

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on August 26, 2010 in Austin, Texas. The meeting was called to order by Chair Delisi. The meeting opened at 9:04 a.m. with the following commissioners present:

Texas Transportation Commission:

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

Administrative Staff:

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

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 4:09 p.m. on August 17, 2010, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the July 28, 2010 workshop, and the July 29, 2010 regular meeting of the Texas Transportation Commission.

Commissioner Holmes made a motion, which was seconded, and the commission approved the minutes of the July 28, 2010 workshop, and the July 29, 2010 regular meeting of the Texas Transportation Commission by a 3-0 vote.

ITEM 2. RESOLUTIONS

Present resolutions to recognize Chief Minute Order Clerk Dee Hernandez, Executive Assistant Shirley Macik, and San Angelo District Engineer Walter McCullough, upon retirement from the department.

This item was presented by Executive Director Amadeo Saenz.

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

a. Final Adoption

(3) Chapter 15 – Financing and Construction of Transportation Projects (MO)

Repeal of §§15.1-15.8; Subchapter C, Distribution and Availability of Data, §15.21, Distribution and Availability; and Subchapter D, Texas Highway Trunk System, §§15.40-15.42

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton: Commission received comments from State Representative Joe Pickett.

112373
AEO

The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of Subchapter A, Transportation Planning, §§15.1 - 15.8, Subchapter C, Distribution and Availability of Data, §15.21, and Subchapter D, Texas Highway Trunk System, §§15.40 - 15.42 all relating to transportation planning and programming to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the repeal of §§15.1 - 15.8, §15.21, and §§15.40 - 15.42 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.

(4) Chapter 16 – Planning and Development of Transportation Projects (MO)

New Chapter 16, New Subchapter A, General Provisions, §§16.1 - 16.4; New Subchapter B, Transportation Planning, §§16.51 - 16.56; New Subchapter C, Transportation Programs, §§16.101 - 16.105; New Subchapter D, Transportation Funding, §§16.151 - 16.160; and New Subchapter E, Project and Performance Reporting, §§16.201 - 16.205

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton:

112374
AEO

The Texas Transportation Commission (commission) finds it necessary to adopt new Chapter 16, Planning and Development of Transportation Projects, new Subchapter A, General Provisions, §§16.1 - 16. 4; new Subchapter B, Transportation Planning, §§16.51 - 16.56; new Subchapter C, Transportation Programs, §§16.101 - 16.105; new Subchapter D, Transportation Funding, §§16.151 - 16.160; and new Subchapter E, Project and Performance Reporting, §§16.201 - 16.205 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 - F, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the new §§16.1 - 16. 4, 16.51 - 16.56, 16.101 - 16.105, 16.151 - 16.160, and 16.201 - 16.205 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 F on file with minute order clerk.

ITEM 12. PROPOSITION 14 BONDS

Gillespie County – Approval of an additional project to be funded with the proceeds of State Highway Fund revenue bonds issued under Transportation Code, Section 222.003 (Proposition 14 Bonds) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton: The commission received comments from State Representative Doug Miller.

112375
AEO

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

Pursuant to the constitutional provision, the Texas Legislature enacted Section 222.003, Texas Transportation Code (Enabling Act), which authorizes the commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the highway fund. Bonds and other public securities issued under the constitutional provision and Enabling Act are commonly known as “Proposition 14” bonds.

The Enabling Act, as amended, provides that (i) the aggregate principal amount of such bonds and other public securities may not exceed \$6 billion, (ii) the commission may issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 billion each year, (iii) \$1.2 billion of the aggregate principal amount of such bonds or other public securities must be issued to fund safety projects that reduce accidents or correct or improve hazardous locations on the state highway system, and (iv) bonds and other public securities and credit agreements may not have a principal amount or terms that are expected to cause annual expenditures with respect thereto to exceed 10 percent of the amount deposited to the credit of the highway fund in the preceding year. The commission has issued approximately \$3.1 billion of Proposition 14 bonds pursuant to the terms of the Enabling Act.

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

On October 30, 2008, January 29, 2009, February 26, 2009, March 26, 2009, July 30, 2009, September 24, 2009, November 19, 2009, December 17, 2009, February 25, 2010, March 25, 2010 and May 27, 2010, the commission adopted Minute Orders 111550, 111680, 111709, 111751, 111890, 111976, 112037, 112075, 112115, 112119 and 112275, respectively, which approved the use of proceeds of Proposition 14 bonds for state highway improvement projects and work associated with state highway improvement activities, as contained in exhibits to the Orders.

Due to continuing national economic conditions and the accompanying effects on construction and material supplies, the projects that have gone to letting continue to experience underruns of the originally obligated bond funds. These underruns allow additional projects to be brought forward for funding under the bond program.

This minute order revises funding allocations for previously approved projects and activities and approves one additional project to be funded with the proceeds of Proposition 14 bonds, as set forth in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the state highway improvement project and work to be performed in connection with state highway improvement activities, as contained in Exhibit A, is approved for funding with the proceeds of Proposition 14 bonds.

Note: Exhibit A on file with minute order clerk.

ITEM 3. AVIATION

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

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton.

112376
AVN

The Texas Department of Transportation (department) is authorized under the federal Aviation Development Act and the state Aviation Facilities Development and Financial Assistance Act to award federal and state funding for capital improvement projects and to assist in the development and establishment of airports in the state of Texas.

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

On Thursday, July 22, 2010, a public hearing was held. No comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$4,660,810.

Note: Exhibit A on file with minute order clerk.

b. Approve the Routine Airport Maintenance Program (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton.

112377
AVN

The Texas Department of Transportation (department) is authorized under Texas Transportation Code, Chapter 21 and Chapter 22, to assist in the development and maintenance of airports in the state.

The Routine Airport Maintenance Program (RAMP) provides financial assistance for publicly owned or operated general aviation, reliever, and non-hub commercial service airports included in the Texas Airport System Plan.

Due to the success of this program, the department requests continuation of the program by providing funds for airport maintenance and small capital improvements on a 50-50 basis up to a maximum of \$50,000 in state funds for Fiscal Year 2011.

A public hearing regarding the funding of the RAMP was held on July 22, 2010, and no comments were received.

IT IS THEREFORE ORDERED by the commission that the airports listed in Exhibit A be awarded grants in accordance with the RAMP and that the executive director, or the director's designee, is authorized to enter into any necessary grant agreements with the appropriate local government agencies necessary to carry out the directives of this minute order.

Note: Exhibit A on file with minute order clerk.

c. Approve Aviation Capital Improvement Program (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Aviation Division Director Dave Fulton.

112378
AVN

Pursuant to Transportation Code, §§21.108-21.111 and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation (department) prepares an Aviation Facilities Development Program identifying the aviation facility requirements, locations, timing, eligibility for funding, and the investment necessary for a state-wide system of airports that will provide for the state's air transportation needs.

There continues to be a need for the construction, rehabilitation and upgrading of the state airport system.

As an element of the Aviation Facility Development Program, the department is required to prepare and update, at least annually, a multiyear Aviation Capital Improvement Program (CIP) to support aviation facilities development.

In June, the draft FY 2011-2013 Aviation CIP was submitted to the sponsors of airports included in the Texas airport system for review.

The Texas Aviation Advisory Committee recommended approval of the FY 2011-2013 CIP at its August meeting.

Comments received have been evaluated and, when appropriate, have been addressed in the CIP.

IT IS THEREFORE ORDERED by the commission that the attached FY 2011-2013 Capital Improvement Program (Exhibit A) is hereby adopted and the Executive Director is authorized to proceed with the development of the airport facilities included in the Capital Improvement Program.

Note: Exhibit A on file with minute order clerk.

ITEM 4. PUBLIC TRANSPORTATION

a. Various Counties – Award federal and state matching funds to designated lead agencies to support continuation of coordinated regional public transportation planning for fiscal year 2011 ((MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason:

112379
PTN

The Texas Transportation Commission (commission) desires to award funds to support the continued development of coordinated regional planning in public transportation.

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

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

Under various sections of the United States Code, the Federal Transit Administration (FTA) provides the department with funds to be used for planning and coordination projects.

On December 17, 2009, the commission awarded funding for FYs 2010 and 2011 in support of regional planning through Minute Order Number 112065.

IT IS THEREFORE ORDERED that this minute order supersedes the FY 2011 awards in Minute Order Number 112065.

IT IS FURTHER ORDERED by the commission that the executive director or the director's designee is authorized to distribute funds as described in Exhibit A, to lead agencies responsible for regionally coordinated transportation planning, submit the necessary state application to the FTA, and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

b. Various Counties – Award federal §5316, Job Access and Reverse Commute grant program funds and Transportation Development Credits to Texoma Area Paratransit System, Inc (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Public Transportation Division Director Eric Gleason:

112380
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, Job Access and Reverse Commute Formula Grant Program (JARC) (49 U.S.C. §5316), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure these grant funds are distributed fairly and equitably within the state.

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

The commission recognizes the importance of the success of the JARC projects and finds that \$264,308 of JARC funds and 52,861 of TDC is available for award to Texoma Area Paratransit System, Inc (TAPS) to support the employment related public transportation service to the Peterbilt factory in Denton, Texas.

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

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

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the award of \$264,308 in JARC funds and 52,861 in TDC to TAPS as described above and enter into the necessary contracts in accordance with the priorities as established in this minute order.

ITEM 5. RAIL

Various Counties – Authorize the expenditure of an \$8.7 million appropriation by the 81st Texas Legislature from the General Appropriations Act for passenger rail studies between Austin and San Antonio (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Rail Division Director Bill Glavin:

112381
RDD

Rider 64b, page VII-37, Senate Bill 1, Acts of the 81st Legislature, Regular Session, 2009 (The General Appropriations Act), appropriated a total of \$8.7 million for environmental review and other preliminary planning activities for the Austin-San Antonio Passenger Rail Project.

The creation of new passenger rail service between Austin and San Antonio will benefit the citizens of Texas by providing an alternative mode of transportation and will help to reduce traffic congestion in the I-35 corridor.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is authorized to enter into any necessary agreements to perform preliminary engineering and environmental review activities for the Austin-San Antonio Passenger Rail Project utilizing the \$8.7 million appropriated funds.

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

a. Final Adoption

(1) Chapter 1 – Management and Chapter 15 – Financing and Construction of Transportation Projects (MO)

New §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees (Advisory Committees); and Repeal of §15.9, Corridor Advisory Committees and §15.10, Corridor Segment Advisory Committees (Transportation Planning)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by General Counsel Bob Jackson:

112382
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt new §1.86, Corridor Advisory Committees, and new §1.87, Corridor Segment Advisory Committees and repeal of §15.9, Corridor Advisory Committees, and §15.10, Corridor Segment Advisory Committees relating to advisory committees to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that new §§1.86 and 1.87 and the repeal of §§15.9 and 15.10 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.

(2) Chapter 13 – Materials Quality and Chapter 15 – Financing and Construction of Transportation Projects (MO)

New §13.7, New Product Evaluation (Materials Quality) and Repeal of §15.13, New Product Evaluation (Research and Planning Contracts)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Research and Technology Implementation Director Rick Collins.

112383
RTI

The Texas Transportation Commission (commission) finds it necessary to adopt new §13.7, New Product Evaluation, relating to materials quality and the repeal of §15.13, New Product Evaluation, relating to research and planning contracts to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that new §13.7 and the repeal of §15.13 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 through D on file with minute order clerk.

(5) Chapter 21 – Right of Way (MO)
Amendments to §21.37, Design (Utility Accommodation)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Right of Way Division Director John Campbell:

112384
ROW

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.37, Design, relating to utility accommodation, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §21.37 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.

(6) Chapter 27 – Toll Projects (MO)
Amendments to §27.82, Toll Operations (Operation of Department Toll Projects)

This item was deferred.

b. Proposed Adoption

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

(3) Chapter 10 –Ethical Conduct by Entities Doing Business with the Department (MO)

New Chapter 10, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Precertification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 – 10.206; New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 – 10.257

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5– 0. This item was presented by Deputy Executive Director Steve Simmons:

112385
DED

The Texas Transportation Commission (commission) finds it necessary to propose new Chapter 10, Ethical Conduct by Entities Doing Business with the Department, New Subchapter A, General Provisions, §§10.1 - 10.7; New Subchapter B, Other Entities' Internal Ethics and Compliance Procedures, §10.51; New Subchapter C, Required Conduct by Entities Doing Business with the Department, §§10.101 - 10.102; New Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, §§10.151 - 10.160; New Subchapter E, Removal of Certification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations, §§10.201 - 10.206; and New Subchapter F, Sanctions for Ethical Violations by Other Entities, §§10.251 - 10.257, all 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 - G, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §§10.1 - 10.7, §10.51, §§10.101 - 10.102, §§10.151 - 10.160, §§10.201 - 10.206, and §§10.251 - 10.257 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 G on file with minute order clerk.

(2) Chapter 9 –Contract and Grant Management (MO)

Repeal of §§9.100-9.117 and New §9.101, Purpose and Application of Subchapter, §9.102, Definitions, §9.103, Notification of Rules, §9.104, Delivery of Written Notice or Requests to the Department, §9.105, Act of Individual or Entity Imputed to Contractor, §9.106, Compliance Program, §9.107, Grounds for Sanctions, §9.108, Procedure, §9.109, Notice of Sanction, §9.110, Available Sanctions, §9.111, Application of Sanction, §9.112, Appeal of Sanction, §9.113, Indirect Sanction on an Affiliated Entity, §9.114, Lessening or Removal of Sanction, §9.115, List of Debarred or Suspended Contractors (Subchapter G, Highway Improvement Contract Sanctions)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5– 0. This item was presented by Deputy Executive Director Steve Simmons:

112386
DED

The Texas Transportation Commission (commission) finds it necessary to repeal existing 43 TAC Chapter 9, Subchapter G, §§9.100 - 9.117, Highway Improvement Contract Sanctions, and simultaneously replace the repealed subchapter with new Subchapter G, §§9.101-9.115, Highway Improvement Contract Sanctions, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the repeal of §§9.100 - 9.117 and new §§9.101-9.115 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.

(1) Chapter 1 – Management (MO)

Repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program (Other Entities' Internal Ethics and Compliance Procedures)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Deputy Executive Director Steve Simmons:

112387
DED

The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §1.8, Internal Ethics and Compliance Program, and §1.9, Effect of Contractor's Internal Ethics and Compliance Program, both relating to other entities' internal ethics and compliance procedures, to be codified under Title 43, Texas Administrative Code, Part 1.

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

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

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

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

(4) Chapter 15 – Financing and Construction of Transportation Projects, Chapter 26 - Regional Mobility Authorities, Chapter 27 - Toll Projects, and Chapter 31 - Public Transportation (MO)

Amendments to §15.92, Miscellaneous Powers and Duties of Corporations (Transportation Corporations), §26.56, Required Internal Ethics and Compliance Program (Miscellaneous Operation Provisions), §27.53, Request (Financial Assistance for Toll Facilities), and §31.39, Required Internal Ethics and Compliance Program (Program Administration)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Deputy Executive Director Steve Simmons:

112388
DED

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §15.92, Miscellaneous Powers and Duties of Corporations, §26.56, Required Internal Ethics and Compliance Program, §27.53, Request, and §31.39, Required Internal Ethics and Compliance Program, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §15.92, §26.56, §27.53, and §31.39 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 H on file with minute order clerk.

ITEM 8. TOLL ROADS

a. Travis and Williamson Counties – Approval of the Central Texas Turnpike System annual operating and management budget (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112389
FIN

Transportation Code, Chapter 228 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.

In TRAVIS AND WILLIAMSON COUNTIES, pursuant to Minute Order 108873, dated April 25, 2002, STATE HIGHWAY 130 has been designated as a toll project and a controlled access state highway from I-35 at SH 195 to a southern terminus at US 183.

In TRAVIS AND WILLIAMSON COUNTIES, pursuant to Minute Order 108896, dated May 30, 2002, STATE HIGHWAY 45 has been designated as a toll project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS AND WILLIAMSON COUNTIES, pursuant to Minute Order 108896, dated May 30, 2002, LOOP 1 has been designated as a toll project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45.

In 2002 the commission issued \$2,199,993,782 in obligations to finance a portion of the costs of the Central Texas Turnpike System (system), a toll project composed initially of the SH 130, SH 45, and Loop 1 project elements (2002 Project), pursuant to an Indenture of Trust and four supplemental indentures. The Indenture of Trust, dated July 15, 2002 (indenture), prescribes the terms, provisions and covenants related to the issuance of toll revenue bonds and obligations to finance a portion of the costs of the 2002 Project. In 2009 the commission issued \$149,275,000 in refunding bonds, pursuant to the Indenture of Trust and the fifth supplemental indenture.

Pursuant to Section 702 of the indenture, the commission has covenanted that on or before August 31 in each fiscal year, it will adopt an annual operating, maintenance and capital budget for the system for the ensuing fiscal year and provide copies of such budgets to the Trustee and the US DOT.

The Texas Department of Transportation has completed these budgets and they are attached as Exhibit A. In accordance with Section 702 of the indenture, the budgets were provided to the General Engineering Consultant for review and comment prior to adoption by the commission.

IT IS THEREFORE ORDERED by the commission that the annual operating, maintenance and capital budgets for the system are adopted for FY 2011.

IT IS FURTHER ORDERED that the executive director is hereby authorized to make necessary adjustments to spending levels in accordance with the indenture as may be necessary in the operations of the system.

Note: Exhibit A on file with minute order clerk.

b. Establish fees to be charged for administering electronic toll collection customer accounts (MO)

This item was deferred.

ITEM 7. AUDIT PLAN

Approve the Audit Plan for Fiscal Year 2011 and determine whether adequate resources have been dedicated to the internal audit program (MO)

Commissioner Underwood made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Audit Office Division Director Owen Whitworth:

112390
AUD

The Texas Internal Auditing Act, Government Code, Chapter 2102, requires the internal auditor to create an annual audit plan that is prepared using risk assessment techniques and that identifies the individual audits to be conducted during the year. The audit plan must be approved by the state agency's governing board. In addition, the governing board must periodically review the resources dedicated to the internal audit program and determine if adequate resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.

The Audit Office developed an Audit Plan for Fiscal Year (FY) 2011, which is set forth in Exhibit A. This audit plan was prepared by completing a risk assessment of the department's functions; obtaining input from the district engineers, division directors, office directors and regional support center directors; discussing potential audit areas with members of the department's administration; and seeking input from the Audit Subcommittee. This audit plan identifies the audits to be conducted and the resources available to the Audit Office for FY 2011. The Audit Office considers its resources for FY 2011 to be adequate to address the risks that warrant audit coverage. The Audit Subcommittee of the Texas Transportation Commission (commission) reviewed the audit plan, and on August 25, 2010 voted to recommend approval of the plan to the full commission.

The Audit Plan for FY 2011 is being presented to the commission for approval and a determination that adequate resources exist to ensure that the risks identified are adequately covered.

IT IS THEREFORE ORDERED by the commission that the Audit Plan for FY 2011, as shown in Exhibit A, is hereby approved.

FURTHER, the commission finds that adequate resources have been dedicated to the internal audit program in order to ensure that the risks identified in the annual risk assessment are covered within a reasonable time frame.

Note: Exhibit A on file with minute order clerk.

ITEM 9. PASS-THROUGH TOLL PROGRAM

Authorize the executive director or designee to negotiate and execute a final pass-through toll agreement with each of those entities whose proposals under the February 25, 2010 pass-through toll program call were selected by the commission in Minute Order 112305 on June 24, 2010, as providing the best value to the state and who were successful in negotiating the financial terms of a pass-through toll agreement (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Houghton was off of the dais). This item was presented by Assistant Executive Director for Engineering Operations John Barton:

112391
AEO

On February 25, 2010 by Minute Order 112156 the Texas Transportation Commission (commission) approved a program call for highway projects to be developed on the state highway system under a pass-through toll agreement (program call). The commission further determined that (i) monies available that can be allocated among all proposals selected under the program call will be limited to an estimated total of \$300 million in Category 12 funds, and (ii) only the category of construction costs will be considered as eligible for reimbursement under the program call.

Pursuant to Minute Order 112156 and Title 43 Texas Administrative Code §§5.51-5.60 (rules), the Texas Department of Transportation (department) published in the Texas Register a notice designating a 60-day period commencing on March 12, 2010 for acceptance of proposals from both public and private entities for projects to be developed under the program call. The deadline for submitting proposals was May 11, 2010. Department staff evaluated the public entity proposals that were timely submitted under the program call using the items of consideration set forth in §5.55 of the rules and provided its analyses of the pass-through toll proposals to the commission.

In accordance with §222.104(b), Transportation Code, and §§5.54-5.55 of the rules, the commission granted preliminary approval on June 24, 2010 in Minute Order 112305 authorizing the department to negotiate the financial terms of a pass-through toll agreement (agreement) with each of those public entities whose proposals were selected by the commission in that minute order as providing the best value to the state. The agreements will provide for the payment of pass-through tolls to the selected public entities as reimbursement for the construction of facilities on the state highway system. A pass-through toll is a per-vehicle fee or a per-vehicle-mile fee that is determined by the number of vehicles using the facility.

In accordance with §5.58(b)(3)(A) of the rules, the commission finds that it is in the public interest to require all agreements negotiated with the selected public entities to contain a provision that limits reimbursement to the actual costs incurred by the public entity (actual cost provision). The actual cost provision will be based on the following concepts:

- (1) The total reimbursement amount for each of the projects as set forth in Exhibit A represents all or a portion of the estimated cost of construction (department's proportional share). Payment of pass-through tolls will be limited to reimbursement of the department's proportional share of the actual cost of labor and materials required for construction of the project as determined by the low bid award of the construction contract (actual cost of construction), subject to the following two exceptions.

- (A) The department will reimburse its proportional share of the amount by which the actual cost of construction exceeds the estimated cost of construction that was approved by the department for the same project (cost overrun). The department's total payment obligation for the project, however, will not exceed 110 percent of the estimated total reimbursement amount as set forth in Exhibit A.
- (B) The department will reimburse to the public entity the amount by which the actual cost of construction is less than the estimated cost of construction that was approved by the department for the same project (cost underrun), up to a maximum of 10 percent of the estimated cost of construction, if the following conditions are met:
 - (i) the total of actual cost and underrun reimbursements by the department may not exceed the department's estimated total reimbursement amount as set forth in Exhibit A;
 - (ii) the amount of cost underrun received by the public entity will be expended on the same project as set forth in Exhibit A, or on other mutually acceptable state highway projects located in the public entity's jurisdiction;
 - (iii) the amount of cost underrun received by the public entity may be expended on the actual costs of an eligible project's environmental clearance and mitigation, right of way acquisition, land surveys, engineering, utility relocation, construction, construction engineering and inspection, and financing, but not on overhead or contingent profits; and
 - (iv) the public entity receives the department's prior consent for the expenditures.
- (2) The reimbursement rate, the minimum reimbursement amount per year, and the maximum reimbursement amount per year as set forth in Exhibit A will be applicable regardless of the actual total reimbursement amount. The number of annual payments will be adjusted to reflect the total reimbursement amount as determined in accordance with paragraph (1).
- (3) No change order to the construction plans or contract may be issued by the public entity without the department's prior written approval, if it would affect prior environmental approvals or significantly revise the scope of the project or the geometric design.
- (4) Construction costs shall have the same meaning as described in the program call.

The department and each of the public entities identified in Exhibit A have agreed to a total reimbursement through pass-through tolls for construction of the projects, a reimbursement rate per vehicle or vehicle-mile, the minimum amount to be reimbursed in any year with all projects open to traffic, and the maximum amount per year as set forth in the exhibit. Each agreement will expire once the total amount of that agreement has been reimbursed. The projects will be authorized and reimbursed from Category 12, Strategic Priority funds

In accordance with §5.57 of the rules, the commission finds that: (1) the projects serve the public interest and not merely a private interest; (2) the proposed pass-through agreements are in the best interest of the state; (3) the projects are compatible with existing and planned transportation facilities; and (4) the projects further state, regional, and local transportation plans, programs, policies, and goals.

Before the projects in the selected proposals are designed, developed, or constructed using funds administered by the department, the projects: (1) must be included in the department's Unified Transportation Program, thereby identifying committed funding for the project; (2) must be included in the department's Statewide Transportation Improvement Program; and (3) 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 and execute a pass-through toll agreement with each of the public entities set forth in Exhibit A for the construction of their respective projects as identified in the exhibit, in accordance with the negotiated terms, the actual cost provision described in this minute order, and such other terms the department determines to be necessary, and to amend Category 12, Strategic Priority, of the 2010 Unified Transportation Program, approved by Minute Order 112237, dated April 29, 2010, to authorize the projects included in each executed agreement.

The commission received comments from Temple Mayor Bill Jones.

ITEM 10. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

a. Approve changes to the lists of mobility, preventive maintenance and rehabilitation, public transit, and transportation enhancement projects previously approved for funding from Texas' portion of the ARRA (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0 (Commissioner Meadows was off of the dais). This item was presented by Deputy Executive Director for Engineering Operations John Barton:

112392
AEO

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$27.5 billion for highway and bridge construction, \$1.1 billion for airport-related purposes, and \$1.5 billion

for surface transportation grants to be administered by the Secretary of Transportation. Texas' share of the funding for highway and bridge construction is approximately \$2.25 billion and transit funds are estimated at \$372 million.

Under the Aviation State Block Grant, Transportation Code, §21.114, the Texas Department of Transportation (department) is the agent of the state and of each political subdivision of the state for the purpose of applying for, receiving, and disbursing federal funds for the benefit of a general aviation airport under federal law, including 49 USC §§2201-2227.

The Texas Transportation Commission (commission) has been designated by the governor as the administering agency for the Federal Transit Administration (FTA) program under 49 USC §5311, and has the authority to award approximately \$50 million in nonurbanized (rural) transit funds.

In Minute Orders 111716 and 111920, dated February 26, 2009 and August 27, 2009, respectively, the commission approved \$51.6 million for proposed eligible projects for FAA's consideration and selection for ARRA funding. FAA selected six airport development projects and awarded \$17,526,834 to the department for sub-grant award of ARRA funds to those airports. Due to project underruns on the six sub-grants, the department is now able to recover an estimated \$2.5 million in ARRA funds. The department has proposed to the FAA for award of these recovered funds, four additional airports that each has an eligible project of \$2.5 million, as set forth in Exhibit A. FAA will select the most appropriate airport according to FAA priority criteria and notify the department of that selection.

In Minute Order 111716, dated February 26, 2009, the commission approved the funding of approximately \$33 million in public transit projects. In Minute Orders 111778, dated April 30, 2009, and 111920, dated August 27, 2009, the commission approved the funding of additional public transit projects. In Minute Orders 112115 and 112341, dated January 28, 2010 and July 29, 2010, respectively, the commission approved a list of public transit projects with revised funding. The department has developed a proposed list of transit projects with revised funding, which is set forth in Exhibit B. These revisions reflect fleet awards, facilities awards, IT equipment awards and other capital awards. There is no net change in the total transit funding program. No other previously approved public transit projects are affected.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

IT IS THEREFORE ORDERED by the commission that the projects set forth in Exhibits A and B are hereby approved for funding under the provisions of the ARRA.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with sub-grant award for the project selected by the FAA from Exhibit A, and transit agreements for the activities described in Exhibit B, and to enter into any other necessary agreements associated with these projects and activities.

IT IS FURTHER ORDERED that the department shall track the progress of the projects set forth in Exhibits A and B separately from other ongoing projects and place information regarding the status of these projects on the department's website.

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

b. Approve additional mobility and preventive maintenance and rehabilitation projects to be funded in the event of continued underruns of originally obligated ARRA funds (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton:

112393
AEO

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). The ARRA created an economic stimulus package that provides \$64.1 billion nationwide for infrastructure projects, including \$27.5 billion for highway and bridge construction, and \$1.5 billion for surface transportation grants to be administered by the Secretary of Transportation. Texas' share for highway and bridge construction is approximately \$2.25 billion.

Due to national economic conditions and the accompanying effects on construction contracting and material supplies, previously approved mobility and preventive maintenance and rehabilitation projects that have gone to letting have experienced a significant underrun of the originally obligated ARRA funds. In Minute Order 111920, dated August 27, 2009, the Texas Transportation Commission (commission) approved a list of additional mobility projects to be funded to the extent funds became available as a result of letting underruns. Many of these projects have been funded. The Texas Department of Transportation (department) expects this trend to continue for September lettings which may allow additional projects to be brought forward for ARRA funding.

Unless the federal deadline is extended, the department must obligate all remaining ARRA funds by September 24, 2010. In order to utilize all available funding, the department has developed a revised list of additional mobility projects as well as a list of additional preventive maintenance and rehabilitation projects, which are set forth in Exhibits A and B. Due to uncertainty as to the total amount of funds that may ultimately be available, the projects are not listed in priority order. The department recommends that the commission authorize the executive director, or his designee, to select one or more projects from those lists in the event that additional funding becomes available, and obligate funds for those projects, without the need for further commission action.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required.

IT IS THEREFORE ORDERED by the commission that the transportation projects set forth in Exhibits A and B are hereby approved for funding under the provisions of the ARRA to the extent that additional funds become available as a result of letting underruns.

IT IS THEREFORE ORDERED that Exhibit A in Minute Order 111920 is rescinded.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to select one or more projects from the lists set forth in Exhibits A and B (providing that funding is available), proceed with project development and contract awards for the selected projects, and enter into any necessary agreements associated with those projects and activities.

IT IS FURTHER ORDERED that the department shall track the progress of the selected projects separately from other ongoing projects and place information regarding the status of these projects on the department's web site.

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

ITEM 11. PROPOSITION 12 BONDS

Approval of a planned debt structure for highway improvement projects to be funded with the proceeds of general obligation bonds issued under Transportation Code, Section 222.004 (Proposition 12 Bonds) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass:

112394
CFO

Section 49-p, Article III of the Texas Constitution (constitutional provision) and Transportation Code, Section 222.004 (section 222.004), and other applicable law, including Government Code, Chapter 1371, authorize the Texas Transportation Commission (commission) to issue general obligation bonds, notes and other public securities (bonds) and to enter into credit agreements.

The commission may issue general obligation bonds for one or more of the following purposes: 1) to pay, or reimburse the State Highway Fund for payment of, all or part of the costs of highway improvement projects including loans for highway improvement projects; 2) to pay (a) the costs of administering projects authorized under Section 222.004, (b) the costs or expense of the issuance of the bonds or (c) all or part of a payment owed or to be owed under a credit agreement and 3) refunding outstanding bonds.

Pursuant to Minute Order 112100 dated January 28, 2010, the commission approved the issuance of up to \$3 billion in one or more series of highway improvement general obligation bonds pursuant to the constitutional provision and section 222.004, and further authorized the Chief Financial Officer of the Texas Department of Transportation (department) to approve the final pricing terms of such bonds.

Since the bonds are payable solely from the general revenues of the State, department staff is in the process of discussing with State leadership potential debt structures and the impact of those structures on the State's general revenue funds and has provided an update to the commission regarding the potential debt structures under consideration.

IT IS THEREFORE ORDERED by the commission that the department is authorized and directed to proceed with a financing structure for the bonds that produces a near-term savings for State general revenue funds, and is based on discussions with State leadership.

ITEM 13. TRANSPORTATION PLANNING

a. Various Counties – Appoint members to the Border Trade Advisory Committee (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 - 0. This item was presented by Transportation Planning and Programming Division Director Jim Randall:

112395
TPP

Transportation Code, Section 201.114(b), requires the Texas Transportation Commission (commission) to appoint members to the Border Trade Advisory Committee (committee) to assist the commission in defining and developing a strategy and making recommendations for addressing the highest priority border trade transportation challenges.

The Texas Department of Transportation's (department) administrative rules governing advisory committees, Title 43, Texas Administrative Code, Section 1.84, provide that the committee members serve staggered three-year terms.

The commission has determined that the individuals or positions listed below fulfill the statutory requirements to serve as members of the committee and shall serve the terms specified:

Terms expiring August 31, 2013

- B & M Bridge-President & Chief Operating Officer, Brownsville & Matamoros Bridge Company, or designee
- Lake Falcon Dam Crossing, Lake Amistad Dam Crossing, Fort Hancock-El Porvenir Bridge, Fabens-Caseta Bridge, Bridge of the Americas-Commissioner, U.S. Section, International Boundary and Water Commission, or designee
- McAllen-Hidalgo International Bridge-Bridge Director, City of McAllen, or designee
- Pharr-Reynosa International Bridge on the Rise-Bridge Director, City of Pharr, or designee
- Presidio Bridge-Executive Director, Texas Department of Transportation, or designee
- Progreso International Bridge-President, B&P Bridge Company of Weslaco, or designee
- Rio Grande City-Camargo Bridge-President, Starr-Camargo Bridge Company, or designee

- Veterans International Bridge at Los Tomates, Free Trade Bridge at Los Indios, Gateway International Bridge-Director, International Bridge System, Cameron County, or designee
- Ysleta-Zaragoza Bridge, Good Neighbor Bridge, Paso del Norte Bridge-Toll Collection Superintendent, City of El Paso, or designee
- Rosalva Guerra, Zapata County Judge, or designee

IT IS THEREFORE ORDERED by the commission that the individuals or positions named above are appointed to the Border Trade Advisory Committee for the terms specified.

b. Various Counties – Appoint one member to the Port Authority Advisory Committee (MO)

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Transportation Planning and Programming Division Director Jim Randall:

112396
TPP

Transportation Code, Section 55.006, requires the Texas Transportation Commission (commission) to appoint a seven-member Port Authority Advisory Committee (committee) to advise the commission and the Texas Department of Transportation (department) on port issues and to provide a forum for exchange of information between the commission, the department, and committee members representing the Texas port system.

The department's administrative rules governing advisory committees, Title 43, Texas Administrative Code, Section 1.84, provide that the committee members serve staggered three-year terms, unless removed sooner at the discretion of the commission.

The commission has determined that the individual listed below fulfills the statutory requirements to serve as a member of the committee for a term expiring on February 28, 2013.

Spencer Chambers

Port of Houston Authority – Dedicated Seat

IT IS THEREFORE ORDERED by the commission that the individual identified above is appointed as a member of the Port Authority Advisory Committee until February 28, 2013.

ITEM 14. RIGHT OF WAY

El Paso County – SL 375 from SH 20 (Mesa Street) to Fonseca Drive – Authorize the negotiation of options to purchase for the advance acquisition of right of way for highway realignment along Loop 375 from SH 20 to Fonseca Drive (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Right of Way Division Director John Campbell:

112397
ROW

In EL PASO, a project has been proposed to improve STATE LOOP 375 (SL 375) from SH 20 (Mesa Street) to Fonseca Drive, approximately 15.2 miles.

The Texas Transportation Commission (commission) finds that use of options to acquire property in connection with the SL 375 project may reduce the time required for acquisition of right of way and can be economically beneficial to the state by either establishing the purchase price at current market value as of the date of the option contract or establishing a methodology for determining a purchase price at the time the option is exercised without the necessity for condemnation, and/or agreeing to restrictions on the owner's future development and improvement of the property. Successful negotiation of options for this project will help preserve the transportation corridor and benefit both the public and land owners along the proposed route.

Although construction of the project is not yet authorized, preserving the transportation corridor for completion of the SL 375 project is essential and urgent, as there is significant risk of impending commercial, industrial and residential development.

Transportation Code, §201.103 authorizes the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads as well as toll projects. Transportation Code, §§203.051 and 203.052 authorize the commission to acquire an interest in real property that the commission determines is necessary or convenient to a state highway or toll project, including property necessary or convenient to protect a state highway or toll project or to accomplish any other purpose related to the project location, construction, improvement, maintenance, beautification, preservation, or operation.

Transportation Code, §202.112 authorizes the commission to purchase an option to acquire property for possible use in, or in connection with, a transportation facility before a final decision has been made as to whether the transportation facility will be located on that property.

IT IS THEREFORE ORDERED by the commission that the El Paso district engineer is authorized to negotiate with property owners along the proposed extension/reconstruction of SL 375 and execute option contracts for the purchase of property of a size and in a location as is reasonably related to the possible future design and alignment of such transportation facility, to expend funds for option fee payments, surveys, title examinations, appraisals and other expenses reasonably necessary to purchase the options, and to exercise the options and expend funds for acquisition of the properties.

15. ENVIROMENTAL RESTRICTION

Bowie County – Authorize the executive director to execute a restrictive covenant for the benefit of the U.S. Army Corps of Engineers (USACE) limiting use of a 1.95-acre tract owned by the department in Bowie County, Texas, to an aquatic ecosystem preserve to mitigate an adverse environmental impact that is a direct result of the construction and improvement of I-30 frontage roads near the city of Hooks (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Environmental Division Director Dianna Noble:

112398
ENV

In BOWIE COUNTY, on INTERSTATE 30, the Texas Department of Transportation (department) proposes to construct various highway improvements including construction of I-30 one-way frontage roads between FM 560 and Spur 86 (project). The project will require a permit from the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act for the placement of dredged or fill material in a wetland area of an unnamed tributary to Panther Creek.

In order to mitigate the adverse environmental impact resulting from the project, the department submitted to the USACE a final mitigation plan dated June 29, 2010 that included the dedication as an aquatic ecosystem preserve of an off site tract of land owned by the department, located along US 59 at the Red River in Bowie County. The tract of land is approximately 1.95 acres and is described in Exhibit A (mitigation property). The USACE approved the final mitigation plan and issued a Nationwide Permit for Linear Transportation Projects dated July 9, 2010 that is conditioned on the department imposing restrictions on the mitigation property to prohibit activities inconsistent with an aquatic ecosystem preserve including grazing of livestock, haying, cropping, commercial timber harvesting, land clearing, filling or draining, and other vegetation and soil disturbing activities (restrictions). The USACE would be the beneficiary of the restrictions with the authority to enforce compliance.

V.T.C.A., Transportation Code, Chapter 201, Section 201.617, authorizes the department to transfer any interest in real property to an appropriate public agency or private entity, with or without monetary consideration, to mitigate an adverse environmental impact that is a direct result of the construction, improvement, or maintenance of a state highway, if the transfer is authorized by the regulatory authority that requires the mitigation.

The Texas Transportation Commission (commission) finds that it is necessary and proper for the state to transfer by restrictive covenants a limitation on the department's use of the mitigation property and the right of the USACE to enforce the restrictions, in consideration for issuance of the Nationwide Permit and authorization to construct the project.

IT IS THEREFORE ORDERED by the commission, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 201, Section 201.617, that the executive director is authorized to execute a proper instrument imposing the restrictions on use of the mitigation property.

ITEM 16. LEGISLATIVE APPROPRIATIONS REQUEST

Adopt the department's Legislative Appropriations Request for FY 2012 and 2013 (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Chief Financial Officer James Bass:

112399
CFO

The Government Code provides the statutory basis for each agency to submit a biennial request for legislative appropriations. The funds shown below are necessary to effectively accomplish the mission, goals, objectives, and strategies of the Texas Department of Transportation's strategic planning and budget structure previously approved by the Governor's Office of Budget, Planning and Policy, and the Legislative Budget Board. The Texas Transportation Commission supports the mission, goals, objectives, strategies and funding requirements outlined below.

TEXAS DEPARTMENT OF TRANSPORTATION LEGISLATIVE APPROPRIATIONS REQUEST FOR FISCAL YEARS 2012 - 2013		
A. GOAL: TRANSPORTATION PLANNING		
	2012	2013
A.1.1 PLAN/DESIGN/MANAGE	\$ 332,072,136	\$ 322,493,553
A.1.2 CONTRACTED PLANNING & DESIGN	445,417,119	264,555,314 & UB*
A.1.3 RIGHT-OF-WAY ACQUISITION	524,456,941	559,587,677 & UB*
A.1.4 RESEARCH	22,071,515	22,079,607
TOTAL, GOAL A:	\$ 1,324,017,711	\$ 1,168,716,151
B. GOAL: TRANSPORTATION CONSTRUCTION		
	2012	2013
B.1.1 EXISTING CONSTRUCTION CONTRACTS	\$1,607,591,185	\$ 497,508,009 & UB*
B.1.2 NEW CONSTRUCTION CONTRACTS	1,513,356,612	3,263,812,952
B.1.3 CONSTRUCTION GRANTS & SERVICES	1,491,448,909	423,744,046
B.1.4 AVIATION SERVICES	109,651,115	84,302,257 & UB*
TOTAL, GOAL B:	\$4,722,047,821	\$4,269,367,264
C. GOAL: MAINTENANCE AND PRESERVATION		
	2012	2013
C.1.1 EXISTING MAINTENANCE CONTRACTS	\$1,108,879,566	\$360,985,330 & UB*
C.1.2 NEW MAINTENANCE CONTRACTS	1,618,789,618	2,130,673,120 & UB*
C.1.3 CONTRACTED ROUTINE MAINTENANCE	699,671,274	703,219,294 & UB*
C.1.4 ROUTINE MAINTENANCE	794,604,385	819,814,953 & UB*
C.1.5 GULF WATERWAY	875,275	826,459 & UB*
C.1.6 FERRY SYSTEM	47,189,312	48,743,747
TOTAL, GOAL C:	\$4,270,009,430	\$4,064,262,903
D. GOAL: OPTIMIZE SERVICES AND SYSTEMS		
	2012	2013
D.1.1 PUBLIC TRANSPORTATION	\$ 119,189,660	\$ 119,218,396 & UB*
D.2.1 TRAFFIC SAFETY	71,933,635	71,996,827 & UB*
D.3.1 TRAVEL INFORMATION	18,402,863	18,407,506 & UB*
TOTAL, GOAL D:	\$ 209,526,158	\$ 209,622,729
E. GOAL: ENHANCE RAIL TRANSPORTATION		
	2012	2013
E.1.1 RAIL PLAN/DESIGN/MANAGE	\$ 15,008,001	\$ 15,697,350
E.1.2 CONTRACT RAIL PLAN/DESIGN	64,035,370	68,700,000

E.1.3 RIGHT-OF-WAY-RAIL	0	0
E.1.4 EXISTING/NEW RAIL CONSTRUCTION	54,635,000	68,135,000
E.1.5 EXISTING/NEW RAIL MAINTENANCE	124,542,852	136,085,390
E.1.6 RAIL SAFETY	1,137,644	1,147,075
TOTAL, GOAL E:	\$ 259,358,867	\$ 289,764,815
F. GOAL: INDIRECT ADMINISTRATION		
	2012	2013
F.1.1 CENTRAL ADMINISTRATION	\$ 47,590,579	\$ 48,007,720
F.1.2 INFORMATION RESOURCES	67,989,448	66,253,911
F.1.3 OTHER SUPPORT SERVICES	38,817,800	38,893,044
F.1.4 REGIONAL ADMINISTRATION	51,712,112	49,767,879
TOTAL, GOAL F:	\$ 206,109,939	\$ 202,922,554
G. GOAL, DEBT SERVICE PAYMENTS		
	2012	2013
G.1.1 GENERAL OBLIGATION BONDS	\$ 156,578,992	\$ 240,151,600
G.1.2 STATE HIGHWAY FUND BONDS	320,429,127	437,321,558
G.1.3 TEXAS MOBILITY FUND BONDS	344,252,801	348,449,562
G.1.4 OTHER DEBT SERVICE	5,171,832	5,171,832
TOTAL, GOAL G:	\$ 826,432,752	\$ 1,031,094,552
H. GOAL, SH 121 TRANSPORTATION PROJECTS		
	2012	2013
H.1.1 PLAN/DESIGN/MANAGE PROJECTS - SH 121	\$ 5,000,000	\$ 5,000,000
H.1.2 CONTRACTED PLAN/DESIGN/MANAGE PROJECTS - SH 121	17,000,000	12,000,000
H.1.3 RIGHT-OF-WAY ACQUISITION - SH 121	106,514,825	97,047,192
H.1.4 EXISTING CONSTRUCTION – SH 121	35,000,000	10,000,000
H.1.5 NEW CONSTRUCTION – SH 121	420,000,000	450,000,000
H.1.6 EXISTING MAINTENANCE – SH 121	0	0
H.1.7 NEW MAINTENANCE – SH 121	0	0
TOTAL, GOAL H:	\$ 583,514,825	\$ 574,047,192
I. GOAL, SH 130 TRANSPORTATION PROJECTS		
	2012	2013
I.1.1 EXISTING CONSTRUCTION – SH 130	\$ 0	\$ 0
I.1.2 NEW CONSTRUCTION – SH 130	2,000,000	4,300,000
TOTAL, GOAL I:	\$ 2,000,000	\$ 4,300,000
GRAND TOTAL: Texas Department of Transportation	\$ 12,403,017,503	\$ 11,814,098,160

*Within a biennium, some strategies are legislatively authorized to carry any unexpended balance (U.B.) forward from the first FY of the biennium to the second FY of the biennium.

IT IS THEREFORE ORDERED that the executive director is authorized to submit a Legislative Appropriations Request to the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy in accordance with all prescribed guidelines in the amounts of \$12,403,017,503 in Fiscal Year 2012 and \$11,814,098,160 for Fiscal Year 2013.

IT IS FURTHER ORDERED that the executive director is hereby authorized to make any and all necessary changes to the LAR including changes to the language, data updates, and funding levels as may be necessary.

ITEM 17. UNIFIED TRANSPORTATION PROGRAM

Amend FY 2011 and FY 2014 allocations in Category 7 (metropolitan mobility/rehabilitation) in the Unified Transportation Program (UTP) (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112400
FIN

The 2010 UNIFIED TRANSPORTATION PROGRAM (UTP) of the Texas Department of Transportation (department) is an 11-year plan that authorizes project planning and development, and is submitted to the Texas Transportation Commission (commission) for approval.

The 2010 UTP was approved by the commission on April 29, 2010, in Minute Order 112237.

At the request of the Lubbock Metropolitan Planning Organization, the Hidalgo County Metropolitan Planning Organization, and the Lubbock and Pharr Districts, the department recommends that the 2010 UTP be amended by reallocating FY 2011 and FY 2014 funds in Category 7 as shown in Exhibit A.

IT IS THEREFORE ORDERED by the commission that the proposed reallocation is approved and the 2010 UTP is amended as shown in Exhibit A.

Note: Exhibit A on file with minute order clerk.

ITEM 18. STATE INFRASTRUCTURE BANK

Final Approval

Parker County – City of Weatherford – Consider granting final approval of an application from the City of Weatherford to borrow \$650,000 from the State Infrastructure Bank to pay for water and sewer line relocation costs resulting from reconstruction of SH 171 from I-20 to FM 1884 in Parker County (MO)

This item was deferred.

ITEM 19. FINANCE**a. Annual review and approval of the investment policy and investment strategies applicable to all funds of the commission not otherwise required to be invested by the comptroller (MO)**

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112401
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 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.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy applicable to funds of the commission held by Bank One, N.A., (in such capacity with its successors, currently *Bank of New York Mellon*), as Trustee under the Indenture of Trust dated July 15, 2002 between the commission and the trustee.

Government Code, §2256.005(e) and Section 17.0 of the investment policy require the commission to review the investment policy and investment strategy on an annual basis, and to approve by order any modifications to the investment policy and investment strategy. The investment policy and investment strategies of the commission have been reviewed and revised annually by minute order since 2003, to update the investment policy and strategies to make it applicable to all funds under the control of the commission and not otherwise required to be invested by the Comptroller of Public Accounts (comptroller) including the Texas Mobility Fund and Central Texas Turnpike System.

The investment policy and investment strategies are attached as Exhibit A.

IT IS THEREFORE ORDERED by the commission that the investment policy and investment strategies applicable to all funds of the commission not otherwise required to be invested by the comptroller, attached as Exhibit A, have been reviewed and are hereby approved in accordance with Government Code Section §2256.005(e) and Section 17.0 of the investment policy.

Note: Exhibit A on file with minute order clerk.

b. Annual review of debt management policy and derivative management policy for financing programs of the department, and authorization for department personnel to execute certain derivative transactions for financing programs of the department (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5 – 0. This item was presented by Finance Division Director Brian Ragland:

112402
FIN

Pursuant to various provisions of Texas law, the Texas Transportation Commission (commission) is authorized to issue and incur obligations for transportation, mobility and other projects.

To ensure that all financing programs undertaken by the commission and/or the Texas Department of Transportation (department) are completed in accordance with the highest standards of industry, law and government practice and to confirm the intent of the commission and the department to adhere to sound financial management practices, the commission initially reviewed and adopted a Debt Management Policy through Minute Order 110656 on August 24, 2006. The policy requires an annual review and, if necessary, amendment. The amended policy is attached hereto as Exhibit A for consideration.

The Debt Management Policy establishes parameters in which to administer the commission's financing programs considering acceptable levels of risk, minimizing interest costs and optimizing future flexibility with consideration to achieving and maintaining the best possible credit ratings.

Pursuant to Chapter 1371, Texas Government Code, and other applicable Texas law, the commission is authorized to execute credit agreements including interest rate swap and other similar agreements.

To establish responsibilities, objectives and guidelines for the use of interest rate swap and other similar products in order to efficiently and prudently manage the commission's asset/liability profile for each financing program the commission initially reviewed and adopted a Derivative Management Policy, also pursuant to Minute Order 110656 on August 24, 2006. The policy also requires annual review and, if necessary, modification. The amended policy is attached hereto as Exhibit B for consideration.

In addition, pursuant to Minute Order 111786 dated April 30, 2009, the commission approved an amended and restated eighth supplemental resolution to the Master Resolution Establishing the Texas Transportation Commission Mobility Fund Revenue Financing Program (the Mobility Fund Eighth Supplement) which authorized the issuance of the \$1,208,495,000 Texas Transportation Commission State of Texas General Obligation Mobility Fund Bonds, Taxable Series 2009A (Build America Bonds - Direct Payment). As a part of the Mobility Fund Eighth Supplement, the commission delegated authority to the Department Representative, until April 30, 2010, to execute any Swap Agreement transaction pursuant to the terms of such supplement (as such terms are defined in the Mobility Fund Eighth Supplement).

In addition, pursuant to Minute Order 112100 dated January 28, 2010, the commission approved a first supplemental resolution to the Master Resolution Establishing the Texas Transportation Commission Highway Improvement General Obligation Financing Program (the Highway Improvement General Obligation First Supplement) which authorized the issuance of Texas Transportation Commission State of Texas Highway Improvement General Obligation Bonds not to exceed an aggregate principal amount of \$3 billion (to date, no such bonds have been issued and delivered). As part of the Highway Improvement General Obligation First Supplement, the commission delegated authority to the chief financial officer of the department, until January 28, 2011, to execute any Swap Agreement transaction pursuant to the terms of such supplement (as such terms are defined in the Highway Improvement General Obligation First Supplement).

In addition, pursuant to Minute Order 112154 dated February 25, 2010, the commission approved a fifth supplemental resolution to the Master Resolution Established a Financing Program for Bonds, Other Public Securities and Credit Agreements Secured by and Payable from Revenue Deposited to the credit of the State Highway Fund (the State Highway Fund Fifth Supplement) which authorized the issuance of the \$1.5 billion Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Taxable Series 2010 (Build America Bonds - Direct Payment). As part of the State Highway Fund Fifth Supplement, the commission delegated authority to the Department Representative, until February 23, 2011, to execute one or more Interest Rate Lock Agreements or Swap Agreements pursuant to the terms of such supplement (as such terms are defined in the State Highway Fund Fifth Supplement).

IT IS THEREFORE ORDERED by the commission that the Debt Management Policy and Derivative Management Policy have been reviewed and are hereby approved.

IT IS FURTHER ORDERED by the commission that the Department Representative shall have authority, until August 25, 2011, to execute any Swap Agreement transaction pursuant to the terms of the Mobility Fund Eighth Supplement.

IT IS FURTHER ORDERED by the commission that the chief financial officer of the department shall have the authority, until August 25, 2011, to execute any Swap Agreement transaction pursuant to the terms of the Highway Improvement General Obligation First Supplement.

IT IS FURTHER ORDERED by the commission that the Department Representative shall have the authority, until August 25, 2011, to execute one or more Interest Rate Lock Agreements or Swap Agreements pursuant to the terms of the State Highway Fund Fifth Supplement.

ITEM 20. OBLIGATION LIMIT REPORT

Status report on the FY 2010 Obligation Limit, the actual obligations utilized through the current month, proposed remaining highway maintenance and construction contract letting for the fiscal year; an update on motor fuel tax receipts; and an update on the latest federal rescission notice.

This item was presented by Finance Division Director Brian Ragland.

ITEM 21. Property Exchange

Palo Pinto, Somervell and Tarrant Counties – Request for proposal to exchange real property for improvements at various locations in the Fort Worth District (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5.-0. This item was presented by Maintenance Division Facilities Management Section Director Uly Flores:

112403
MNT

On June 25, 2009, by Minute Order 111860, the Texas Transportation Commission (commission) issued approval to issue a request for proposal to exchange property of the Texas Department of Transportation (department) in exchange for buildings and other facility-support structures to be constructed on department-owned property in the Fort Worth and Dallas districts.

The commission finds it necessary to withdraw the previous minute order and reissue a request for proposal under authorization of this minute order to revise the appraisal of department owned property, located at I-30 and Collins Road, Arlington, Tarrant County, from \$17.6 million to \$12 million and to reduce the project scope. The property located at I-820 and SH 199, Saginaw, Tarrant County which had an appraised value of \$850,000 will not be exchanged, as stated in the prior Minute Order 111860. Reduction of the project scope includes deletion of construction of a laboratory building located at 2501 Southwest Loop 820 in Fort Worth, Tarrant County; deletion of the construction of a new maintenance facility on department owned property located at 508 South Blue Mound Road in Saginaw, Tarrant County and deletion of the construction of a new area engineer office on department owned property located at 1851 SH 66 in Garland, Dallas County.

Transportation Code, Chapter 201, Section 201.1055, authorizes agreements with private entities for the acquisition, design, construction or renovation of buildings for the Texas Department of Transportation (department). This allows exchange of existing department-owned property and improvements with a private entity in return for the construction of a building or other facility required to support department operations on department-owned property.

Under that authority, the department intends to issue a Request for Proposal to select a qualified private entity to design, construct, renovate, and provide other facility-support structures in exchange for the existing property at I-30 and Collins Road, Arlington. If the design and construction cost is less than the appraised value of the property, the private entity will be required to pay the difference in cash upon the exchange. If the costs are more than the value of the exchange, the private entity shall have the option to donate the difference. The construction and renovation of buildings on state-owned property will provide critically needed replacement facilities required to support department operations and mission.

The following department-owned properties that will be exchanged are no longer needed for the purposes for which they were acquired:

Property located at I-30 and Collins Road, Arlington, Tarrant County, more particularly described by metes and bounds in Exhibit A, and having an appraised value of \$12 million (Exhibit A).

The following improvements will be procured in exchange for the properties that are no longer needed:

- Construction of a new area engineer and maintenance building and renovation of an existing laboratory building to be completed on department-owned property located at 2501 Southwest Loop 820 in the city of Fort Worth, Tarrant County, Texas, more particularly described by metes and bounds in Exhibit B.
- Construction of a new maintenance facility to be completed on department-owned property located at SH 144 in the city of Glen Rose, Somervell County, Texas, more particularly described by metes and bounds in Exhibit C.
- Construction of a new maintenance facility to be completed on department-owned property located at 2400 US 180 West, Mineral Wells, Palo Pinto County, Texas, more particularly described by metes and bounds in Exhibit D.

The department proposes to negotiate a development and exchange agreement with the top ranked proposer to procure the new buildings and facilities based on whose proposal provides the best value to the department. Best value will be based on cost estimates for the site development, construction, renovation, design and management services and other all associated costs.

IT IS THEREFORE ORDERED by the commission that the previous Minute Order 111860 dated June 25, 2009, is withdrawn (Exhibit E).

IT IS THEREFORE ORDERED by the commission that the department issue a request for proposal and commence negotiations with the top ranked proposer to design, construct, renovate, and provide other facility-support structures, as described, in exchange for the department-owned property located in Arlington.

IT IS FURTHER ORDERED that the department may negotiate with the second ranked proposer or reissue a request for proposal for this project in the event that suitable terms for a development and exchange agreement cannot be accomplished.

ITEM 22. CONTRACTS

a. Award or Reject Highway Improvement Contracts

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

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112404
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 August 10 and 11, 2010.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

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

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 5- 0 rejecting Controlling Project Nos. 0912-00-341 in Harris County; 0500-03=563 in Harris County; 0089-07-142 in Wharton County; 3623-01-001 in Coryell County; and 0909-22-149 in McLennan County and deferring Controlling Project No. 0018-01-068 in LaSalle County. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112405
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 August 10 and 11, 2010.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

The commission received comments from Charlie Fotz, Brad Shearer, and Gregory Cohinos with Satterfield & Portikes; Pat Pluenneke with James Construction Group; and Chris McClorg with Ledcor CMI Inc., Ken Barnett, the director of TxDOT's Construction Section, General Counsel Bob Jackson and Deputy Counsel Joanne Wright also made comments.

ITEM 23. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute orders by a vote of 5 – 0. This item was presented by Executive Director Amadeo Saenz:

a. Donations to the Department

(1) Administration Division – Acknowledge a donation from Infra-Americas, for reimbursement of a department employee's travel expenses for speaking at the Annual US

Public Private Partnership (P3) Infrastructure Finance Forum. The meeting was held in New York, New York from June 21-23, 2010 (MO)

112406
GSD

This minute order acknowledges a donation of \$900 from Infra-Americas for a Texas Department of Transportation (department) employee's travel expenses to speak at the Annual US Public Private Partnership (P3) Infrastructure Finance Forum which was held in New York, New York, from June 21-23, 2010.

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

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

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

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

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

The commission also finds that the donor 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 donation of \$900 by Infra-Americas is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) **Bridge Division** – Acknowledge a donation from the American Iron and Steel Institute for a department employee's travel expenses to attend the Bridge Task Force Meeting in Washington, D.C. from August 11 – 13, 2010 (MO)

112407
GSD

This minute order acknowledges a donation of approximately \$628.50 from the American Iron and Steel Institute (AISI) for a Texas Department of Transportation (department) employee's travel expenses to attend the Bridge Task Force meeting in Washington, D.C. from August 11 – 13, 2010.

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

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

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

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

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

The commission also finds that the donor 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 donation of approximately \$628.50 from AISI is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) Houston District – Consider a donation from Greenroad Media, Inc., to perform installation and maintenance activities for Landscape Partnership Agreements along various highways throughout the Houston District (MO)

112408
GSD

This minute order considers a donation by Greenroad Media, Inc. to the Texas Department of Transportation (department) to perform installation and maintenance activities under landscape partnership agreements along various highway locations in the

Houston District. The breakdown of the potential donation is as follows: for each site, a guaranteed \$810, a potential revenue of up to \$19,200 per site if landscaping on the site is installed, and up to \$230,000 per site in donated materials and services to install and maintain landscaping on the site if the site is developed. Potentially, this could equate to up to \$1,000,500 ($\{ \$810 + \$19,200 \} \times 50$ sites) in revenue to the state, and up to \$11.5 million ($\$230,000 \times 50$ sites) for material and maintenance, for a potential maximum value of \$12.5 million. The various highways and specific coordinates are attached to this minute order as Exhibit A.

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

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

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

The commission finds that the donation 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 some of the sponsors may be interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department. Nonetheless, the commission finds that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation worth up to \$12.5 million by Greenroad Media, Inc., is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(4) Research and Technology Office – Consider a donation from the Colorado Department of Transportation (CDOT) for department employee's travel expenses to speak and participate at the CDOT Peer Exchange. The meeting will be held in Denver, Colorado from September 22 – 23, 2010 (MO)

112409
GSD

This minute order considers a donation of approximately \$1,354 from the Colorado Department of Transportation (CDOT) for a Texas Department of Transportation (department) employee's travel expenses to participate in the CDOT Peer Exchange in Denver, Colorado, September 22 – 23, 2010.

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

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

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

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

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

The commission also finds that the donor 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 donation of approximately \$1,354 from CDOT is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(5) Travel Information Division – Consider a donation from the Texas Travel Industry Association to provide food, beverage, lodging, admission and transportation to area attractions, solicited from various sponsors, to the department during a study tour to educate the department's travel counselors on the North Texas region from October 17-22, 2010 (MO)

This item was deferred.

(6) Yoakum District – Consider a cash donation from Lavaca Navidad River Authority (LNRA) towards construction of turn lanes on SH 111 near the Lavaca Navidad River Authority Park and Lake Texan State Park (MO)

112410
GSD

This minute order considers a cash donation to the Texas Department of Transportation (department) from Lavaca Navidad River Authority (LNRA) of approximately \$15,000 towards construction of turn lanes on SH 111 near the Lavaca Navidad River Authority Park and Lake Texan State Park.

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

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

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

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

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

The commission also finds that the donor 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 donation of approximately \$15,000 from LNRA is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. Eminent Domain Proceedings

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

112411
ROW

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

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

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

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

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

lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Comal	US 281	1	0253-03-065	21
Dallas	SL 12	2	0353-05-105	5, 5TE
Denton	FM 2181	3	2054-02-018	63

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Angelina	SL 287	E	2553-01-102	5B
Angelina	SL 287	F	2553-01-102	5A
Harris	IH 45	J	0500-03-546	209
Harris	IH 45	X	0500-03-546	206
Harris	IH 10	G	0271-07-260	848
Harris	IH 10	H	0271-07-260	849
Harris	IH 10	L	0271-07-260	851
Harris	IH 10	K	0271-07-260	850
McLennan	IH 35	V	0014-08-082	51, 51E
Tarrant	SH 114	C	0353-03-088	20
Tarrant	SH 114	W	0353-03-088	21
Tarrant	SH 114	B	0353-03-088	110
Tarrant	SH 114	A	0353-03-088	114
Tarrant	SH 114	D	0353-03-088	19
Tarrant	SH 114	I	0353-03-088	101A, 101B
Tarrant	SH 114	Q	0353-03-088	108B
Tarrant	SH 114	P	0353-03-088	30
Tarrant	SH 114	M	0353-03-088	97
Tarrant	SH 114	N	0353-03-088	93
Tarrant	SH 114	S	0353-03-088	23
Tarrant	SH 114	T	0353-03-088	108A
Tarrant	SH 114	R	0353-03-088	106
Tarrant	SH 121	O	0364-01-132	50
Tarrant	SH 121	U	0364-01-132	51

Note: Exhibits 1 through 3 and A through X on file with minute order clerk.

c. Highway Designation

Shelby County – Extend the designation of SH Loop 500 from SH 7 westward to US 96, north of Center

112412
TPP

In SHELBY COUNTY, local officials have requested to extend the designation of STATE LOOP 500 (SL 500) from SH 7 westward to US 96 north of Center, a distance of approximately 2.95 miles.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended extending the designation of SL 500.

The Texas Transportation Commission (commission) finds that the designation of SL 500 will facilitate the flow of traffic, promote public safety, and maintain continuity of the state highway system and is necessary for the proper development and operation of the system.

IT IS THEREFORE ORDERED by the commission that SL 500 be extended from SH 7 westward to US 96 north of Center, a distance of approximately 2.95 miles.

d. Load Zones & Postings

Hamilton and Milam Counties – Revise load restrictions on various bridges on the state highway system (MO)

112413
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 bridges described in Exhibits A and B be placed, revised, or removed 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.

e. Right of Way Dispositions and Donations

(1) Bexar County – SH Loop 1604 at Bulverde Road in San Antonio – Consider the sale of surplus right of way to the abutting landowner (MO)

112414
ROW

In BEXAR COUNTY, on STATE HIGHWAY LOOP 1604, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 4551, Page 95, Deed Records, and Volume 3815, Page 1961, Official Public Records, Bexar County, Texas.

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

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

FCS Fischer, Ltd., a Texas limited partnership, is the abutting landowner and has requested that the surplus land be sold to the partnership for \$36,048.

The commission finds \$36,048 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 department 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 FCS Fischer, Ltd., a Texas limited partnership, for \$36,048; **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.

(2) Denton County – FM 720, old alignment at E. Eldorado Parkway in Little Elm – Consider the sale of surplus right of way to the Town of Little Elm (MO)

112415
ROW

In the town of Little Elm, DENTON COUNTY, near FARM TO MARKET ROAD 720, the State of Texas acquired certain land formerly used for highway purposes by instrument recorded in Volume 647, Page 323, Deed Records of Denton County, Texas.

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

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

The Town of Little Elm has requested that the surplus land be sold to the town for \$19,360.

The Texas Transportation Commission (commission) finds \$19,360 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a department 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 Town of Little Elm, Texas, for \$19,360; **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.

(3) Fort Bend County – FM 1464 from Beechnut south to West Airport Boulevard – Consider designation of a new alignment, removal of the old alignment from the system and transfer of control, jurisdiction and maintenance to the county. The MO will also authorize the transfer to the county of the surplus right of way (MO)

112416
ROW

In FORT BEND COUNTY, on FARM TO MARKET ROAD 1464, the State of Texas used certain land for highway purposes.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, the designation of FM 1464 from Beechnut south to West Airport Boulevard on a new alignment, that the old alignment be removed from the state highway system and that control, jurisdiction and maintenance be transferred to the county.

The surplus land, described in Exhibits B, C, and D, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property and may recommend the quitclaim to the county of any interest in land to which there is no record title in the state's name.

The fair value of the surplus state land has been determined to be \$1.5 million, and the cost of future maintenance over the next 25 years is estimated to be \$2.5 million.

The commission finds \$1.5 million to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that: 1) FM 1464 is designated on a new alignment from Beechnut south to West Airport Boulevard; 2) existing alignment FM 1464 from Beechnut south to West Airport Boulevard is removed from the state highway system; 3) control, jurisdiction and maintenance of the existing alignment, from Clodine-Reddick Road south to West Airport Boulevard, is transferred to the county; and 4) the existing ROW from Beechnut to Clodine-Reddick Road is retained for use as a drainage basin with the roadway being obliterated.

FURTHER, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument transferring the state's rights, title and interest in the surplus state land to Fort Bend County, Texas, in consideration of the savings to the state of future maintenance costs, and a proper instrument quitclaiming the surplus no-title land to Fort Bend County, Texas; 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 state land.

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

(4) Hopkins County – SH 11 in Sulphur Springs – Consider the designation of a new alignment, removal of the old alignment from the system and transfer of control, jurisdiction and maintenance to the city. The MO will also authorize the transfer to the city of right of way held in the state’s name and quitclaim of land to which there is no record title (MO)

112417
ROW

In the city of Sulphur Springs, HOPKINS COUNTY, on STATE HIGHWAY 11, the State of Texas used certain land for highway purposes.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, the designation of SH 11 concurrently with SH 19, from SH 19 at Houston Street, south to 0.649 mile south of I-30, and east on a new alignment to SH 154, a distance of approximately 2.46 miles, and that existing SH 11 from SH 19 at Houston Street, east and south to SH 154, 0.5 mile south of I-30, a distance of approximately 4.0 miles, be removed from the state highway system and that control, jurisdiction and maintenance be transferred to the city from SH 19 at Houston Street east to Davis Street.

The surplus land, described in Exhibits B, C, and D, is no longer needed for a state highway purpose. In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property and may recommend the quitclaim to the city of the interest acquired and held by the city is its own name for use by the state.

The fair value of the surplus state land has been determined to be \$239,820, and the cost of future maintenance over the next 20 years is estimated to be \$3.08 million. The commission finds \$239,820 to be a fair and reasonable value of the state’s rights, title and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that:1) SH 11 is designated concurrently with SH 19, from SH 19 at Houston Street, south to 0.649 mile south of I-30, and east on a new alignment to SH 154, a distance of approximately 2.46 miles; 2) existing SH 11 from SH 19 at Houston Street, east and south to SH 154, 0.5 mile south of I-30, a distance of approximately 4.0 miles, is removed from the state highway system; 3) and control, jurisdiction and maintenance of existing SH 11 from SH 19 at Houston Street east to Davis Street is transferred to the city.

FURTHER, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument transferring the state’s rights, title and interest in the surplus state land, described in Exhibits B and D, to the City of Sulphur Springs, Texas, in consideration of the savings to the state of future maintenance costs, and a proper instrument quitclaiming the surplus land in the city’s name, described in Exhibits C and D, to the City of Sulphur Springs, Texas; 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 state land.

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

(5) Hunt County – US 69 in Greenville – Consider the sale of a surplus maintenance site to Greenville Independent School District (MO)

112418
ROW

In the city of Greenville, HUNT COUNTY, on US 69, the State of Texas acquired certain land for a maintenance site by instrument recorded in Volume 579, Page 241, Deed Records of Hunt County, Texas.

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

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of real property which is no longer needed for a state highway purpose.

Greenville Independent School District has requested that the state sell the surplus land for \$178,792.

The commission finds \$178,792 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 to Greenville Independent School District for \$178,792 all of the state's rights, title and interest in the surplus land; **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.

(6) Tarrant County – FM 1187 at Newt Patterson Road in Fort Worth – Consider a grant of easement to correct an error (MO)

112419
ROW

In the city of Fort Worth, TARRANT COUNTY, on FARM TO MARKET ROAD 1187, the State of Texas, by and through Tarrant County, acquired certain land for highway purposes by instrument recorded in Instrument No. D208427019, Deed Records of Tarrant County, Texas.

The instrument conveying the land to the state extinguished a gas line easement that should not have been extinguished.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend that the governor execute an instrument necessary to resolve an error in an instrument that conveyed an interest in real property to the state for highway right of way.

It is the opinion of the commission that it is proper and correct that the state grant an easement in and to the property described in Exhibit A to Energy Transfer Fuel, L.P., to correct the error.

NOW, THEREFORE, the commission recommends, subject to the attorney general, that the Governor of Texas execute a proper instrument granting to Energy Transfer Fuel, L.P., a new easement to correct the error.

(7) Tarrant County – I-20/I-820 in Fort Worth – Consider the sale of a surplus easement to the underlying fee owner (MO)

112420
ROW

In the city of Fort Worth, TARRANT COUNTY, on I-20/I-820, the State of Texas acquired an easement interest in certain land needed for highway drainage purposes by instrument recorded in Volume 2637, Page 363, Deed Records of Tarrant County, Texas.

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

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

Southwest Bank f/k/a Southwest National Bank is the underlying fee owner and has requested that the surplus easement be sold to the bank for \$59,000.

The commission finds \$59,000 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for a department purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument partially releasing all of the state's rights and interest in the surplus easement to Southwest Bank f/k/a Southwest National Bank for \$59,000.

(8) Tarrant and Denton Counties – FM 156 in Fort Worth and Haslet near the Fort Worth Alliance Airport – Consider the designation of a new alignment, removal of the old alignment and transfer of control, jurisdiction and maintenance and transfer of right of way to the City of Fort Worth (MO)

112421
ROW

In the cities of Fort Worth and Haslet, TARRANT and DENTON COUNTIES, on FARM TO MARKET ROAD 156, the State of Texas used certain land for highway purposes.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, the designation of FM 156 on a new location, the removal from the state highway system of the old alignment and the transfer of control, jurisdiction and maintenance of the old alignment to the City of Fort Worth.

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

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

The fair value of the surplus land has been determined to be \$1.1 million, and the cost of future maintenance over the next six years is estimated to be \$1.6 million.

The commission finds \$1.1 million to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

IT IS THEREFORE ORDERED by the commission that: 1) FM 156 is designated on a new location from the intersection with the old alignment north of Elizabeth Creek south to the intersection with the old alignment in Haslet, a distance of approximately 4.5 miles; 2) existing FM 156 is removed from the state highway system, a distance of approximately 3.99 miles; 3) and control, jurisdiction and maintenance of the old alignment is transferred to the City of Fort Worth.

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

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

(9) Wise County – US 380 at Chico Avenue in Decatur – Consider the sale of surplus right of way to the abutting landowner (MO)

112422
ROW

In the city of Decatur, WISE COUNTY, on US 380, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 420, Page 316, Deed Records of Wise County, Texas.

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

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

Victory Family Church of Decatur, Inc., is the abutting landowner and has requested that the surplus land be sold to the trustee for \$14,627.

The commission finds \$14,627 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 department 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 Victory Family Church of Decatur, Inc., for \$14,627; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

f. Speed Zones

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

112423
TRF

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

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

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

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

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

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

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

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

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

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

The commission recessed its open meeting at 11:20 a.m. to enter into Executive Session relating to Items 24a. and 24c.

24. Executive Session Pursuant to Government Code, Chapter 551, Section 551

a. Section 551.071 – Consultation with and advice from legal counsel regarding pending and contemplated litigation, including a briefing by the Office of the Attorney General on Kemp v. Amadeo Saenz, Jr., et al., and Sierra Club v. FHWA and TxDOT.

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

c. Section 551.074 - Discuss the duties of one or more persons who fills a position of Executive Director, Deputy Executive Director, Chief Financial Officer, Assistant Executive Director, General Counsel, Audit Office Director, Director of Government and Public Affairs, and Director of Strategic Policy and Performance Management.

The regular meeting was reconvened at 12:41 p.m. and the public meeting adjourned at 12:41 p.m.

APPROVED:

Deirdre Delisi, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on August 26, 2010, in Austin, Texas.

Roger Polson,
Interim Chief Minute Order Clerk
Texas Department of Transportation