

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on May 27, 2010 in Austin, Texas. The meeting was called to order by Chair Delisi. The meeting opened at 9:02 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:

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 2:42 p.m. on May 19, 2010, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 2. Approval of Minutes of the April 29, 2010 regular meeting of the Texas Transportation Commission

Commissioner Underwood made a motion, which was seconded, and the commission approved the minutes of the April 29, 2010 regular meeting of the Texas Transportation Commission by a 4-0 vote. (Commissioner Holmes absent),

ITEM 1. RESOLUTION AND RECOGNITION

a. Present resolutions to recognize Helen Havelka, former employee in the commission support office and former commission aide, upon her retirement from the department.

This resolution was presented by Deputy Executive Director Steve Simmons. Senator Robert Nichols presented a resolution from the Senate.

b. Acknowledge recognition from the Federal Highway Administration who presented the Exemplary Ecosystem Initiative Program award to the city of Seymour and the Wichita Falls District for the Seymour Park Stream Mitigation Site project.

Recognition by FHWA's Al Alonsi. Wichita Falls District Engineer Larry Tegtmeier made comments, as well as the head of City of Seymour Department of Economic Development John Studer.

c. Presentation of a certificate from the governor, in recognition of the 25th Anniversary of the Adopt-a-Highway program.

This certificate was presented to the commission by Travel Division Director Doris Howdeshell.

ITEM 3. AVIATION

Guadalupe County – Award federal grant funding for airport improvement project at New Braunfels Municipal Airport (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. The item was presented by Aviation Division Director David Fulton:

112256
AVN

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

The airport listed in Exhibit A is currently in need of improvements to preserve the airport. The department recommends the award of federal grant funds for the improvements.

On Thursday, April 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 project described in Exhibit A at an estimated cost of \$6,906,836.

Note: Exhibit A on file with minute order clerk.

ITEM 4. PUBLIC TRANSPORTATION

a. Various Counties – Award federal §5304 funds, Statewide Transportation Planning Program, and state matching funds to Nortex Regional Planning Commission and South Texas Development Council to support continuation of coordinated regional public transportation planning for FY 2010 (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. The item was presented by Public Transportation Division Director Eric Gleason:

112257
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 §5304 of the Federal Transit Code, the Federal Transit Administration (FTA) provides the department with funds to be used for planning and coordination projects.

The commission directs the award of federal §5304 Statewide Transportation Planning Program funds and state match of \$21,060 to Nortex Regional Planning Commission and \$15,000 to South Texas Development Council for regionally coordinated transportation planning.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is authorized to distribute funds as outlined above, submit the necessary state application to the FTA, and enter into the necessary contracts.

b. Various Counties – Award federal §5311, §5311(f), §5316, §5317, Rural Transit Assistance Program funds and award transportation development credits for FY 2010 coordinated call for projects (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. The item was presented by Public Transportation Division Director Eric Gleason:

112258
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor in a letter dated October 4, 2005 as the administering agency for the Federal Transit Administration (FTA) grant programs and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

Title 43, Texas Administrative Code, Sections §31.17, §31.18, §31.36 and §31.37 establishes the process by which program proposals shall be evaluated and funds distributed.

On July 24, 2009, the department published a Notice of Request for Proposal for projects in the *Texas Register*. Project criteria included project planning and coordination; demonstration of need; benefits of the project; and project management.

Title 43, Texas Administrative Code, §5.73 establishes the process for which Transportation Development Credits (TDC) may be awarded at the discretion of the commission.

The commission finds that the projects in Exhibit A are eligible for funding and awards a total of \$15,746,191 in federal program funds and 390,019 in TDC.

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 awards as described in Exhibit A, submit the necessary state application to the FTA and enter into the necessary contracts.

Note: Exhibit A on file with minute order clerk.

c. Various Counties – Award federal §5310 funds, Special Needs of Elderly Individuals and Individuals with Disabilities Program, and award transportation development credits for FY 2010 (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. The item was presented by Public Transportation Division Director Eric Gleason:

112259
PTN

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

The commission passed Minute Order 112145, on February 25, 2010, awarding the available portion of the FY 2010 federal §5310 program funds in accordance with the five month continuing resolution of SAFETEA-LU passed by the United States Congress.

The United States Congress has now passed a continuing resolution of SAFETEA-LU through December 2010, and the FTA has announced the total available funds for FY 2010 §5310 federal apportionment for Texas. The balance of the FY 2010 §5310 federal apportionment for Texas, including deobligated funds from previous awards, is awarded under this minute order.

Awards to transit operators are calculated in accordance with the formula in Title 43, Texas Administrative Code, §31.31. The distributions are shown in Exhibit A.

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

The commission finds that the projects in Exhibit A are eligible for funding and awards a total of \$4,910,424 in federal Formula Grant funds for Special Needs of Elderly Individuals and Individuals with Disabilities and 582,906 in TDC. The projects receiving TDC awards will reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access for the transit dependent populations to jobs and other necessary activities; enhance safety

by reducing mechanical breakdowns; improve air quality by reducing emissions with technological advances in the bus industry; and increase the value of the transportation assets by investing in the replacement of depreciated rolling stock thus yielding savings and efficiencies which can be reinvested into additional trips.

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

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

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the awards as described in Exhibit A, submit the necessary state application to the FTA, and enter into the necessary contracts.

Note: Exhibit A on file with minute order clerk.

d. Various Counties – Award federal §5311, Nonurbanized Area Formula Program, funds to rural transit districts (MO)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. The item was presented by Public Transportation Division Director Eric Gleason:

112260
PTN

The Texas Transportation Commission (commission) takes special note of its designation by governor as the administering agency for the Federal Transit Administration (FTA) grant program, "Formula Grant Program for Areas Other than Urbanized" (49 U.S.C. §5311), in a letter dated October 4, 2005; and further acknowledges that federal program regulations require the Texas Department of Transportation (department) to ensure that these grant funds are distributed fairly and equitably within the state.

The commission may award funds from the commission discretionary §5311 program funds on a pro rata basis, competitively, or a combination of both in accordance with 43 Texas Administrative Code §31.36 (g) (3).

The commission desires to award \$7,484,465 in §5311 program funds to rural operators.

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 awards as described in Exhibit A, submit the necessary state application to the FTA, and enter into the necessary contracts.

Note: Exhibit A on file with minute order clerk.

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

a. Final Adoption

Chapter 9 – Contract and Grant Management and Chapter 31 – Public Transportation (MO)

New §9.130, Purpose, §9.131, Definitions, §9.132, Applicability, §9.133, Procedure for Imposing Sanctions, §9.134, Improvement Action Plan, §9.135, Withholding Funds or Disallowing Costs, §9.136, Suspension or Termination for Cause, §9.137, Determination of Ineligibility, §9.138, Appeal of Sanction, and §9.139, Lessening Terms or Removal of Sanction (New Subchapter H, Grant Sanctions); and Amendments to §31.3, Definitions (General) and §31.48, Project Oversight (Program Administration)

Commissioner Houghton made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Holmes was absent. This item was presented by Deputy Executive Director Steve Simmons:

112261
OGC

The Texas Transportation Commission (commission) finds it necessary to adopt new §§9.130-9.139, new Subchapter H, relating to grant sanctions and amendments to §31.3 and §31.48 relating to public transportation grant sanctions, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new sections, attached to this minute order as Exhibits A - E, 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 §§9.130-9.139 and amendments to §31.3 and §31.48 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 E on file with minute order clerk.

Note: The commission received comments from Texas Transit Executive Director Jeff Heckler.

b. Proposed Adoption

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

(1) Chapter 1 – Management and Chapter 15 – Transportation Planning and Programming (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 4 – 0. Commissioner Holmes was absent. This item was presented by General Counsel Bob Jackson:

112262
OGC

The Texas Transportation Commission (commission) finds it necessary to propose new §1.86, Corridor Advisory Committees, and new §1.87, Corridor Segment Advisory Committees and the 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 proposed 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 proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(2) Chapter 13 – Materials Quality and Chapter 15 – Transportation Planning and Programming (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 4 – 0. Commissioner Holmes was absent. This item was presented by Deputy Executive Director for Engineering Operations John Barton:

112263
AEO

The Texas Transportation Commission (commission) finds it necessary to propose 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 proposed 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 proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

Note: The commission received comments from State Senator Glen Hegar concerning Item 11.

(3) Chapter 15 – Transportation Planning and Programming (MO)

Repeal of §§15.1-15.8 of Subchapter A, Transportation Planning; 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. Commissioner Holmes joins the meeting. This item was presented by Deputy Executive Director for Engineering Operations John Barton:

112264
AEO

The Texas Transportation Commission (commission) finds it necessary to propose 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 proposed 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 proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

Note: The commission received comments from Harris County Judge Ed Emmitt.

(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 Deputy Executive Director for Engineering Operations John Barton:

112265
AEO

The Texas Transportation Commission (commission) finds it necessary to propose 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 proposed 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 proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

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

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

(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:

112266
ROW

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

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

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

(6) Chapter 27 – Toll Projects (MO)

Amendments to §27.82, Toll Operations (Operation of Department Toll Projects)

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 Texas Turnpike Authority Division Director Mark Tomlinson:

112267
TTA

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §27.82, relating to toll operations, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §27.82 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.

ITEM 12. SAFE ROUTES TO SCHOOL

Award projects funded with federal §1404 funds, Safe Routes to School Program, 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 Traffic Operations Division Director Carol Rawson:

112268
TRF

Pursuant to Title 43, TAC §§25.500 – 25.505, Safe Routes to School Program, the Texas Transportation Commission (commission) may distribute designated federal funds to the Safe Routes to School Program to enhance safety in and around school areas through a comprehensive program designed to improve the bicycle and pedestrian safety of school age children; encourage a healthy and active lifestyle from an early age; enable and encourage

children, including those with disabilities, to walk and bicycle to school; and to facilitate projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

A call for project applications for the Safe Routes to School Program, opening on August 28, 2009 and closing on November 30, 2009 was published in the *Texas Register* on August 17, 2009. The call requested applications for infrastructure and non-infrastructure projects. The Texas Department of Transportation Bicycle Advisory Committee and the project evaluation committee evaluated projects based on methodology developed in accordance with the selection criteria, pursuant to Title 43, TAC, §25.504. The Director of Traffic Operations reviewed the recommendations of the committees and compiled the recommendation for the commission.

In selecting the projects shown in Exhibit A, Infrastructure Projects, and Exhibit B, Non-Infrastructure Projects, the commission, pursuant to Title 43, TAC, §25.504, considered:

- the recommendations of the Director of Traffic Operations
- safety of the traveling public
- safety in and around school areas
- funding availability

IT IS THEREFORE ORDERED by the commission that the SAFE ROUTES TO SCHOOL PROGRAM – 2009 PROGRAM CALL projects, as shown in Exhibits A and B are approved and the executive director is directed to enter into any necessary agreements and proceed in the most feasible and economical manner with program development at an estimated infrastructure construction cost of \$45,645,172 and non-infrastructure project cost of \$8,437,928. Federal funding will consist of \$54,083,100 apportioned under Section 1404 of Public Law 109-59, SAFETEA-LU.

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

Note: The commission received comments from Representative Tim Kleinschmidt; City of Temple Councilman Marty Janczak; and Bike Texas Executive Director Robin Stallings.

ITEM 6. CONTESTED CASE

Chambers County – CBS Outdoor, Inc. v. Texas Department of Transportation – Consider action on administrative law judge proposal for decision concerning cancellation of an outdoor advertising permit, final order (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 Office of General Counsel Attorney Rich O’Connell:

112269
OGC

On May 27, 2010 the Texas Department of Transportation considered the staff’s proposed cancellation of Outdoor Advertising Permit Number 013510, held by CBS Outdoor, Inc. (CBS). CBS requested an administrative hearing and the matter was referred to the State Office of Administrative Hearings. The proposal for decision concluded that the

permit should not be canceled. Under the Administrative Procedure Act and the Texas Transportation Commission's (commission) rules, the matter is now appropriate for entry of a final order by the commission.

IT IS THEREFORE ORDERED that the commission issues the attached order in the case of CBS Outdoor, Inc. v. Texas Department of Transportation, Docket No. 601-09-4322, and directs the executive director to dismiss the enforcement action against CBS.

Note: Final Order on file with minute order clerk.

ITEM 7. TOLL ROAD PROJECTS

Accept the annual Inspection Report for the Central Texas Turnpike Project (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 Texas Turnpike Authority Division Director Mark Tomlinson:

112270
TTA

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

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

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

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

In Section 707 of the Indenture of Trust, the commission covenants that it shall cause the general engineering consultant to make an inspection of the project at least once in the fiscal year following the substantial completion of the 2002 Project and in each fiscal year thereafter.

Following each inspection and on or before the 90th day prior to the end of each fiscal year, the general engineering consultant shall submit to the commission a report concerning the inspection, setting forth (a) their findings as to whether the project has been maintained in good repair, working order and condition and (b) their advice and recommendations as to the proper maintenance, repair and operation of the project during the ensuing fiscal year and (c) an estimate of the amount of money necessary for such

purposes, including their recommendations as to the total amounts and classifications of items and amounts that should be provided for in the annual operating budget, the annual maintenance budget and annual capital budget for the next ensuing fiscal year.

Section 707 of the Indenture of Trust requires copies of the report to be filed with the U.S. Department of Transportation and the Trustee.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. The FY 2010 Central Texas Turnpike Project Annual Inspection Report, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 707 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's FY 2010 Central Texas Turnpike Project Annual Inspection Report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

ITEM 8. TRANSPORTATION PLANNING AND FINANCE

a. Designate entities that may appoint additional members to the I-35 Corridor Segment Advisory Committees (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 Texas Turnpike Authority Division Director Mark Tomlinson:

112271
TTA

In Minute Order 112113, dated January 28, 2010, the Texas Transportation Commission (commission) created the I-35 Corridor Segment Advisory Committees, and identified entities that may appoint members to those committees.

The City of New Braunfels has requested that its mayor be able to name a representative to the I-35 Corridor Segment Committee 3. This additional designation will further the department's goal of achieving a diverse representation of community interests and stakeholders on each corridor segment advisory committee.

Title 43, Texas Administrative Code, §15.10 provides that the commission by order will create corridor segment advisory committees to assist the Texas Department of Transportation (department) in the transportation planning process for the I-35 corridor and in the corridor planned as part of I-69, and may create corridor segment advisory committees for any other corridor.

The purpose of corridor segment advisory committees is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment.

Each of the corridor advisory committees will provide to the department its advice and recommendations on transportation improvements to be made in the segment of a

corridor for which it is created, including facilities to be included in a development plan for that segment, and upgrades and other improvements to be made to existing facilities located in that segment, and other segment level planning, development, and financing matters as requested by the department.

In developing advice and recommendations, a corridor segment advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

A corridor segment advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

As provided in 43 TAC §15.10(b), a corridor segment advisory committee may consist of the following members: (1) one member appointed by the county judge of each county in which the proposed segment may be located, representing the general public within the county; (2) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed segment may be located, representing the general public within the metropolitan planning organization; (3) additional members representing the general public within cities designated by the commission, in which all or part of a proposed segment may be located, each of whom will be appointed by the mayor of a designated city; (4) additional members representing the ports, chambers of commerce, economic development councils and corporations, and other organizations that have an interest in transportation that are designated by the commission, within whose service area all or part of a proposed segment may be located, each of whom will be appointed by the governing body of a designated entity, and (5) an individual who resides or has a business in the area in which the segment may be located, has an interest in transportation, and is appointed to the committee by the commission.

IT IS THEREFORE ORDERED by the commission that the City of New Braunfels may appoint a member of the I-35 Corridor Segment 3 Advisory Committee created under Minute Order 112113.

b. Authorize the 2010 Federal Demonstration and Discretionary Programs (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 Finance Division Director Brian Ragland:

112272
FIN

The Texas Department of Transportation (department) annually receives notification from the Federal Highway Administration (FHWA) concerning projects that will receive funding through the Fiscal Year 2010 Federal Demonstration and Discretionary Programs.

Generally, various state departments of transportation submit candidate projects to FHWA for consideration of receiving federal funds. Another method through which states receive funds is when projects are submitted by members of the U.S. Congress representing that part of the state. For FY 2010, 22 projects have been selected to receive federal funding (See Exhibit A).

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director is hereby authorized to proceed in the most feasible and economical manner with project development and program monitoring of the identified projects in the FY 2010 Federal Demonstration and Discretionary Programs.

Note: Exhibit A on file with minute order clerk.

c. **Various Counties** – Concurrence with the Regional Transportation Council of the North Central Texas Council of Governments' funding of construction and other project development costs of projects to be advanced through the use of payments received from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (MO)

Commissioner 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 Finance Division Director Brian Ragland:

112273
FIN

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

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

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

Pursuant to Transportation Code, §228.012, the SH 121 payments may be used to pay the costs of a transportation project, highway project, or air quality project within a department district in which any part of the SH 121 toll project is located. Money must be allocated to projects authorized by Transportation Code, §228.0055 or §228.006, as applicable. The SH 121 toll project is located in the Dallas District. An air quality project

is a project or program of the department or another governmental entity that the commission determines will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads.

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

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

In Minute Order 112015, dated October 29, 2009, the commission clarified that commission concurrence in projects selected by the RTC to be financed with the SH 121 payments is limited to ensuring the funds are allocated to projects authorized by Transportation Code, §228.0055 or §228.006. Under Minute Order 112015, the department is required to disburse such funds in accordance with directions from the RTC to pay the costs of qualified projects.

The department has established a work program to account for and track projects and project costs in the Dallas District that are to be funded with the SH 121 payments. In Minute Order 111215, dated January 31, 2008; Minute Order 111439, dated July 31, 2008; Minute Order 111528, dated September 25, 2008; Minute Order 111553, dated October 30, 2008; Minute Order 111822, dated May 28, 2009; Minute Order 111854, dated June 25, 2009; Minute Order 111928, dated August 27, 2009; Minute Order 112047, dated November 19, 2009 and Minute Order 112121, dated January 28, 2010, the commission concurred with certain projects identified by the RTC to be funded with those payments, and approved the placement of those projects in the work program. The RTC, through an extensive public involvement process, has identified additional project costs in the Dallas District to be funded with the SH 121 payments.

IT IS THEREFORE ORDERED by the commission that, pursuant to the MOU and Minute Order 112015, it concurs with the projects as shown in Exhibit A that have been selected by the RTC to be funded with the SH 121 payments, and approves the placement of the projects in the work program with CONSTRUCT authority, to be developed consistent with applicable state and federal laws, regulations, and procedures. Pursuant to the finding of the RTC, the commission determines that the projects shown in Exhibit A and B are

transportation or highway projects, or air quality projects that will mitigate or prevent air pollution caused by the construction, maintenance, or use of public roads, and are therefore eligible to be funded with the SH 121 payments.

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

Note: Exhibit A on file with minute order clerk.

d. **El Paso County** – Consider the preliminary approval of a request for financial assistance from the Camino Real Regional Mobility Authority (CRRMA) to pay for the costs of constructing a controlled access facility consisting of two general-purpose lanes reconstructed in each direction and one new tolled managed lane in each direction on Loop 375, from US 54 to Zaragoza Road in El Paso County, and authorize the executive director to enter into a project development agreement with CRRMA (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:

112274
FIN

The Texas Department of Transportation (department) and the Camino Real Regional Mobility Authority (CRRMA) have been proceeding with the preliminary development of the Loop 375 Cesar Chavez – Border Highway Project, a toll project from US 54 to Zaragoza Road in El Paso County (Cesar Chavez Project).

The Cesar Chavez Project is located within the boundaries of the CRRMA, and is subject to the market valuation and primacy requirements of Transportation Code, §228.0111. The Cesar Chavez Project is one segment of a proposed regional network of toll facilities that are part of the 2008 Comprehensive Mobility Plan for the El Paso area (2008 CMP). The 2008 CMP contemplates that the Cesar Chavez Project will be developed by the CRRMA.

The department and the CRRMA are negotiating an agreement on the terms and conditions applicable to the development, construction, and operation of the Cesar Chavez Project, and the waiver of the development of a market valuation of the Cesar Chavez Project. Approval of the agreement by the Board of Directors of the CRRMA (Board) and a determination by the El Paso Metropolitan Planning Organization that the Cesar Chavez Project be developed under the agreed terms and conditions are required before the Board considers the exercise of the CRRMA's option to develop, construct, and operate the Cesar Chavez Project pursuant to Transportation Code, §228.0111(g) and other applicable law.

Transportation Code, §370.301 authorizes the department to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project by a regional mobility authority (RMA) on terms agreed to by the department and the RMA. Transportation Code, §222.103 authorizes the

department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the Texas Transportation Commission (commission).

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

In accordance with Section 27.53 of the toll equity rules, the CRRMA has submitted a request for financing in the amount of \$80.25 million to pay for the costs of the procurement, design, and construction of the Cesar Chavez Project, including the costs of engineering, environmental, legal, financial, public outreach, and related direct and indirect services and costs associated with the development and implementation of the project. The requested financial assistance would be in the form of a grant.

Section 27.53(d) authorizes the executive director of the department to waive submission of individual items of information or data required by Section 27.53(c) if: (1) the information or data required by this section is not relevant to the project or the financial assistance requested; (2) the department already possesses information or data in a format that may be substituted for the required information or data; or (3) the past performance of the requestor on previous projects developed in collaboration with the department indicates that the requestor will adequately and prudently address the issues and impacts described in the requested information or data.

Information and data required by Section 27.53(b) is either contained in the request for financing or is already in the department's possession. Supplemental information and data required by Section 27.53(c) is contained in the request for financial assistance, has already been provided to the department, or is waived under Section 27.53(d).

The department previously conducted environmental studies and analyses of the Cesar Chavez Project, and a Finding of No Significant Impact has been issued for the project by the Federal Highway Administration.

The CRRMA has committed to implementing the Cesar Chavez Project in compliance with all applicable local, state and federal environmental laws, regulations and requirements, and has committed to implement all environmental permits, issues, and commitments (EPIC).

The completion of the Cesar Chavez Project will benefit the state and the traveling public and improve the efficiency of the state's transportation system by enhancing local and regional mobility, decreasing congestion, increasing safety, increasing economic development opportunities, decreasing travel time, decreasing air pollution, and enhancing quality of life in the corridor.

The Cesar Chavez Project will expand the availability of funding for transportation projects or reduce direct state costs. The financial assistance will reduce the amount of funding required from local governments and will realize the benefits described above. This financial assistance will enhance the ability of the Cesar Chavez Project to go forward as a toll facility, improving the efficiency of the state transportation system. Without the financial assistance, the timeline to complete the Cesar Chavez Project and realize the benefits could be indefinitely delayed.

The Cesar Chavez Project is consistent with the approved Statewide Transportation Plan and is included as a toll project in the approved metropolitan transportation plan (MTP) of the El Paso Metropolitan Planning Organization (MPO), and in the MPO's transportation improvement program and the Statewide Transportation Improvement Program. Both the MTP and the TIP were found to conform to the State Implementation Plan.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the Camino Real Regional Mobility Authority meets the applicable requirements of 43 TAC §27.53 and §27.54(a) and, in accordance with those provisions, the commission grants preliminary approval of the request for financing in the amount of \$80.25 million, in the form of a grant, to be used for the purposes described herein, and directs the executive director to implement the actions authorized and required by those and other applicable toll equity rule provisions.

ITEM 9. PROPOSITION 14 BONDS

Bexar 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 Deputy Executive Director for Engineering Operations John Barton:

112275
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, and March 25, 2010, the commission adopted Minute Orders 111550, 111680, 111709, 111751, 111890, 111976, 112037, 112075, 112115 and 112119, 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 10. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Approve changes to the lists mobility, preventive maintenance and rehabilitation, 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 5 – 0. This item was presented by Assistant Executive Director for Engineering Operations John Barton.

112276
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 of the funding for highway and bridge construction is approximately \$2.25 billion.

The Texas Department of Transportation (department) collaborated with the Texas Division of the Federal Highway Administration (FHWA), MPOs, tolling authorities and transit providers to develop a unified approach to identify and prioritize projects that potentially qualify for funding.

In Minute Order 111734, dated March 5, 2009, the Texas Transportation Commission (commission) approved the funding, under the provisions of the ARRA, of approximately \$1.2 billion in mobility projects. In Minute Orders 111777, dated April 30, 2009, 111808, dated May 28, 2009, 112044, dated November 19, 2009, 112073, dated December 17, 2009, 112115, dated January 28, 2010, and 112232, dated April 29, 2010, the commission made revisions to the previously approved list of mobility projects. In Minute Order 111910, dated August 27, 2009, the commission approved a list of additional mobility projects to be funded to the extent funds become available as a result of letting underruns. In Minute Order 111969, dated September 24, 2009, the commission approved a list of substitute mobility projects to be funded in the event that any previously approved mobility projects were unable to meet ARRA deadlines.

In Minute Order 111734, dated March 5, 2009, the commission approved the funding, under the provisions of the ARRA, of approximately \$500 million in preventive maintenance and rehabilitation projects. In Minute Orders 111777 and 111808, dated April 30, 2009 and May 28, 2009 respectively, the commission made revisions to the previously approved list of preventive maintenance and rehabilitation projects.

In Minute Order 111848, dated June 25, 2009, the commission approved a list of additional preventive maintenance and rehabilitation projects to be funded as a result of letting underruns. In Minute Order 111879, dated July 30, 2009, technical revisions were made to the list of additional preventive maintenance and rehabilitation projects. In Minute Orders 112012, 112115, and 112232, dated October 29, 2009, January 28, 2010, and April 29, 2010, respectively, the commission approved funding for additional preventive maintenance and rehabilitation projects due to continued letting underruns.

A revised list of mobility projects has been developed and is set forth in Exhibit A. Additional mobility projects have been added due to continued letting underruns. No previously approved mobility projects are affected by the selection of these additional projects.

The department has developed a list of additional preventive maintenance and rehabilitation projects to be funded due to continued letting underruns, which is set forth in Exhibit B. No previously approved preventive maintenance and rehabilitation projects are affected by the selection of these additional projects.

All projects are subject to federal and state laws, including the provisions of the ARRA. No matching funds are required for mobility or preventive maintenance and rehabilitation projects.

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 Exhibit A in Minute Order 112232 is rescinded and replaced with Exhibit A to this minute order.

IT IS FURTHER ORDERED that the executive director or the director's designee is authorized to proceed with project development and contract awards for the projects described in Exhibits A and B and to enter into any 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.

ITEM 11. PASS-THROUGH TOLL PROGRAM

Authorize the executive director or designee to add a provision that limits the liability of each party in the event of a cost overrun or underrun into all pass-through toll agreements to be negotiated with those public entities whose proposals under the February 26, 2009 pass-through toll program call were selected by the commission on October 29, 2009 and December 17, 2009 (MO)

This item was deferred.

Note: The commission received comments from City of Fulshear Mayor Tommy Kuykendall; Fort Bend County Commissioner Richard Morrison; Fort Bend County Commissioner W.A. Andy Meyers; and Brazoria County Engineer Gerald Roberts.

ITEM 13. 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 and an update on motor fuel tax receipts.

This item was presented by Finance Division Director Brian Ragland.

ITEM 14. 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 by a vote of 5– 0. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112277
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 May 11 and 12, 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 Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 5- 0. This item was recommended by staff and presented by Construction Division Director Russel Lenz:

112278
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 May 11 and 12, 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, with the exception of Project Number CM 2010(844) (Fort Bend County), be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein. The award or rejection of Project Number CM 2010(844) is hereby deferred to a later date.

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

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

Note: Exhibit A on file with minute order clerk.

b. Various Counties – Approve award of a (\$500,000) scientific services contract to Michael Baker Jr., Inc., which employs a former department executive director (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 recommended by staff and presented by Deputy Executive Director Steve Simmons:

112279
OGC

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

Michael Baker, Jr., Inc. employs Michael W. Behrens, P.E., the former executive director of the Texas Department of Transportation (department). Mr. Behrens served as the department's executive director until August 31, 2007. The department advertised for technical experts for scientific services for transportation projects. Michael Baker Jr., Inc. was chosen to be a provider in accordance with the competitive selection procedures set forth in the Professional Services Procurement Act, Government Code, Chapter 2254, and 43 Texas Administrative Code §§9.30 et seq. The \$500,000 contract is for various counties throughout Texas. Under Government Code, §669.003, the department may enter into a contract if it is approved by the Texas Transportation Commission (commission).

IT IS THEREFORE ORDERED by the commission that it approves the contract.

ITEM 15. ROUTINE MINUTE ORDERS

Commissioner Holmes made a motion, which was seconded and the commission approved the following minute orders by a vote of 5 – 0 with the exception of 15.a.(2) which was taken separately. The commission also received comments from El Paso County Assistant County Attorney Cygne Nemir on Item 15.e.(3). This item was presented by Deputy Executive Director Steve Simmons:

a. Donations to the Department

(1) Bridge Division – Consider a donation from the Precast/Prestressed Concrete Institute (PCI) for a department employee’s travel expenses to attend PCI’s annual convention in Washington, D.C., May 29-June 2, 2010 (MO)

112280
GSD

This minute order considers a donation of approximately \$1,996.60 from the Precast/Prestressed Concrete Institute (PCI) for a Texas Department of Transportation (department) employee’s travel expenses to attend PCI’s Annual Convention and Bridge Conference in Washington, D.C., May 29-June 2, 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 \$1,996.60 from PCI 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)

112281
ROW

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

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

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

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

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

NON-CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	SH 317	2	0398-04-064	30
Bell	SH 317	9	0398-04-064	54
Bell	SH 317	8	0398-04-064	53
Bell	SH 317	7	0398-04-064	36
Bell	SH 317	3	0398-04-064	32
Bell	SH 317	4	0398-04-064	25
Denton	FM 2181	6	2054-02-018	92
Denton	FM 423	1	1567-02-030	72
Montgomery	FM 1774	5	1400-04-026	119

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Bell	IH 35	C	0015-06-082	14
Bell	IH 35	G	0015-06-082	84
Bell	IH 35	E	0015-06-082	39
Bell	IH 35	F	0015-06-082	95
Bell	IH 35	H	0015-06-082	62
Bell	IH 35	I	0015-06-082	81
Denton	SH 114	B	0353-02-066	6
Harris	SH 99	D	3510-06-006	3AAQ
McLennan	IH 35	A	0014-09-096	43

Note: Exhibits 1 through 9 and A through H on file with minute order clerk.

c. Highway Designations

(1) Coryell County – Designate US 190 on a new location southeast of Copperas Cove and redesignate the current location as Business US 190-E (MO)

112282
TPP

In CORYELL and LAMPASAS COUNTIES, local officials have requested the designation of US 190 on a new location from existing US 190, approximately 0.17 mile west of FM 2657, eastward and northeastward to US 190 approximately 0.5 mile east of Constitution Drive. Local officials have also requested the redesignation of the old location as Business US 190-E.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended designating US 190 on a new location on the state highway system, a distance of approximately 4.9 miles, and redesignating the old location as Business US 190-E, a distance of approximately 4.5 miles.

The Texas Transportation Commission (commission) finds that the designation of US 190 on a new location and redesignation of the old location as Business US 190-E 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 US 190 be designated on a new location on the state highway system from existing US 190, approximately 0.17 mile west of FM 2657, eastward and northeastward to US 190 approximately 0.5 mile east of Constitution Drive, a distance of approximately 4.9 miles, and the old location be redesignated as Business US 190-E, a distance of approximately 4.5 miles.

IT IS FURTHER ORDERED that upon the start of construction of the new location roadway, the Texas Department of Transportation (department) shall forward this minute order, along with all other pertinent information, to the American Association of State Highway and Transportation Officials Special Committee on U.S. Route Numbering.

IT IS FURTHER ORDERED that in the event construction of the new location roadway does not begin within 36 months of the date of this order, the order shall be null and void.

IT IS FURTHER ORDERED that if the new location roadway is developed by an entity other than the department, the maintenance, control, and jurisdiction of the new location roadway will remain with the developing entity until it is opened to traffic as approved by the department.

(2) Starr County – Designate FM 7550 along a new location from US 83 east of Pete Diaz Boulevard northward to FM 755 (MO)

112283
TPP

In STARR COUNTY local officials have requested the designation on the state highway system of FARM TO MARKET ROAD 7550 along a new location from US 83 approximately 0.6 mile east of Pete Diaz Boulevard northward to FM 755, a distance of approximately 1.94 miles. This new roadway will facilitate a safer and more effective movement of people and goods by providing a direct connection to the Starr-Camargo International Bridge.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended the designation of FM 7550 on the state highway system.

The Texas Transportation Commission (commission) finds that the designation of FM 7550 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 a new location roadway from US 83 approximately 0.6 mile east of Pete Diaz Boulevard, northward to FM 755, a distance of approximately 1.94 miles, be designated on the state highway system as FM 7550.

d. Right of Way Disposition and Highway Designation

Comal County – FM 306 and FM 483 from I-35 east to FM 1101 in New Braunfels – Consider the designation of the extension of FM 306 and the removal from the system of FM 483 and transfer of control, jurisdiction and maintenance to the county and quitclaim of surplus FM 483 right of way to the county (MO)

112284
ROW

In the city of New Braunfels, COMAL COUNTY, officials have requested to extend the designation of FARM TO MARKET ROAD 306 from I-35 east to FM 1101 on new location, a distance of approximately 0.95 mile, and that FM 483, from I-35 east to FM 1101, be removed from the state highway system (system); and the State of Texas used certain land for highway purposes to which title is held in the county's name.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended, as shown in Exhibit A, that the designation of FM 306 be extended from I-35 east to FM 1101 and that FM 483 from I-35 east to FM 1101, a distance of approximately 0.94 mile, be removed from the system and that control, jurisdiction and maintenance be transferred to Comal County.

Portions of the FM 483 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 recommend the quitclaim to the county of any interest that might have accrued to the state by use of the property.

The county has requested that FM 483 be removed from the system and that control, jurisdiction and maintenance from I-35 east to FM 1101 be turned over to the county and that the surplus land be quitclaimed to the county.

IT IS THEREFORE ORDERED by the commission that the extension of FM 306 from I-35 east to FM 1101 is accepted and designated as part of the system, a distance of approximately 0.95 mile, and that FM 483 from I-35 east to FM 1101 is removed from the system and transferred to the county for control, jurisdiction and maintenance, a distance of approximately 0.94 mile.

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 quitclaiming all of the state's rights and interest in the surplus land to Comal County, Texas.

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

e. Right of Way Dispositions and Donations

(1) Bexar County – Wurzbach Parkway at Schertz Road in San Antonio – Consider the sale of surplus right of way to the abutting landowner (MO)

112285
ROW

In BEXAR COUNTY, on WURZBACH PARKWAY, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 6942, Page 1750, Official Public Records of Real Property of Bexar 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.

Sports, Outdoor and Recreation (Soar) Park is the abutting landowner and has requested that the surplus land be sold to Soar for \$4,100.

The commission finds \$4,100 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Sports, Outdoor and Recreation (Soar) Park for \$4,100; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(2) Comal County – SH Loop 337 Landa Street in New Braunfels – Consider the transfer of surplus right of way to the city of New Braunfels (MO)

112286
ROW

In the city of New Braunfels, COMAL COUNTY, on STATE HIGHWAY LOOP 337, the State of Texas acquired certain land needed for highway purposes by instrument recorded in Volume 157, Page 191, Deed Records of Comal 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 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 \$591,266, and the state's costs for maintenance and resurfacing over the next 28 years is estimated to be \$675,000.

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

The commission finds \$591,266 to be a fair and reasonable value of the state's rights, title and interest in the surplus land.

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

Note: Exhibit A on file with minute order clerk.

(3) El Paso County – FM 1109 from SH 20 to the Rio Grande southeast of El Paso – Consider the amendment of MO 110125, passed June 30, 2005, to provide for the immediate removal of the highway from the system and transfer of control, jurisdiction and maintenance to the county; also consider the transfer and quitclaim of surplus right of way to the county for a portion of the highway (MO)

112287
ROW

In the city of El Paso, EL PASO COUNTY, on FARM TO MARKET ROAD 1109, the State of Texas acquired certain land for highway purposes by instruments recorded in Volume 1035, Page 269 and Volume 1043, Page 466, Deed Records of El Paso County, Texas, and the state used certain land to which there is no record title in the state's or county's name.

Minute Order 110125, passed June 30, 2005, provided that FM 1109 was removed from the highway system subject to the award of the construction contract by the Texas Department of Transportation for a new non-freeway facility.

An award for the construction contract has not been granted, and the county has requested that the highway be removed from the system and turned over to the county.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that FM 1109 from SH 20 to the Rio Grande, shown on Exhibit A, be removed from the state highway system and that control, jurisdiction and maintenance be transferred to the county.

The surplus land acquired by the state (surplus state land) and the surplus no-title land, described in Exhibits B, C and D, 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 and may recommend the quitclaim to the county of any interest that might have accrued to the state by use of the property, if there is no record title to the property.

The fair value of the surplus state land has been determined to be \$3,200, and the state's costs for maintenance over the next 20 years is estimated to be \$44,690.

The county has requested that control, jurisdiction and maintenance be transferred to the county, that the surplus state land be transferred to the county and that the surplus no-title land be quitclaimed to the county.

The commission finds \$3,200 to be a fair and reasonable value of the state's rights, title and interest in the surplus state land.

IT IS THEREFORE ORDERED by the commission that MO 110125 is amended to delete the condition of a prior award of a construction contract, and FM 1109 from SH 20 to the Rio Grande is removed from the system and transferred to the county for control, jurisdiction and maintenance, a distance of approximately 4.11 miles.

FURTHER, the commission finds that the surplus state land and the surplus no-title land are no longer needed for a state highway purpose and that the value of the surplus state land is less than \$10,000. The commission authorizes the executive director to execute a proper instrument transferring all of the state's rights, title and interest in the surplus state land to the El Paso County, Texas, in consideration of the savings to the state of future maintenance costs. The commission also recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument quitclaiming the state's rights and interest in the surplus no-title land to El Paso County, Texas. The commission further finds that, under the circumstances, it would be impracticable for the state to reserve 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) Jack County – US 281 at SH 148 in Jacksboro – Consider the sale of surplus right of way to the abutting landowner (MO)

112288
ROW

In the city of Jacksboro, JACK COUNTY, on US 281, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 92, Page 128, Deed Records of Jack 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.

Patrick J. Clarke is the abutting landowner and has requested that the surplus land be sold to him for \$10,300.

The commission finds \$10,300 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's

rights, title and interest in the surplus land to Patrick J. Clarke for \$10,300; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(5) Johnson County – Park Road 21 at County Road 1224 – Consider the sale of surplus right of way to the abutting landowners (MO)

112289
ROW

In JOHNSON COUNTY, on PARK ROAD 21, the State of Texas acquired certain land for highway purposes by instrument recorded in Volume 357, Page 208, Deed Records of Johnson County, Texas.

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

Gayland Pugh and wife, Alice Pugh, are the abutting landowners and have requested that the surplus land be sold to them for \$5,400.

The Texas Transportation Commission (commission) finds \$5,400 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus land is no longer needed for a state highway purpose and that the value of the surplus land is less than \$10,000 and authorizes the executive director to execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to Gayland Pugh and wife, Alice Pugh, for \$5,400; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(6) Smith County – East Texas Rail Trail, adjacent to FM 2493 in Bullard – Consider the sale of surplus railroad land (MO)

112290
ROW

In the city of Bullard, SMITH COUNTY, near FARM TO MARKET ROAD 2493, the State of Texas acquired certain land formerly used for railroad purposes by instrument recorded in Volume 4002, Page 299, Official Public Records of Smith County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed by the Texas Department of Transportation (department) for railroad or any other department purposes, and in accordance with V.T.C.A., Transportation Code, Section 91.095, the surplus land may be sold.

The City of Bullard has requested that the surplus land be sold to the city for \$14,375.

The Texas Transportation Commission (commission) finds \$14,375 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 City of Bullard, Texas, for \$14,375; 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)

112291
TRF

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

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

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

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

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

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

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

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

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

a. Donations to the Department

(2) Lubbock District – Consider a cash donation from Commissioner Fred Underwood for the purchase of up to 72 High Efficiency LED 4-function flashlights for use by maintenance personnel in the Lubbock District (MO)

112292
GSD

This minute order considers a cash donation to the Texas Department of Transportation (department) from Commissioner Fred Underwood of \$7,000 for the purchase of up to 72 High Efficiency LED 4-function flashlights for use by maintenance personnel in the Lubbock District. These flashlights will be used in emergency situations during nighttime roadway incidents. They will enhance the safety of department personnel and the traveling public during these situations.

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

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

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

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

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

IT IS THEREFORE ORDERED by the commission that the cash donation of \$7,000 from Commissioner Fred Underwood 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.

Note: Commissioner Holmes made a motion, which was seconded and the commission approved the following minute order by a vote of 4 – 0. Commissioner Underwood recused himself.

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 received comments from Hidalgo County Judge Rene Ramirez.

16. Executive Session Pursuant to Government Code, Chapter 551, **Section 551**
a. Section 551.071 – Consultation with and advice from legal counsel regarding any item on this agenda

The commission did not meet in executive session.

The regular meeting of the Texas Transportation Commission adjourned at 11:26 a.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 May 27, 2010, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation