolled (managed) lanes along I-820 and SH 183 from I-35W to I-35E in Tarrant and Dallas counties, as well as portions of I-35W, I-35E, and other facilities to the extent necessary for connectivity and financing. Request for competing Proposals and Qualifications relates to unsolicited proposal from Managed Lanes, LP (MLLP), a subsidiary of Peter Kiewit Sons, Inc.

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

109839
TTA

Subchapter I, Chapter 361, Transportation Code prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement with a private entity that provides for the design, construction, financing, maintenance, or operation of a turnpike project on the state highway system.

In response to an unsolicited proposal received from Managed Lanes, LP, a subsidiary of Peter Kiewit Sons', Inc., the Texas Transportation Commission (commission) in Minute Order 109646, dated April 29, 2004, authorized the department to publish a request for competing proposals and qualifications (RFPQ) for the development of proposed tolled managed lanes along I-820 and SH 183 from I-35W to I-35E in Dallas and Tarrant counties, as well as portions of I-35W, I-35E, and other facilities to the extent necessary for connectivity and financing (project).

The department issued the RFPQ on May 21, 2004, and received four proposal and qualifications submittals that were evaluated in accordance with the evaluation process and using the evaluation criteria prescribed in the RFPQ. Based on this evaluation, the department determined that (1) Managed Lanes, LP, (2) Trinity River Transportation Partners (3) Cintra, Concesiones de Infraestructuras de Transporte, S.A., and (4) Trinity River Constructors, were qualified to be on the short list of proposers that will be requested to submit detailed proposals for the project.

Development of the project is a crucial element in responding to severe traffic bottlenecks that exist in the Dallas/Fort Worth Metroplex, particularly along the I-820/SH 183 corridor. There exists the potential for expediting the completion of this project through the development of a public/private partnership and the employment of innovative methods such as those described in the proposal and qualifications submittals.

IT IS THEREFORE ORDERED by the commission that the department is authorized to issue to those proposers qualified for the short list a request for detailed proposals to potentially, as determined by the department, develop, design, construct, finance, maintain and operate the proposed tolled managed lanes along I-820 and SH 183 from I-35W to I-35E in Dallas and Tarrant counties, as well as other facilities to the extent necessary for connectivity and financing.

b. Travis and Williamson Counties - Accept the General Engineering Consultant quarterly progress report for the Central Texas Turnpike Project

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

109840
TTA

In TRAVIS and WILLIAMSON COUNTIES, State Highway 130 has been designated a turnpike project and a controlled access state highway from Interstate Highway 35 north of Georgetown to a southern terminus at US Highway 183.

In TRAVIS and WILLIAMSON COUNTIES, State Highway 45 has been designated a turnpike 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 turnpike 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 45.

The Texas Transportation Commission (commission) has issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike Project, a turnpike project composed of the SH 130, SH 45, and Loop 1 project elements (2002 Project), 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 2004, 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.

The commission received comments from Chris Baker.

ITEM 13. FINANCE

a. Various Counties - Accept the Quarterly Investment Report as of August 31, 2004 as requested 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:

109841
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, Minute Order 109339, dated July 31, 2003, and Minute Order 109732, dated July 29, 2004. 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 August 31, 2004, 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.

b. Parker County - Authorize the executive director to negotiate a pass-through toll agreement with the City of Weatherford for projects to improve SH 171/FM 51, I-20 frontage roads, overpass at I-20 and Holland Lake Road, and FM 2552

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the following minute order presented by Finance Division Director James Bass. Chairman Williamson abstained from voting.

109842
FIN

On September 2, 2004, the City of Weatherford (city) submitted a proposal for a pass-through toll agreement. The city's proposal, among other things, provided for the city to construct improvements to SH 171/FM 51, FM 2552, eastbound and southbound frontage roads from South Bowie Street to FM 1884, overpass at Holland Lake Road, and construction of SH 171/FM 51 north of I-20.

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.

Section 5.54 of the commission's rules provide that the commission may authorize the department's executive director or his designee to negotiate a pass-through toll agreement with a public entity after considering the following factors: (1) financial benefits to the state; (2) local public support for the projects; (3) whether the projects are in the department's Unified Transportation Program (UTP); (4) the extent to which the projects will relieve congestion on the state highway system; (5) the potential benefits to regional air quality that may be derived from the projects; (6) compatibility of the proposed projects with existing and planned facilities; and (7) the entity's experience in developing highway projects.

After considering factors described by §5.54, the commission determines that: (1) the proposal has the potential to provide financial benefits to the state, subject to the outcome of the negotiations with the county; (2) the county's proposal indicated broad support for the projects and did not identify any opposition; (3) none of the projects identified in the proposal are in the current UTP, therefore future funding sources should be identified; (4) the projects identified in the proposal demonstrate the potential to relieve congestion on the state highway system, and the extent of the relief to the system will be quantified and documented in consultation with the North Texas Central Council of Governments (NCTCOG); (5) potential benefits to regional air quality must be quantified and documented by NCTCOG 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 county lacks significant experience developing highway projects, but has delegated responsibility to a Program Manager that has extensive experience in roadway conceptual planning, preliminary engineering, and design and construction support services for highway projects.

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

IT IS THEREFORE ORDERED that the executive director or his designee is authorized to negotiate a pass-through toll agreement with the City of Weatherford. 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.

ITEM 14. STATE INFRASTRUCTURE BANK

Hays County - City of Kyle - Grant final approval of an application from the City of Kyle to borrow \$14 million from the State Infrastructure Bank to pay for the construction of FM 1626 from FM 2770 to I-35 and replace existing two-lane bridge with a six-lane bridge in Kyle

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

109843
FIN

In accordance with 43 TAC §6.23, the City of Kyle (city) has submitted an application to borrow \$14 million to pay for the expansion of FM 1626 from FM 2770 to I-35 in Kyle. FM 1626 is on the state highway system and its expansion will be partially funded with Category 11, District Discretionary and Category 1, Preventive Maintenance and Rehabilitation funds. The project will improve the safety and efficiency of the State of Texas' (state) transportation system. This indicates that there is a transportation need for and anticipated public benefit from the proposed project. The project is on the state highway system, is eligible for federal funding as a functionally classified rural major collector, is consistent with the Texas Transportation Plan, but is not included in the latest version of the Statewide Transportation Improvement Program.

The city has represented that the loan will be secured by a combination of Tax Increment Reinvestment Zone (TIRZ) revenue and city property taxes and has submitted evidence of a Standard & Poor's BBB+ bond rating. The present and projected financial condition of the SIB is sufficient to cover this request.

On May 18, 2004, the city council passed a resolution authorizing submission of this application to the SIB. This resolution indicates the official written approval of the projects by the governing body of the city and demonstrates local public support.

The proposed project and loan are in conformity with the purpose of the SIB and will expand the availability of funding for transportation projects and reduce direct state costs.

Section 350 of the National Highway System Designation Act of 1995 (Public Law No. 104-59) authorized states to establish a State Infrastructure Bank (SIB) for the purpose of making loans and providing other financial assistance to public and private entities. Transportation Code, Chapter 222, Subchapter D, created a SIB within the Texas Department of Transportation (department). The Texas Transportation Commission (commission) has adopted administrative rules implementing that subchapter and establishing eligibility criteria for an entity applying for financial assistance from the SIB. These rules are codified as Title 43, Texas Administrative Code, Chapter 6.

In accordance with 43 TAC §6.32(d), a study of the social, economical, and environmental impact of the projects, consistent with the National Environmental Policy Act (42 U.S.C. §4321 et seq.), and in compliance with the requirements of the department's environmental rules, was conducted as part of the department's environmental assessment of the projects, resulting in findings of no significant impact.

In accordance with 43 TAC §6.31, the department has reviewed and analyzed the application, finds the application to be in compliance with the requirements of 43 TAC, Chapter 6, and recommends that the commission grant final approval of the application pursuant to 43 TAC §6.32.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the City of Kyle meets the requirements of 43 TAC §6.32(e) and, in accordance with that section, the commission grants final approval of the application to borrow \$14 million from the SIB to be repaid over a period of 20 years at 4.55 percent interest per annum, with no principal and interest payments during first two years, and directs the executive director to implement the actions authorized and required by that section.

ITEM 15. CONTRACTS

a. Award or Reject Highway Improvement Contracts

(1) Maintenance

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

109844
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 14 and 15, 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 minute order clerk.

(2) Highway and Building Construction

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order, rejecting Project No. CPM 100-8-82 in Bee County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

109845
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 14 and 15, 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 minute order clerk.

b. Various Counties - Approve award of \$750,000 engineering services to Halff Associates, Inc.

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Deputy Executive Director Steven Simmons:

109846
OGC

Government Code, §669.003, provides that a state agency may not enter into a contract with an entity that employs a person who was the executive head of the agency within the previous four years unless the governing board of the agency approves the contract in an open meeting.

Halff Associates, Inc. (Halff) employs Charles W. Heald, the former executive director of the Texas Department of Transportation (department). Mr. Heald served as the department's executive director within the previous four years. The department advertised for hydrology and hydraulic studies at various locations in the Fort Worth District, and Halff was chosen to be a provider in accordance with the competitive selection procedures set forth in the Professional Services Procurement Act, Government Code, Chapter 2254, and 43 Texas Administrative Code §§9.30 et seq. The \$750,000 contract is for engineering services to be performed in the counties of Erath, Hood, Jack, Johnson, Palo Pinto, Parker, Somervell, Tarrant, and Wise. Under Government Code, §669.003, the contract may not be entered unless it is approved by the Texas Transportation Commission (commission).

IT IS THEREFORE ORDERED that the commission approves the above contract and authorizes the executive director or the executive director's designee to take all necessary steps to execute the contract.

c. Contract Claim

Hudspeth County - Project IM 10-1(232) - Approve a claim settlement with Dan Williams Company for additional compensation

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Deputy Executive Director Steven Simmons:

109847
AEO

In HUDSPETH COUNTY on INTERSTATE HIGHWAY 10, Dan Williams Company (contractor) was awarded construction project IM 10-1(232) in the amount of \$29,924,843.

The contractor filed a claim against the Texas Department of Transportation (department) for additional compensation in an unspecified amount for Type C hot mix used to construct temporary ramps and detours. Using the quantities of Type C hot mix indicated on the plans (10,889 tons) and applying the unit price for this item, the district estimated the claim at \$413,782. The contractor claimed the way the quantity information was presented on the plans led them to believe the Type C hot mix placed on the Class 2 detours was going to be paid for separately. The contractor's position is that the way the quantity information was presented in the plans takes precedence over the words of the specification and their assumption regarding the source of the quantities should be accepted.

Pursuant to Title 43, Texas Administrative Code, §9.2, the Contract Claim Committee met informally with the contractor, and the claim was successfully resolved.

The agreed resolution requires that the contractor be paid the sum of \$85,000 in full and final satisfaction of the claim. This consideration shall be payable only after the department is in receipt of a duly authorized and completed Settlement Agreement and Release containing a specific promise by the contractor to release and hold harmless the State of Texas, its officers, and employees with regard to all claims and disputes arising from the contract.

IT IS THEREFORE ORDERED by the Texas Transportation Commission (commission) that the sum of \$85,000 is authorized to be expended from funds under the control and jurisdiction of the commission, and the executive director is directed to take the necessary steps to secure a warrant in this amount payable to the contractor.

ITEM 16. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved the following minute orders, presented by Executive Director Michael W. Behrens.

a. Donations to the Department

(1) Fort Bend County - Consider a donation from the Fort Bend Regional Landfill, L.P. for funding of a portion of an existing rehabilitation project on FM 1994

109848
OGC

Fort Bend Regional Landfill, L.P. (FBRL) proposes to donate to the Texas Department of Transportation (department) a cash donation of \$200,000 toward an existing rehabilitation project on FM 1994.

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

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 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 also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$200,000 by FBRL 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.

(2) Tyler County - Consider a donation from Wal-Mart Stores, Texas, L.P. for plans, specifications, and estimates and for the labor for installing a warranted traffic signal at a Super Wal-Mart shopping center at US 69 at Cobb Mill Road in Woodville

109849
OGC

This minute order considers an estimated \$100,000 donation by Wal-Mart Stores Texas, L.P. (WST) to the Texas Department of Transportation (department) for engineering and installation costs for a new traffic signal at a proposed Super Wal-Mart shopping center located at the intersection of US 69 and Cobb Mill Road in Woodville.

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

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 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 also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$100,000 by WST 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. Donation and Exchange of Real Property

(1) Brewster County - Consider a donation from Lajitas Real Estate, Inc. for sufficient funding, property, and services to provide for land acquisition and exchange of right of way, utility relocation, environmental assessments, plans, specifications, and estimates, and construction engineering necessary for relocation of approximately 1.2 mile length of FM 170

109850
OGC

Lajitas Real Estate, Inc. (Lajitas) would like to donate sufficient funding, property and services to provide for land acquisition and exchange of right of way; utility relocation; environmental assessments; schematics; plans, specifications, and estimates; and construction and construction engineering necessary for relocation of an approximately 1.2 mile length of highway designated as FM 170 in Brewster County, Texas described in Exhibit A (existing and proposed realignment). The estimated donation is between \$300,000 and \$600,000.

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

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.

In accordance with Transportation Code, Chapter 202, Subchapter B, the commission may recommend the exchange of surplus land as partial or full consideration for other land needed by the state for highway purposes.

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 also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

It is the opinion of the commission that upon completion and acceptance of the new right of way, the existing right of way will no longer be needed for highway purposes, will be surplus, and should be removed from the state highway system. It would then be proper and correct that the state convey and release its rights, title, and interest in the surplus land, title, and interest to Lajitas in exchange and as consideration for the conveyance of the new right of way to the state.

IT IS THEREFORE ORDERED by the commission that the donation by Lajitas 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 and completion of the exchange.

IT IS FURTHER ORDERED by the commission that the executive director is authorized to tender the following proposal to Lajitas:

Provided that Lajitas conveys the new right of way to the state; pays the cash difference between the value of the existing right of way and the value of the new right of way, if any; and, pay the difference between the current construction project and the proposed realignment, if any; then the commission will recommend the conveyance of the existing right of way in accordance with Transportation Code, Chapter 202, Subchapter B.

FURTHER, in consideration of the foregoing premises and in accordance with Transportation Code, Chapter 202, Subchapter B, the commission hereby finds that if and when Lajitas satisfactorily complies with all the conditions of this minute order, the designation of the surplus land as part of the state highway system is then cancelled and 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 proper instruments conveying and releasing all of the state's rights, title and interest in the surplus land, title and interest to Lajitas in exchange and as consideration for the conveyance to the state of the new right of way.

Note: Exhibit A on file with minute order clerk.

(2) Bastrop and Lee Counties - Consider a donation from the The Aluminum Company of America (Alcoa, Inc.) for sufficient funding, property and services to provide for land acquisition and exchange of right of way, utility relocation, environmental assessments, plans, specifications, and estimates, and construction and construction engineering necessary to relocation portions of FM 619 and FM 696

This item was deferred.

c. Eminent Domain Proceedings

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

109851
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	89 & 89E
B	Williamson	SH 130	0440-05-007	90
C	Williamson	SH 130	0440-05-007	121B
D	Travis	SH 130	0440-06-008	182
E	Travis	SH 130	0440-06-008	225
F	Travis	SH 130	0440-06-008	234
G	Travis	SH 130	0440-06-008	321
H	Travis	SH 130	0440-06-008	322
I	Travis	SH 130	0440-06-008	323
J	Travis	SH 130	0440-06-008	338
K	Travis	SH 130	0440-06-008	345, pts 1&2
L	Travis	SH 130	0440-06-008	351
M	Travis	SH 130	0440-06-008	353
N	Travis	SH 130	0440-06-008	363
O	Travis	SH 130	0440-06-008	1216
P	Travis	SH 130	0440-06-008	1217
Q	Travis	SH 130	0440-06-008	1218

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

(2) Various Counties - noncontrolled and controlled access highways

109852
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	Robertson	SH 6	0049-06-068	7 Pts. 1&2
2	Robertson	SH 6	0049-06-068	11 Pts. 1&2
3	Robertson	SH 6	0049-06-068	12
4	Henderson	US 175	0197-06-038	15
5	Henderson	US 175	0197-06-038	19
6	Bexar	US 281	0253-04-126	1
7	Bexar	SP 421	0291-10-084	33
8	Houston	SH 7	0336-01-043	1
9	Lavaca	US 77	0370-02-020	8
10	Lavaca	US 77	0370-02-020	10
11	Smith	FM 346	0492-04-026	33 & 33E
12	Limestone	FM 937	1191-04-019	29E
13	Hunt	SH 276	1290-05-012	30
14	Burnet	RM 2341	2206-01-012	3
15	Burnet	RM 2341	2206-01-012	7

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Bell	IH 35	0015-14-117	4
B	Bell	IH 35	0015-14-117	5
C	Bell	IH 35	0015-14-117	8
D	Bell	IH 35	0015-14-117	11
E	Bell	IH 35	0015-14-117	12
F	Bell	IH 35	0015-14-117	13
G	Bell	IH 35	0015-14-117	19
H	Bell	IH 35	0015-14-117	20
I	Bell	IH 35	0015-14-117	24
J	Bell	IH 35	0015-14-117	25
K	Bell	IH 35	0015-14-117	29
L	Bell	IH 35	0015-14-117	35
M	Bell	IH 35	0015-14-117	40
N	Harris	IH 10	0271-07-262	511
O	Harris	IH 10	0271-07-262	518
P	Harris	IH 10	0271-07-264	106
Q	Harris	IH 10	0271-07-264	108
R	Harris	IH 10	0271-07-264	136&136TE
S	Harris	IH 10	0271-07-264	140&140TE
T	Harris	IH 10	0271-07-265	675

Note: Exhibits 1 through 15 and A through T on file with minute order clerk.

d. Highway Designations**(1) Hale County - Extend the designation of FM 3466 along a new location in the city of Plainview**109853
TPP

In HALE COUNTY, in the city of Plainview (city), city officials have requested that FARM TO MARKET ROAD 3466 be extended along a new location. In order to facilitate the flow of traffic, promote public safety, and maintain continuity within the state highway system, the city has requested that the new extension be from its present terminus at Business Interstate 27 U eastward to Farm to Market Road 400, a distance of approximately 0.5 miles, in the city of Plainview.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that FM 3466 be extended from BI 27 U to FM 400 in Plainview.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that FARM TO MARKET ROAD 3466 is extended on the state highway system from its present terminus at BI 27 U eastward to FM 400 in the city of Plainview in Hale County.

(2) Hood County - Extend the designation of FM 4 along a new location and return control, jurisdiction and maintenance along a segment of the former location to Hood County and remaining segment to the City of Granbury109854
TPP

In HOOD COUNTY, (county) in the city of Granbury (city), a new location of FARM TO MARKET ROAD 4 was recently completed and opened to traffic. The county and city have requested the removal of the former location of FM 4 from the state highway system.

The county and city have requested control, jurisdiction, and maintenance of the former location of FM 4 from 2.4 miles east of the intersection of US 377 to US 377.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that the former location of FM 4 be removed from the state highway system and returned to the county and city.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the former location of FARM TO MARKET ROAD 4 is removed from the state highway system from 2.4 miles east of the intersection of US 377 to US 377 and returned to the county and city for control, jurisdiction, and maintenance, a distance of approximately 2.4 miles.

e. Load Zones & Postings**Various Counties - Revise load restrictions on state highway system:****(1) Roadways**109855
CST

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

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

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

It has been determined from this investigation that the loads on certain sections of roads 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 transported or moved on, over or upon those roads as described in Exhibit A be fixed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the fixing, revisions or removal of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) Bridges

109856
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 the bridge described in Exhibit A, be placed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

f. Right of Way Dispositions and Donations**(1) Collin County - FM 2934 at Frisco Street in Frisco - Consider the sale of surplus right of way**109857
ROW

In the city of Frisco, COLLIN COUNTY, on FARM TO MARKET ROAD 2934, the State of Texas (state) acquired certain land for a state highway purpose by instruments recorded in Volume 700, Page 613; Volume 705, Page 327; Volume 703, Page 59; Volume 700, Page 610; and Volume 719, Page 94, Collin County Deed Records.

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, Section 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land to a governmental entity with the authority to condemn the property.

The City of Frisco has requested that the surplus land be sold to the city for \$406,405.

The commission finds \$406,405 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the City of Frisco, Texas, for \$406,405; 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) Johnson County - US 67 at County Road 1216 northwest of Cleburne - Consider the exchange of right of way109858
ROW

In JOHNSON COUNTY, on US HIGHWAY 67, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded in Volume 1550, Page 689, 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 partial or full consideration for other land needed for a state highway purpose.

Land needed for a state highway purpose (new land), described in Exhibit B, has been conveyed to the state by Ruth Anne Erwin - an undivided one-half interest, and Raymond L. Erwin and Barbara Jan Erwin - an undivided one-half interest (Erwins), who are also owners of the land abutting the surplus land. The Erwins have requested that the surplus land be conveyed to them in exchange and as consideration for 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 Erwins in exchange and as consideration for the conveyance of the new land 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 Ruth Anne Erwin - an undivided one-half interest, and Raymond L. Erwin and Barbara Jan Erwin - an undivided one-half interest, in exchange and as consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles 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: Exhibit A on file with minute order clerk.

(3) Smith County - SH 64, 0.24 mile west of Loop 323 west of Tyler - Consider the exchange of right of way

109859
ROW

In the city of Tyler, SMITH COUNTY, on STATE HIGHWAY 64, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded in Volume 328, Page 557, Smith County Land Records.

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.

Land needed for a state highway purpose (new land), described in Exhibit B, has been conveyed to the state by MSJ Properties, Ltd.; Cherokee of Virginia, L.L.C.; Tradd Street Limited Partnership; Edward G.R. Bennett and Adelaida U. Bennett; Craig M. Bennett, Jr. and Sandra S. Bennett; and Edward G. Lilly, Jr. (owners), who are also the abutting landowners of the surplus land. The owners have requested that the surplus land be conveyed to them and will pay to the state the \$248,652 difference in value between the value of the surplus land 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 convey the surplus land to the owners in exchange and as consideration for the conveyance of the new land and the cash payment of \$248,652 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 MSJ Properties, Ltd.; Cherokee of Virginia, L.L.C.; Tradd Street Limited Partnership; Edward G.R. Bennett and Adelaida U. Bennett; Craig M. Bennett, Jr. and Sandra S. Bennett; and Edward G. Lilly, Jr., in exchange and as consideration for the conveyance of the new land and the cash payment

of \$248,652 to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles 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: Exhibit A on file with minute order clerk.

g. Speed Zones

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

109860
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 portions of minute orders establishing the speed zone shown on the attached Exhibit C is canceled.

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

ITEM 17. 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.**

The commission did not meet in executive session.

OPEN COMMENT PERIOD - The commission received no comments.

Commissioner Nichols made a motion, seconded by Commissioner Houghton, and the commissioners approved adjourning the meeting.

The regular meeting of the Texas Transportation Commission adjourned at 4:57 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 October 28, 2004, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation