

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on January 25, 2007 in Duncanville, Texas. The meeting opened at 9:23 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner

Administrative Staff:

Michael W. Behrens, Executive Director
 Bob Jackson, General Counsel
 Roger Polson, Executive Assistant to the Deputy Executive Director

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 2:30 p.m. on January 17, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

The commission received comments from Senator Royce West.

ITEM 1. Approval of Minutes of the December 14, 2006 regular meeting of the Texas Transportation Commission.

Commissioner Houghton made a motion, seconded by Commissioner Andrade, and the commission approved the minutes of the December 14, 2006 regular meeting of the Texas Transportation Commission.

Executive Director Michael Behrens presented the Texas Road Hand Award to Grady Smithey.

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

The commission received comments from Duncanville Mayor David Green; County Commissioner John Wiley Price; Director of Transportation, North Central Texas Council of Governments Michael Morris; and District Engineer William Hale.

ITEM 2. DISCUSSION ITEM**Federal legislative priorities**

This item was presented by Government and Business Enterprises Division Director Coby Chase. The commission received comments from Chief Financial Officer James Bass.

ITEM 3. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:**Proposed Adoption (to be published in the Texas Register for public comment)****Chapter 5 – Finance (MO)****New Chapter 5, Subchapter G, Private Activity Bonds**

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

110810
OGC

The Texas Transportation Commission (commission) finds it necessary to propose new §§5.81-5.88, relating to private activity bonds, to be codified under Title 43, Texas Administrative Code, Part 1.

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

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

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

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

ITEM 4. PUBLIC TRANSPORTATION**Various Counties – Award federal funding to rural and urban transportation operators for the replacement of public transportation vehicles (MO)**

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

110811
PTN

The Texas Transportation Commission (commission) takes special note of its designation by the governor as the administrating 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 on January 26, 2006, approved Minute Order 110378, which awarded the FY 2006 federal §5311 program funds to the nonurbanized (rural) areas of the state in accordance with formula provisions of 43 Texas Administrative Code §31.36. Minute Order 110378 included setting aside an amount for commission discretionary funds.

Additionally, the commission on January 25, 2001, approved Minute Order 108412, which authorized flexible federal funding of \$5 million annually for fiscal years 2001–2004 (\$20 million) to purchase replacement vehicles for small urban and rural transit systems. Project savings realized under the awards to urban systems financed with the flexible funding above have resulted with a balance of unobligated funds.

The commission on December 14, 2006, approved Minute Order 110771, expressing its intent to make available Transportation Development Credits (TDCs) that support regional coordination to include fleet replacement not to exceed an estimated \$12.5 million.

The commission now desires to award funds to rural and urban systems with applicable TDCs, as listed in Exhibit A, to purchase replacement transit vehicles. Should further funds become available as a result of project savings or deobligations, these funds may be made available to transit agencies also listed on the respective contingency lists identified in Exhibit A.

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 allocations as described in Exhibit A, submit the necessary state applications to FTA and enter into the necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

ITEM 5. TRANSPORTATION PLANNING AND PROGRAMMING

a. Various Counties – Approve appointment of one member to the Grand Parkway Association Board of Directors (MO)

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

110812
TPP

The Texas Transportation Commission (commission) by Minute Order 108413, dated January 25, 2001, appointed Ed Poole, to serve a six-year term on the Board of Directors (board) of the Grand Parkway Association, a transportation corporation created by the commission under Transportation Code, Chapter 431.

Mr. Poole's term expires on January 25, 2007.

Pursuant to Title 43, Texas Administrative Code (TAC), §15.85, the board has nominated Mr. Poole for a second term on the board and has submitted the prescribed documentation for commission review:

Ed Poole, League City

The board, as authorized by the executive director of the Texas Department of Transportation, published not less than 20 days prior to the date of this order, an appropriate notice of the nomination and of its proposed consideration by the commission, and has furnished the commission with the requisite publisher's affidavit.

Based upon the review and consideration of all relevant information as documented and filed with the commission, and based upon the board's recommendation, it appears to the commission that the nominee is fully eligible and qualified to serve as a member of the board in accordance with Transportation Code, Chapter 431, and with 43 TAC, Chapter 15, Subchapter H.

IT IS THEREFORE ORDERED by the commission that effective on the date of this order, Ed Poole is hereby appointed to serve as a member on the board for the Grand Parkway Association, with a term expiring January 25, 2013.

b. Various Counties – Accept the annual 2007-2008 Port Capital Program submitted by the Port Authority Advisory Committee (MO)

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

110813
TPP

Transportation Code, Sections 55.006 and 55.007, require the Texas Transportation Commission (commission) to appoint a seven-member Port Authority Advisory Committee (committee) with the following duties:

- 1) prepare a port mission plan;
- 2) review eligible projects to be funded under the Port Access Account Fund and make recommendations for approval or disapproval to the Texas Department of Transportation (department);
- 3) maintain trade data information that will assist ports in this state and international trade;
- 4) annually prepare a list of projects that includes recommended funding levels for each project and, if necessary for staged implementation of the project, the funding requirements for each stage; and
- 5) advise the commission and the department on matters relating to port authorities.

Transportation Code, Section 55.008 requires the committee to develop a two-year Port Capital Program defining the goals and objectives of the committee concerning the development of port facilities and an intermodal transportation system. In addition, this section requires the committee to update the Port Capital Program annually and

submit it to the governor, the lieutenant governor, the speaker of the house of representatives, and the commission.

The committee met on November 15, 2006 and formally adopted the 2007-2008 Port Capital Program and submitted the program to the department.

IT IS THEREFORE ORDERED by the commission that the 2007-2008 Port Capital Program as shown in Exhibit A is accepted and will be further distributed as required by statute.

Note: Exhibit A on file with minute order clerk.

c. **Various Counties** – Appointment of two members to the Austin-San Antonio Intermunicipal Commuter Rail District Board for a two-year term (MO)

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

110814
TPP

Article 6550c-1, VTCS, authorized the creation of a commuter rail district for the purpose of providing commuter rail service between two municipalities.

The commissioners' courts of Bexar and Travis Counties and the city councils of the city of Austin and the city of San Antonio adopted resolutions favoring the creation of a commuter rail district for the purpose of providing commuter rail service between Austin and San Antonio.

The Austin-San Antonio Commuter Rail District (district) is governed by a board of directors (board). The board is responsible for the management, operation and control of the district. The district convened their first meeting in February 2003, and the appointed board members entered into a service term of two years. Commencing in February 2007 the board terms will be staggered in either one or two year periods.

Article 6550c-1 provides that the Texas Transportation Commission (commission) shall appoint two public members to the board of a district.

The commission, by Minute Order 109121, dated December 19, 2002, the commission appointed Mariano Camarillo of Austin and J. Tullos Wells of San Antonio to the board of the district based on their experience and knowledge of commuter rail transportation. The commission reappointed both to a second two year term by Minute Order 109929, dated January 27, 2005.

The commission has determined that it would be in the best interest of the citizens of Central Texas for both Mr. Camarillo and Mr. Wells to be reappointed for third terms as members of the board due to their exemplary service and the need for the district to continue uninterrupted in their current efforts to bring commuter rail to the region.

IT IS THEREFORE ORDERED by the commission that the individuals named above are re-appointed as members of the Austin-San Antonio Commuter Rail District for third terms which will expire in either one or two years as determined by the board.

d. Various Counties – Authorize a corridor feasibility study generally along I-10 and US 190 from the New Mexico state line to the Louisiana state line (MO)

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

110815
TPP

The Federal Highway Administration has recently initiated a study that will describe the steps and estimate the funding necessary to construct a rural freeway route from Augusta, Georgia, to Natchez, Mississippi. If this corridor were continued through Louisiana and Texas, six military installations could be connected along the route for military deployments. The route of the corridor would be from generally along US 190 at the Louisiana state line, westerly to I-10 in El Paso.

To assess the impacts of this proposed transportation corridor in Texas, it is necessary to examine the corridor's feasibility, its connectivity to military installations and the potential for economic development.

State and local officials have expressed interest in the development of this corridor.

The Safe Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users, Subtitle G – High Priority projects authorized the Secretary of Transportation to carry out the listed projects. Project Number 2533 is for conducting a study of I-10 and US 190 with a focus on congestion relief and the need for a military and emergency relief transportation corridor. The earmarked federal funding associated with this project is \$160,000.

In order to fully address the feasibility and route analysis requirements for the 800-mile corridor in Texas, it is estimated the study would cost \$2 million.

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 feasibility and route studies for the I-10/US 190 Corridor at a total estimated cost of \$2 million.

ITEM 6. TOLL ROAD PROJECTS

a. All Counties – Authorizing waiver of requirement of the payment of a toll for certain vehicles and classes of vehicles (MO)

The commission considered the following minute order presented by TTA division director Phil Russell and received comments from Jayne Peters; Chief of the Texas Highway Patrol Randy Elliston; and Kevin Feldt from the North Texas Tollway Authority. They recommended changes to the minute order and deferred the vote to the end of the meeting.

TTA

Free passage on toll projects on the state highway system is governed by the Transportation Code, the administrative rules of the Texas Department of Transportation (department), and applicable trust agreements and bond indentures.

Transportation Code, §228.054(a) provides that the operator of a vehicle, other than an authorized emergency vehicle, that is driven or towed through a toll collection facility shall pay the proper toll. Section 228.054(e) further provides that the department may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

In accordance with Transportation Code, §362.901 and 43 TAC §27.81(b), the department generally allows free passage on toll projects for military vehicles in convoy and individually. However, pursuant to 43 TAC §27.81(h), the provision of free passage for military vehicles on toll projects that are governed by a trust agreement or indenture in existence on the effective date of the administrative rule is governed by the terms of that trust agreement or indenture.

Section 502(b) of the Indenture of Trust (indenture) for the Central Texas Turnpike System (CTTS) provides that the Texas Transportation Commission (commission) shall not grant free passage or reduced tolls within a class, except that, in its discretion, it may:

- reduce tolls through the use of commutation or other tickets or privileges based upon frequency or volume if the reduction is expected to result in an increase in revenues;
- grant free passage or reduce tolls for operational, emergency, or safety reasons;
- grant free passage to members, officers and employees of the department acting in the discharge of their official duties related to the state highway system;
- grant free passage for use by the Army, Air Force, Navy, Coast Guard, Marine Corps, or militia or any branch thereof in time of war or other emergency;
- grant free passage to public safety officers of the United States, the State and its agencies and political subdivisions when any of them (1) are acting in the discharge of their official duties, (2) can provide proper identification, (3) are using marked public safety vehicles, and (4) are traveling under flashing lights and sirens; and
- grant temporary free access for agents and contractors of the department acting on behalf of the department in connection with the construction, improvement, maintenance or operation of the toll system.

Pursuant to 43 TAC §27.82(f), the commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

- the private entity is required under the contract to submit to the department for approval the methodology for the setting of tolls, increasing the amount of the tolls, and the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll;
- the private entity is required to submit to the department for approval any proposed change in an approved methodology for the setting of a toll or an administrative fee;
- the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under 43 TAC §27.83 that provides an operational concession to the private entity; and
- the commission approves the award of the contract to the private entity.

The policy related to free passage on department toll projects established in this order does not apply to private entities under contract to operate a department toll project that are authorized to set toll rates for the use of the toll project in accordance with 43 TAC §27.82(f). Those contracts will include tolling regulations prescribing the tolling methodology required to be approved by the department that includes initial maximum toll rates and limitations on escalating the amount of the tolls, as well as defining those vehicles exempt from the payment of tolls.

IT IS THEREFORE ORDERED that free passage on TxDOT toll roads shall be granted to the following:

- (1) authorized emergency vehicles as defined in Transportation Code, §541.201 (fire department and police vehicles, ambulances, municipal department or public service corporation emergency vehicles, private vehicles of volunteer firefighters or certified emergency medical services employees or volunteers, industrial emergency response vehicles, and vehicles of blood or tissue banks) when responding to an emergency or, in the case of police vehicles, pursuing an actual or suspected violator of the law;
- (2) marked, recognizable military vehicles, except on the CTTS, where such vehicles may only receive free passage during time of war or other emergency;
- (3) department contractors working on the construction, improvement, maintenance, or operation of the toll project or system being traveled; and
- (4) any vehicle in the time of a declared emergency or natural disaster, as determined by the executive director of the department.

IT IS FURTHER ORDERED that the policy established in this order does not apply to temporary free passage, not exceeding 24 hours, that is provided for operational, safety, or emergency reasons, as determined by the executive director of the department or designee, except that, in the case of the CTTS, temporary free passage may only be granted as allowed under the indenture.

b. All Counties – Establishing administrative fees to be charged to owners and lessees of vehicles that use a toll project without paying the proper toll (MO)

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

110816
TTA

Transportation Code, Section 228.055(b) provides that the Texas Department of Transportation (department) may impose and collect an administrative fee, so as to recover the cost of collecting an unpaid toll on a department toll project, not to exceed \$100.00.

43 Texas Administrative Code §27.82(e) states that the Texas Transportation Commission (commission) by minute order will establish administrative fees charged to owners and lessees of vehicles that use a department toll project without paying the proper toll. In establishing an administrative fee, the commission will consider the estimated cost to the department to collect unpaid tolls on department toll projects, which will be determined by: (1) the existing or estimated violation rate on toll projects; and (2) the estimated number of violations that the department will collect.

The department projects a 10 percent violation rate on toll projects. The department anticipates that approximately 75 percent of toll violations will be resolved through a notice of nonpayment. Of the remaining violations, approximately 50 percent will be resolved following submission to a collection agency. Violations ultimately submitted to court will be resolved on a case-by-case basis.

In order to recoup the costs of processing toll violations, considering the estimated violation and collection rates, the department recommends the following fee structure:

Level 1 – Notice of nonpayment - \$5.00 administrative fee

Level 2 – Submission to collection agency - \$25.00 administrative fee

Level 3 – Submission to court - \$100.00 administrative fee

IT IS THEREFORE ORDERED that the department may impose and collect administrative fees in the following amounts: (1) \$5.00 for a violation resulting in a notice of nonpayment; (2) \$25.00 for a violation submitted to a collection agency; and (3) \$100.00 for a violation submitted to court.

IT IS FURTHER ORDERED that the administrative fee imposed for a particular violation is not cumulative and the total amount assessed for each violation shall not exceed \$100.00.

c. Travis and Williamson Counties – Establish the toll rate for video transactions resulting from use of the tolled portions of Loop 1, SH 45 and Segments 1-4 of SH 130 (2002 Project of the Central Texas Turnpike System) by vehicles not equipped with a transponder with sufficient funds in the corresponding customer account (MO)

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

110817
TTA

Title 43, Texas Administrative Code, §27.82(d) provides that the Texas Transportation Commission (commission) will establish toll rates for the use of a toll project on the state highway system. In setting toll rates, the commission is required to consider: (1) the results of traffic and revenue studies and any schedule of toll rates established in a traffic and revenue report; (2) the requirements of project bond covenants; and (3) vehicle classifications, type and location of the facility, and similar criteria that apply to a specific project.

The 2002 Project of the Central Texas Turnpike System (CTTS) consists of three elements: SH 130 (approximately 49 miles), which begins north of Georgetown in Williamson County and runs to US 183 in southeast Travis County; SH 45N (approximately 13 miles), from Ridgeline Blvd. west of US 183 to SH 130; and the Loop 1 Extension (approximately three miles), which runs from FM 734 (Parmer Lane) to SH 45N.

Pursuant to Minute Order 110483, dated March 30, 2006, the commission approved a toll rate schedule for the 2002 Project of the CTTS consisting of a cash rate and a rate for transponder users (electronic toll collection).

Section 502 of the indenture for the CTTS authorizes the commission, in its discretion in connection with the management of the CTTS, to establish and maintain introductory and other types of pricing.

The commission has determined that a toll rate charged to customers that do not have a transponder affixed to their vehicle, or that have a transponder, but have an insufficiently funded or closed customer account (video toll rate), should be offered as part of a pilot program to determine its value to the operation of the CTTS.

The video tolling rate will be 33 percent higher than the electronic toll collection rate in order to cover the additional costs to the Texas Department of Transportation (department) attributable to video transactions allowed under this order. The video tolling rate for each tolling point on the CTTS is set forth in Exhibit A.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the department is authorized to charge an introductory video toll rate for the use of the 2002 Project of the Central Texas Turnpike System as set forth in Exhibit A.

IT IS FURTHER ORDERED that after an analysis of the benefit and value of the introductory video toll rate option, the commission will take further action to permanently adopt the video toll rate pricing in accordance with the requirements of the indenture and bond covenants or will discontinue the video toll rate option.

Note: Exhibit A on file with minute order clerk.

d. Travis and Williamson Counties – Accept the General Engineering Consultant quarterly progress report for the Central Texas Turnpike System as of November 30, 2006 (MO)

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

110818
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 the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

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

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

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

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending November 2006, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

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

Note: Exhibit A on file with minute order clerk.

e. Dallas County – Consider preliminary approval of a request for financing from the North Texas Tollway Authority to pay for certain costs relating to the development of the Eastern extension of the President George Bush Turnpike, including costs of right-of-way acquisition and utility relocations and adjustments (MO)

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

110819
FIN

On January 22, 2007, the North Texas Tollway Authority (NTTA) submitted a request for a grant of financial assistance. The request identifies funding needs for the eastern extension of the President George Bush Turnpike as a 10-mile long facility extending from SH 78, south to I-30, following the formerly-planned alignment of Loop 9.

Transportation Code, §222.103 authorizes the department to participate, by spending money from any available source, in the acquisition, construction, maintenance, or operation of a toll facility of a public or private entity on terms and conditions established by the commission. 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 NTTA has requested \$160,270,000 for the acquisition of right of way, relocation utility adjustments, and related costs and services, contingent on execution of a revenue-sharing agreement.

The requested financial assistance would consist of \$160,270,000 from department's right-of-way funds allocated to the Dallas District. Right-of-way funding is appropriated to the state highway fund and must be expended by the department. Accordingly, right-of-way money to be expended on the proposed project must be approved by the commission under the toll equity rules.

Information and data required by Section 27.53(b) is either contained in the request for financing or in the draft revenue-sharing agreement. Supplemental information and data required by Section 27.53(c) is contained in the request for financing or has already been provided to the department.

The proposed project and work by the NTTA is consistent with the approved Texas Transportation Plan, included in the Statewide Transportation Improvement Program, and included in the approved plan of the North Central Texas Council of Governments.

NOW, THEREFORE, IT IS DETERMINED that the request for financial assistance submitted by the North Texas Tollway Authority meets the requirements of 43 TAC §27.53 and §27.54(a). The commission grants preliminary approval of the request for financing in the amount of \$160,270,000, in the form of a grant, and directs the executive director to implement the actions authorized and required by those provisions contingent upon execution of a revenue-sharing agreement acceptable to the department.

ITEM 7. FINANCE

Accept the Quarterly Investment Report as of November 30, 2006 as required by the Public Funds Investment Act (MO)

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

110820
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds

and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

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

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

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, Minute Order 110087, dated May 26, 2005, Minute Order 110145, dated July 28, 2005, and Minute Order 110617, dated July 27, 2006. The commission also adopted investment strategies in relation to the Texas Mobility Fund on February 24, 2005 and the Lease With an Option to Purchase Houston District Headquarters Complex Project on May 26, 2005. The commission has designated the department's Chief Financial Officer and Deputy Director of Finance as investment officers.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending November 30, 2006, attached as Exhibit A, and a quarterly investment report for the Lease With an Option to Purchase Houston District Headquarters Complex Project for the period ending November 30, 2006, attached as Exhibit B, have been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment reports attached as Exhibits A and B are accepted.

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

ITEM 8. STATE INFRASTRUCTURE BANK

Gregg County – Liberty City Water Supply Corporation – Consider granting final approval of an application from the Liberty City Water Supply Corporation to borrow \$568,744, with a 20 percent contingency, from the State Infrastructure Bank to pay for utility relocation along SH 135 from I-20 northwest to Susan Road in Liberty City (MO)

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

110821
FIN

On December 14, 2006, by Minute Order Number 110785, the Texas Transportation Commission (commission) granted preliminary approval of an application for financial assistance from the Liberty City Water Supply Corporation to borrow \$568,744.47 with a 20 percent contingency from the State Infrastructure Bank (SIB) to pay for utility adjustments made necessary by the expansion of SH 135 from a two-lane to a four-lane divided highway from I-20, northwest to Susan Road in Liberty City (project).

Pursuant to the commission's preliminary approval, the executive director implemented and completed negotiations and other actions authorized and required by commission rules. The executive director affirms that the necessary social, economic, and environmental impact study has been completed, and that the department has approved that study. The executive director recommends that the commission grant final approval of the SIB application for financial assistance.

The commission determines that providing financial assistance will protect the public safety and prudently provide for the protection of public funds, while furthering the purposes of the SIB; and that the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

IT IS THEREFORE ORDERED that the financial assistance application submitted by the Liberty City Water Supply Corporation to borrow \$568,744.47 with a 20 percent contingency from the State Infrastructure Bank is granted final approval. The executive director is directed and authorized to enter into the financial assistance agreement as negotiated with Liberty City Water Supply Corporation to include the following repayment terms: the loan will be repaid over a period of no more than 10 years at 4.06 percent interest per annum.

ITEM 9. 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, seconded by Commissioner Andrade and the commission approved the following minute order rejecting Project No. RMC 6153-01-001 in Uvalde County and RMC 6156-56-001 in Hidalgo County, as

recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110822
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on January 9 and 10, 2007.

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

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

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

Note: Exhibit A on file with minute order clerk.

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

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order rejecting Project No. BR 2007(164) in Tarrant County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110823
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation

(department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on January 9 and 10, 2007 as shown on Exhibit A.

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

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

ITEM 10. ROUTINE MINUTE ORDERS

Commissioner Andrade made a motion, seconded by Commissioner Houghton, and the commission approved the following minute orders with the exception of Item 10.b. presented by Executive Director Michael W. Behrens.

Item 10.b., Commissioner Andrade made a motion, seconded by Commissioner Houghton to approve the minute order, Commissioner Holmes and Commissioner Underwood abstained. The commission approved the minute order by a vote of 3 to 0.

a. Donations to the Department

(1) Construction Division – Acknowledge a donation from the University of New Mexico for a department employee's travel expenses related to participation in the 44th Paving Transportation Conference that was held on January 8-9, 2007 in Albuquerque, New Mexico (MO)

110824
OGC

This minute order acknowledges a donation of \$646.30 from the University of New Mexico (UNM) for a Texas Department of Transportation (department) employee's travel expenses. The employee made a presentation on public-private partnerships at the 44th Paving Transportation Conference that was held January 8-9, 2007 in Albuquerque, New Mexico.

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

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

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

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

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

IT IS THEREFORE ORDERED by the commission that the donation of \$646.30 by UNM is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) **Rusk County** – Consider a donation from TXU Mining Company, L.P. for sufficient funding and services to upgrade an existing drainage culvert to prevent flooding of the FM 3231 roadway in Rusk County (MO)

110825
OGC

TXU Mining Company, L.P. (TXU) proposes to donate to the Texas Department of Transportation (department) an estimated \$241,453.39 necessary for upgrades to an existing drainage culvert on FM 3231 to control surface water and prevent flooding of the FM 3231 roadway north of FM 1251 in Rusk County, Texas.

This donation has been examined by department personnel. The department recommends issuance of this minute order on the ground that it is in the best interest and welfare of the traveling public. Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties.

Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

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

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that the donor is not subject to department regulation or oversight. Periodically, the donor has funded projects that improve the state roadways as well as facilitates the donor's mining operations. Agreements have been entered into with the department to accept the donations, and there haven't been any issues.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$241,453.39 by TXU Mining Company, L.P. is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

b. Eminent Domain Proceedings

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

110826
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

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
1	Collin	US 75	0047-14-058	29
2	Collin	US 75	0047-14-058	37
3	Collin	US 75	0047-14-058	38
4	Robertson	SH 6	0049-06-070	2
5	Brown	US 67	0054-07-068	1
6	Henderson	US 175	0198-02-028	77
7	Henderson	US 175	0198-02-028	78
8	Henderson	US 175	0198-02-028	99
9	Henderson	US 175	0198-02-028	113
10	Anderson	US 79	0205-07-065	39
11	Anderson	US 79	0205-07-066	49
12	Anderson	US 79	0205-07-066	65
13	Anderson	US 79	0205-07-066	75
14	Tarrant	SH 26	0363-01-123	43
15	Tarrant	SH 26	0363-01-123	44
16	Tarrant	SH 26	0363-01-123	46
17	Tarrant	SH 26	0363-01-123	91
18	Tarrant	SH 26	0363-01-123	112
19	Tarrant	SH 26	0363-01-123	150
20	Gregg	SH 135	0377-01-042	3A & 3A TE
21	Rockwall	SH 205	0451-01-043	59
22	Rockwall	SH 205	0451-01-043	62B
23	Upshur	SH 155	0520-02-044	7
24	Upshur	SH 155	0520-02-044	8
25	Upshur	SH 155	0520-02-044	10
26	Harrison	FM 134	0632-03-036	7
27	Bowie	FM 559	1020-01-045	31
28	Bowie	FM 559	1020-01-045	44
29	Bowie	FM 559	1020-01-045	56, 56E, 56 TE
30	Bowie	FM 559	1020-01-045	78 & 78E
31	Bowie	FM 559	1020-01-045	79
32	Coryell	FM 2657	3131-03-008	5
33	Lampasas	FM 2657	3131-03-008	6
34	Harris	Gulf Bank Road	8003-12-008	252
35	Harris	Mykawa Road	8144-12-007	22

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Collin	US 75	0047-14-057	18
B	Collin	US 75	0047-14-057	19
C	Collin	US 75	0047-14-057	34

CONTROLLED ACCESS (continued)

EXHIBIT	COUNTY	HIGHWAY	ROW CSJ NO.	PARCEL
D	Collin	US 75	0047-14-057	35
E	Collin	US 75	0047-14-057	36
F	Collin	US 75	0047-14-057	37
G	Collin	US 75	0047-14-058	34
H	Collin	SH 289	0091-04-049	23
I	Collin	SH 289	0091-04-049	32
J	Collin	SH 289	0091-05-052	9
K	San Jacinto	US 59	0177-02-072	1
L	San Jacinto	US 59	0177-02-072	12
M	San Jacinto	US 59	0177-02-072	14
N	San Jacinto	US 59	0177-02-072	80
O	Montgomery	US 59N	0177-05-100	8B
P	Rockwall	SH 205	0451-01-043	1
Q	Rockwall	SH 205	0451-01-043	53
R	Rockwall	SH 205	0451-01-043	96
S	Tarrant	SH 121	0504-02-018	37
T	Johnson	SH 121	0504-05-002	116
U	Travis	SH 45SE	1200-05-012	710
V	Dallas	IH 635	2374-01-150	1
W	Dallas	IH 635	2374-01-150	9
X	Dallas	IH 635	2374-01-150	14
Y	Dallas	IH 635	2374-01-151	61
Z	Dallas	IH 635	2374-02-115	32
AA	Coryell	FM 2657	3131-03-008	2

Note: Exhibits 1 through 35 and A through AA on file with minute order clerk.

c. Finance

Accept the quarterly cash report for the period ending November 30, 2006 (MO)

110827
FIN

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

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for the first quarter of Fiscal Year 2007, ending November 30, 2006, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

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

Note: Exhibit A on file with minute order clerk.

d. Load Zones & Postings

Various Counties – Revise load restrictions on various roadways on the state highway system:

(1) Roadways (MO)

110828
CST

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

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

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

It has been determined from this investigation that the loads on certain sections of roads of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be transported or moved on, over or upon the roads described in Exhibit A be fixed, revised, or removed for the month of January 2007, as set forth therein, superseding any portion of a previous action in conflict. The executive director shall proceed with the erection, revision or removal of signs as appropriate, making the removal of this load limitation effective and operative.

Note: Exhibit A on file with minute order clerk.

(2) Bridges (MO)

110829
BRG

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

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

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

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

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

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

e. Right of Way Dispositions and Donations

(1) Hidalgo County – US 83 at Westgate Drive in Weslaco - Consider the sale of surplus right of way (MO)

110830
ROW

In the city of Weslaco, HIDALGO COUNTY, on US 83, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded in Volume 1021, Page 121, Deed Records of Hidalgo 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.

RDG ANDE, LTD., a Texas limited partnership, is the abutting landowner and has requested that the state sell the surplus land to the partnership for \$63,246.

The commission finds \$63,246 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 of 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 RDG ANDE, LTD., a Texas limited partnership, for \$63,246; 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) Houston County – US 287 at CR 232 southeast of Crockett – Consider the sale of surplus right of way (MO)

110831
ROW

In HOUSTON COUNTY, on US 287, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 144, Page 626, Deed Records of Houston 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.

John R. Brannen is the abutting landowner and has requested that the surplus land be sold to him for \$479.

The commission finds \$479 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 John R. Brannen for \$479; 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) Lee County – Old SH 20 east of Montgomery Street in Giddings - Consider the quitclaim of surplus right of way (MO)

110832
ROW

In the city of Giddings (city), LEE COUNTY, on OLD SH 20, the state used certain land for highway purposes for which there is no record title in the state's name;

The land (surplus land), described in Exhibits A, B and C, 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 quitclaim of any interest that may have accrued to the state by use of the property.

The city has requested that the surplus land be quitclaimed to the city.

It is the opinion of the commission that it is proper and correct that the state quitclaim its rights and interest in the surplus land to the city.

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

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

(4) Tarrant County – Spur 280 at Fort Worth and Denver Railroad in Fort Worth – Consider the exchange of drainage easements (MO)

110833
ROW

In the city of Fort Worth, TARRANT COUNTY, on STATE SPUR 280, the State of Texas acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 3682, Page 463, Deed Records of Tarrant County, Texas.

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

Cotton Depot Associates, L.P., a Texas limited partnership, has conveyed to the state an easement interest in land needed for the realignment and reconstruction of a new drainage facility (new easement), described in Exhibit B, and desires to make a partial donation to the state of the value of the new easement.

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

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

An Agreement Concerning the Donation of Property to the Texas Department of Transportation (donation agreement) has been executed by the owner and tendered to the department for acceptance under the provisions of Title 43, Texas Administrative Code, Chapter 1, Subchapter G, since the value of the new easement provided by the owner, which is \$35,165, exceeds the value of the surplus easement, which is \$20,130.

The owner has executed and delivered a conveyance document under the terms of the donation agreement to convey the new easement to the state and has requested that the state's rights and interest in the surplus easement be released.

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

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

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

FURTHER, in consideration of the foregoing premises and in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends,

subject to approval by the attorney general, that the Governor of Texas execute a proper instrument releasing all of the state's rights and interest in the surplus easement in exchange and as consideration for the conveyance to the state of the new easement.

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

(5) Williamson County – FM 619 southeast of Taylor – Consider the transfer of title of surplus right of way to Williamson County and removal from the state highway system (MO)

110834
ROW

In WILLIAMSON COUNTY, on FARM TO MARKET ROAD 619, the State of Texas (state) acquired certain land for a state highway purpose by instruments recorded in Volume 342, Page 587; Volume 344, Page 391; and Volume 346, Page 29 of the Deed Records of Williamson 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, Section 202.021, the Texas Transportation Commission (commission) may waive payment for real property transferred to a governmental entity with the authority to condemn the property, if the estimated cost of future maintenance on the property equals or exceeds the fair value of the property.

The appraised value of the surplus land is \$8,132. The Austin district has advised that maintenance of the surplus land for ten years is estimated to cost the state \$37,834, which exceeds the value of the surplus land. Williamson County has requested that the surplus land be transferred to the county in consideration of the estimated savings to the state of future maintenance costs.

The commission finds \$8,132 to be a fair and reasonable value for the state's rights, title and interest in the surplus land, and it is the opinion of the commission that it is proper and correct that the state convey to the county all of its rights, title and interest in the surplus land in consideration of the estimated savings to the state of future maintenance costs, which exceed the value of 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 Williamson County in consideration of the estimated savings to the state of future maintenance costs; **SAVE AND EXCEPT**, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

IT IS FURTHER ORDERED that the surplus land is removed from the state highway system.

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)

110835
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 zone shown on the attached Exhibit C is canceled.

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

ITEM 11. Executive Session Pursuant to Government Code, Chapter 551

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

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

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

The commission did not meet in executive session.

OPEN COMMENT PERIOD - The commission received comments from Nocona Economic Development Corps Executive Director James Yohe; Downtown Fort Worth Inc., Director of Transportation and Planning Melissa Dailey; Cuero Historical Museum President Gandolf Burrus; and Kristina Gaboury representing Texas Bicycle Coalition; and

ITEM 6. TOLL ROAD PROJECTS

a. All Counties – Authorizing waiver of requirement of the payment of a toll for certain vehicles and classes of vehicles (MO)

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

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TTA

Free passage on toll projects on the state highway system is governed by the Transportation Code, the administrative rules of the Texas Department of Transportation (department), and applicable trust agreements and bond indentures.

Transportation Code, §228.054(a) provides that the operator of a vehicle, other than an authorized emergency vehicle, that is driven or towed through a toll collection facility shall pay the proper toll. Section 228.054(e) further provides that the department may waive the requirement of the payment of a toll or may authorize the payment of a reduced toll for any vehicle or class of vehicles.

In accordance with Transportation Code, §362.901 and 43 TAC §27.81(b), the department generally allows free passage on toll projects for military vehicles in convoy and individually. However, pursuant to 43 TAC §27.81(h), the provision of free passage for military vehicles on toll projects that are governed by a trust agreement or indenture in existence on the effective date of the administrative rule is governed by the terms of that trust agreement or indenture.

Section 502(b) of the Indenture of Trust (indenture) for the Central Texas Turnpike System (CTTS) provides that the Texas Transportation Commission (commission) shall not grant free passage or reduced tolls within a class, except that, in its discretion, it may:

- reduce tolls through the use of commutation or other tickets or privileges based upon frequency or volume if the reduction is expected to result in an increase in revenues;
- grant free passage or reduce tolls for operational, emergency, or safety reasons;
- grant free passage to members, officers and employees of the department acting in the discharge of their official duties related to the state highway system;
- grant free passage for use by the Army, Air Force, Navy, Coast Guard, Marine Corps, or militia or any branch thereof in time of war or other emergency;

- grant free passage to public safety officers of the United States, the State and its agencies and political subdivisions when any of them (1) are acting in the discharge of their official duties, (2) can provide proper identification, (3) are using marked public safety vehicles, and (4) are traveling under flashing lights and sirens; and
- grant temporary free access for agents and contractors of the department acting on behalf of the department in connection with the construction, improvement, maintenance or operation of the toll system.

Pursuant to 43 TAC §27.82(f), the commission may authorize a private entity under contract to operate a department toll project to set toll rates for the use of the toll project and to establish an administrative fee charged to owners of vehicles that use the toll project without paying the proper toll, if:

- the private entity is required under the contract to submit to the department for approval the methodology for the setting of tolls, increasing the amount of the tolls, and the setting of an administrative fee to be imposed to recover the cost of collecting an unpaid toll;
- the private entity is required to submit to the department for approval any proposed change in an approved methodology for the setting of a toll or an administrative fee;
- the private entity will operate the toll project under a comprehensive development agreement or under a contract resulting from a procurement under 43 TAC §27.83 that provides an operational concession to the private entity; and
- the commission approves the award of the contract to the private entity.

The policy related to free passage on department toll projects established in this order does not apply to private entities under contract to operate a department toll project that are authorized to set toll rates for the use of the toll project in accordance with 43 TAC §27.82(f). Those contracts will include tolling regulations prescribing the tolling methodology required to be approved by the department that includes initial maximum toll rates and limitations on escalating the amount of the tolls, as well as defining those vehicles exempt from the payment of tolls.

IT IS THEREFORE ORDERED that free passage on TxDOT toll roads shall be granted to the following:

(1) on the CTTS, authorized emergency vehicles as defined in Transportation Code, §541.201 (fire department and police vehicles, ambulances, municipal department or public service corporation emergency vehicles, private vehicles of volunteer firefighters or certified emergency medical services employees or volunteers, industrial emergency response vehicles, and vehicles of blood or tissue banks) when responding to an emergency or, in the case of police vehicles, pursuing an actual or suspected violator of the law;

(2) on non-CTTS TxDOT toll roads, authorized emergency vehicles as defined in Transportation Code, §541.201 (fire department and police vehicles, ambulances, municipal department or public service corporation emergency vehicles, private vehicles

of volunteer firefighters or certified emergency medical services employees or volunteers, industrial emergency response vehicles, and vehicles of blood or tissue banks) when the operator of the vehicle is on duty;

(3) marked, recognizable military vehicles, except on the CTTS, where such vehicles may only receive free passage during time of war or other emergency;

(4) department contractors working on the construction, improvement, maintenance, or operation of the toll project or system being traveled; and

(5) any vehicle in the time of a declared emergency or natural disaster, as determined by the executive director of the department.

IT IS FURTHER ORDERED that the policy established in this order does not apply to temporary free passage, not exceeding 24 hours, that is provided for operational, safety, or emergency reasons, as determined by the executive director of the department or designee, except that, in the case of the CTTS, temporary free passage may only be granted as allowed under the indenture.

IT IS FURTHER ORDERED that this order expires April 27, 2007.

The regular meeting of the Texas Transportation Commission adjourned at 1:10 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

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I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on January 25, 2007, in Duncanville, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation