

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on June 28, 2007 in Austin, Texas. The meeting opened at 9:07 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 4:10 p.m. on June 20, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

ITEM 1. Approval of Minutes of the May 24, 2007 regular meeting and June 14, 2007 special meeting of the Texas Transportation Commission.

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the May 24, 2007 regular meeting and June 14, 2007 special meeting of the Texas Transportation Commission.

ITEM 2. AVIATION

Approve funding for airport improvement projects at various locations (MO)

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

110965
 AVN

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

The airports listed in Exhibit A are currently in need of improvements to preserve the airports or to meet standards. Due to the interest on the part of the airport sponsors, the department recommends that the improvements be funded.

On Wednesday, May 16, 2007, a public hearing was held and no comments were received.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that the executive director, or the director's designee, is authorized to enter into any necessary agreements to fund, through the Aviation Facilities Grant Program, the projects described in Exhibit A at an estimated cost of \$6,216,624.

Note: Exhibit A on file with minute order clerk.

ITEM 3. PUBLIC TRANSPORTATION

a. Nueces and San Patricio Counties – Award of transportation development credits to the Corpus Christi Regional Transportation Authority for fleet replacement and maintenance equipment (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:

110966
PTN

The Texas Transportation Commission (commission) desires to award Transportation Development Credits (TDC) to the Corpus Christi Regional Transportation Authority (RTA) to be used as the local match for fleet replacement and maintenance facility equipment needs identified in their Capital Improvement Program (CIP) which received a federal earmark under SAFETEA-LU.

The commission further recognizes that state and federal law permits the substitution of TDC as the required non-federal match for capital projects. Title 43, Texas Administrative Code (TAC), §5.73 establishes a process by which TDC may be awarded at the discretion of the commission. The commission finds that this project and associated distribution of the TDC has been reviewed to ensure eligibility, overall benefit to public transportation initiatives and ability to further the goals of the department, as outlined in 43 TAC §5.72 (e).

The commission finds that the project will: reduce congestion by improving reliable transit options thereby increasing levels of ridership; expand economic opportunity by increasing the level of service access; 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 into the replacement of depreciated rolling stock thus yielding savings or efficiencies which can be reinvested into additional trips for the citizens of Texas.

The commission desires to award \$2,931,599 in TDC to the Corpus Christi RTA for fleet replacement and maintenance facility equipment.

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

Transportation Code, Chapter 456 authorizes the 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 distribute TDC to the Corpus Christi RTA as outlined above, and to enter into any necessary contract.

Note: The commission received comments from Corpus Christi District Engineer Craig Clark; and Corpus Christi Regional Transportation Authority General Manager Ricardo Sanchez.

b. Various Counties – Award state funds to public transportation providers for FY 2008 as appropriated by the 80th Texas Legislature (MO)

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

110967
PTN

The General Appropriations Act enacted by the 80th Texas Legislature, Regular Session, appropriates \$39,817,135 for public transportation grants for small urban and nonurbanized areas of the state.

The Texas Transportation Commission (commission) desires to award \$19,741,068, the appropriated amount for FY 2008.

Title 43, Texas Administrative Code, §31.11 establishes a formula by which public transportation funds shall be distributed to the small urban and nonurbanized areas of the state. The FY 2008 allocation is shown in Exhibit A and has been calculated in accordance with the provisions of §31.11, and adjusted to address the appropriated level.

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

Transportation Code, Chapter 456 authorizes the 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 and to enter into the necessary contracts for the FY 2008 program of projects upon completion of all application requirements by the local public transportation operators.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Texas Transit Association executive director Ben Herr.

ITEM 4. DISCUSSION ITEM

Report and analysis of statewide pavement conditions and the impacts on present and future available resources

This report was presented by Assistant Executive Director for Engineering Operations Amadeo Saenz. Comments were also made by Chief Financial Officer James Bass.

ITEM 6. TOLL PROJECTS**a. Collin and Denton Counties – Consider the recommendation of the Regional Transportation Council concerning the financing, construction, and operation of the SH 121 project from Business SH 121 to US 75 in Denton and Collin counties**

Commissioner Holmes made a motion, seconded by Commissioner Andrade, and the commission approved by a vote of 4 to 1 (Houghton voting no) the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

110968
TTA

Transportation Code, §223.210(h) provides that the moratorium on certain comprehensive development agreements imposed by that section does not apply to a comprehensive development agreement entered into in connection with the SH 121 project if before the Texas Transportation Commission (commission) or the Texas Department of Transportation (department) enters into a contract for the financing, construction, or operation of the project with a private participant, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the North Texas Tollway Authority (NTTA), and the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007.

Transportation Code, §223.210(h) also provides that if the financial value of the commitment submitted by the authority is determined to be equal to or greater value than any other commitment submitted prior to March 26, 2007, the commission shall allow the NTTA to develop the project.

On March 26, 2007, the Chair of the Regional Transportation Council (RTC), the metropolitan planning organization for the Dallas-Fort Worth region, sent a letter to the chairmen of the commission and the NTTA that in part asked the NTTA to determine if the NTTA Board wished to submit a binding commitment for the SH 121 toll project. If so, the submission would be due to the RTC no later than May 25, 2007.

In the March 26, 2007 letter, the Chair of the RTC indicated that any binding commitment submitted by the NTTA would need to: (1) clearly state what is “guaranteed” in its proposal; (2) specify and communicate the risk that will be borne by users of the NTTA System due to (a) a change in bond rating, (b) possible toll rate increases on other NTTA facilities, and (c) the delayed development of committed projects; and (3) describe any other toll projects which cannot be built by NTTA in a timely fashion.

On May 18, 2007, the NTTA submitted a public sector proposal to finance, design, construct, operate, and maintain the SH 121 toll project to the RTC. As requested in the RTC’s March 26, 2007 letter, the department reviewed the NTTA submission and compared that submission with the proposal submitted by Cintra Concesiones de Infraestructuras de Transporte, S.A. (Cintra) in response to the department’s request for

proposals. The RTC also contracted with PricewaterhouseCoopers to act as independent financial advisor to the RTC for the purpose of assessing the financial value of the Cintra proposal and the NTTA submission using the criteria in Transportation Code, §223.210(h).

On June 18, 2007, the RTC passed a motion that the NTTA undertake the development, design, construction, financing, operation, and maintenance of the SH 121 toll project, and requested that the commission approve the selection of the NTTA for the SH 121 toll project.

The NTTA submission did not include a formal commitment to execute a pre-determined project agreement, as was required under the department's request for proposals, or firm lending commitments. The NTTA has indicated that their ability to achieve financial close within 60 days from the date of the NTTA's selection is certain. However, under the NTTA submission, commitments to finance the SH 121 toll project are conditioned on the execution of a project agreement between the department and the NTTA in a form acceptable to the underwriters and lenders. Moreover, the summary of the review of the NTTA submission prepared by RTC staff indicates that the submission did not meet the RTC conditions set out in the RTC's March 26, 2007 letter.

The NTTA proposes to finance the SH 121 toll project as part of the NTTA System, with some project costs paid from revenue derived from other parts of the system. The NTTA system is exposed if project costs are higher, traffic and revenue is lower or service commencement is delayed, or the rate of inflation by which toll rates may be escalated is lower than current estimates. The negative impact of these risks could be borne by users in the form of higher system tolls and by local communities if previously committed projects are delayed or cannot be constructed.

IT IS THEREFORE ORDERED by the commission that the RTC recommendation that the NTTA undertake the development, design, construction, financing, operation, and maintenance of the SH 121 toll project is approved.

IT IS FURTHER ORDERED that the department is authorized to enter into a project agreement with the NTTA if: (1) within 60 days from the date of this order, RTC staff has negotiated with the NTTA the major terms of the project agreement and has submitted those terms to the department, and a quantification of public benefits anticipated to be derived from the NTTA's development, design, construction, financing, operation, and maintenance of the SH 121 toll project has been agreed to by the RTC; and (2) the NTTA is able to achieve financial close, including payment of the agreed upfront payment amount, concurrently with or no later than 45 days after the execution and delivery of the project agreement. In the event financial close occurs after the execution and delivery of the project agreement, the agreement shall include a provision requiring termination of the agreement if financial close, including payment of the agreed upfront payment amount, is not achieved by the end of the 45 days allowed under this order.

IT IS FURTHER ORDERED that the major terms to be negotiated by the RTC staff shall include: (1) the timing and amount of the annual payments; (2) adherence by the NTTA with the RTC's toll rate policy; (3) enforcement provisions and remedies for

the NTTA's failure to comply with the toll rate policy, project schedule, payment obligations, and other commitments; and (4) the term of the agreement.

Note: The commission received comments from North Central Texas Council of Governments Director Michael Morris; North Texas Tollway Authority Chairman Paul Wageman; citizen Richard Reeves; Texans Against Tolls Co-Director Mary Anderson; Dallas Citizens Council Chairman Tom Dunning; North Texas Tollway Authority Acting Executive Director Jerry Hiebert; City of Frisco Mayor Mike Simpson; and Dallas-Fort Worth Regional Transportation Council Mayor Oscar Trevino.

ITEM 4. DISCUSSION ITEM (continued)

Report and analysis of statewide pavement conditions and the impacts on present and future available resources

This report was presented by Assistant Executive Director for Engineering Operations Amadeo Saenz. Comments were also made by Chief Financial Officer James Bass.

ITEM 3. PUBLIC TRANSPORTATION (continued)

c. Various Counties – Award Federal §5303 and State Planning Funding for FY 2008 to Metropolitan Planning Organizations, and authorize the §5304, State Planning and Research Program (MO)

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

110969
PTN

The Texas Transportation Commission (commission) was designated by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, Metropolitan Planning Program (49 U.S.C. §5303) and State Planning and Research Program (49 U.S.C. §5304), in a letter dated October 4, 2005, and is required to ensure that these grant funds are distributed and utilized in accordance with guidance from FTA.

Title 43, Texas Administrative Code (TAC), §31.21(c) establishes a formula through which §5303 program funds shall be distributed to the metropolitan planning organizations (MPO) of the state; and 43 TAC §31.22 establishes the mechanism through which §5304 program funds are administered by the Texas Department of Transportation (department). The distribution of the FY 2007 apportionment is shown in Exhibit A and has been calculated in accordance with the provisions of §31.21(c) and §31.22.

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

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

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to proceed with the award of \$6,046,857 in federal FY 2007 §5303 FTA allocation and \$1,511,714 in state match as described in Exhibit A; and §5304 FTA allocation for the state FY 2008 program as described in Exhibit A, submit the necessary state application to FTA, and enter into any necessary contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with minute order clerk.

Note: The commission received comments from Texas Transit Association Executive Director Ben Herr.

d. Various Counties – Award Federal §5311, Commission Discretionary Funds to Nonurbanized Transit Districts to Assist with Increased Fuel Costs (MO)

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

110970
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 Grant Program for Areas Other than Urbanized" (49 U.S.C. §5311), in a letter dated June 13, 2002; 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 February 28, 2007, approved Minute Order 110839, which awarded the FY 2007 federal §5311 program funds to the nonurbanized areas of the state. Minute Order 110839 included an amount of \$4,763,720 to be awarded by the commission on a pro rata basis, competitively, or a combination of both, in accordance with 43 TAC §31.36 (g) (3).

The commission desires to award \$1.7 million in §5311 nonurbanized (rural) funds to operators to assist with the burden caused by the recent increases in fuel costs.

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 application 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. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:

a. Proposed Adoption (to be published in the Texas Register for public comment)

(1) Chapter 1 – Management (MO)

Amendments to §1.4, Public Access to Commission Meetings (Public Meetings and Hearings)

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute order presented by General Counsel Bob Jackson:

110971
OGC

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §1.4 relating to public access to commission meetings, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §1.4 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.

(2) Chapter 21 – Right of Way (MO)

Amendments to §21.23, State Participation in Toll-Related Relocations (Utility Adjustment, Relocation, or Removal)

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

110972
ROW

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §21.23, relating to state participation in toll-related relocations, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §21.23 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.

b. Final Adoption

Chapter 9 – Contract Management (MO)

Amendments to §9.2, Contract Claim Procedure (General) and §9.38, Contract Management (Contracting for Architectural, Engineering, and Surveying Services)

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

110973
DES

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §9.2 and §9.38, relating to contract claim procedure and contract management, to be codified under Title 43, Texas Administrative Code, Part 1.

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

IT IS THEREFORE ORDERED by the commission that the amendments to §9.2 and §9.38 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 C on file with minute order clerk.

ITEM 6. TOLL PROJECTS (continued)

b. Various Counties – Amend Minute Order 110964 to correct the description of candidate projects for development, construction, and operation as toll projects subject to the process prescribed by Transportation Code Section 228.0111, for establishing the terms and conditions for the development, construction, and operation of those projects, and for developing market valuations of those projects, with local toll-project entities within whose boundaries approved candidate toll projects are located (MO)

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

110974
TTA

Senate Bill 792, 80th Legislature, Regular Session, 2007, added Transportation Code, §228.0111, to establish a process for providing local toll-project entities, defined as

regional tollway authorities, regional mobility authorities, or counties acting under Chapter 284, Transportation Code, with the first option to develop, construct, and operate toll projects located within the boundaries of the local toll-project entity.

Transportation Code, §228.0111 prescribes a process for establishing the terms and conditions for the development, construction, and operation of those projects, and for developing market valuations of those projects, with local toll-project entities within whose boundaries approved candidate toll projects are located.

On June 14, 2007, in Minute Order 110964, the Texas Transportation Commission (commission) approved a list of candidate projects for development, construction, and operation as toll projects, and authorized the executive director of the Texas Department of Transportation (department) to initiate the process prescribed by Transportation Code, §228.0111 with the local toll-project entity within whose boundaries an approved candidate toll project is located.

Exhibit A to this order corrects the description of candidate projects throughout the state that were approved by the commission in Minute Order 110964.

IT IS THEREFORE ORDERED by the commission that the corrected list of candidate projects for development, construction, and operation as toll projects contained in Exhibit A to this order is approved.

Note: Exhibit A on file with minute order clerk.

c. Various Counties – Authorize the creation of the Sulphur River Regional Mobility Authority by Delta, Hopkins, Hunt and Lamar counties (MO)

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

110975
TTA

Pursuant to Chapter 370 of the Transportation Code, and 43 TAC Chapter 26 (Regional Mobility Authority rules), Delta, Hopkins, Hunt and Lamar Counties (counties) petitioned the Texas Transportation Commission (commission) for authorization to form a Regional Mobility Authority (RMA). The petition was filed on April 20, 2007.

By letter dated April 27, 2007, the Texas Department of Transportation (department) notified the county that the petition met the requirements of §26.11 of the RMA rules.

The initial project identified in the petition consists of the completion of the widening of SH 24, from a two-lane to a four-lane divided facility, from Business SH 24 south of the city of Cooper to the Hunt County line. The project will provide a viable reliever route for commercial and noncommercial traffic, and will improve traffic circulation within the region.

The board of directors of the RMA, as set forth in the petition, will be composed of nine members, with eight directors appointed by the member counties and one director, who will serve as chairperson, appointed by the Governor. Of the eight directors, two members will be appointed by the Delta County Commissioners Court, one

specifically representing the City of Cooper's interests, two members will be appointed by the Hopkins County Commissioners Court, one specifically representing the City of Sulphur Springs' interests, two members appointed by the Hunt County Commissioners Court, one member specifically representing the City of Commerce's interests, and two members appointed by the Lamar County Commissioners Court, one member specifically representing the City of Paris' interests.

On May 24, 2007, the department conducted a public hearing in Delta County, pursuant to §26.12 of the RMA rules, to receive public comment on the proposed formation of the RMA. Notice of the public hearing was published in the *Texas Register* and in newspapers of general circulation in the respective counties.

At the public hearing, four elected officials and four individuals spoke in favor of the creation of the RMA. No one spoke in opposition to the creation of the RMA. No written comments were received.

The commission finds that the creation of the RMA has sufficient public support. The commission bases this finding on: (1) resolution of support from the Commissioners Courts of Delta, Hopkins, Hunt and Lamar Counties; and (2) the support indicated by elected officials at the public hearing.

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

The commission finds that the potential candidate project is: consistent with the Statewide Transportation Improvement Plan (STIP) and the approved Texas Transportation Plan. The project will be added to the STIP. Subject to commission approval of the project under §26.31 of the RMA rules, the commission also finds that the project will benefit the traveling public.

The commission finds that the composition of the board as described in the petition will adequately represent affected political subdivisions.

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

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

IT IS FURTHER ORDERED that the initial board of directors shall be composed of nine members, with eight members appointed by the petitioning counties, and the presiding officer appointed by the Governor.

Note: The commission received comments from Lamar County Judge Donald Wall.

ITEM 7. FINANCE

Authorize the filing of an application with the Bond Review Board for approval of the issuance of obligations secured by revenue in the State Highway Fund for the purpose of financing costs of authorized projects (MO)

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

110976
FIN

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.

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.

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.

Pursuant to Minute Order No. 110472, dated March 30, 2006, the commission approved a "Master Resolution Establishing a Financing Program for Bonds, other Public Securities and Credit Agreements Secured by and Payable from Revenue Deposited to the Credit of the State Highway Fund" (Master Resolution) to establish a revenue financing program (Financing Program) to provide a financing structure to facilitate the commission's exercise of the powers and authority conferred by the Enabling Act and pursuant to which the commission is authorized to issue obligations (Senior Obligations),

including bonds, notes and other public securities, and execute credit agreements and qualified hedge agreements, secured by and payable from a pledge of and lien on revenues deposited to the credit of the highway fund, as provided by the Master Resolution, and further approved a first supplemental resolution to the Master Resolution which authorized the issuance of "Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006" (the "Initial Senior Obligations"), which were issued in the original aggregate principal amount of \$600 million.

Pursuant to Minute Order No. 110729, dated October 26, 2006, the commission approved the second and third supplemental resolutions to the Master Resolution which authorized the issuance of "Texas Transportation Commission State Highway Fund First Tier Revenue Bonds, Series 2006A and Series 2006B" (which, collectively with the Series 2006 Bonds, are the "Outstanding Senior Obligations"), which were issued in the original aggregate principal amount of \$852,550,000 and \$100 million, respectively.

The commission has determined it to be in the best interest of the state to issue additional Senior Obligations, as herein provided.

Government Code, §1231.041 provides that a state agency may not issue a state security, including a bond, unless the Texas Bond Review Board (board) approves the issuance; and, Government Code, §1231.042 provides that, in order to obtain the approval of the board to issue a state security, a state agency must apply to the board in the manner prescribed by the board.

Pursuant to this authority, the board has adopted bond review rules, codified as 34 TAC §§181.1-181.12. Section 181.3 provides that a state agency that proposes to issue state securities shall apply for board approval by filing an application with the board and prescribes documentation required to be included with an application.

IT IS THEREFORE ORDERED by the commission that the Texas Department of Transportation (department) is authorized and directed to file with the board an application for approval of the issuance of additional Senior Obligations, in an aggregate principal amount not to exceed \$1.5 billion of bonds and other public securities authorized to be issued pursuant to and in accordance with the terms of the Enabling Act, and any necessary ancillary documents, for the purpose of financing the costs of highway improvement projects.

IT IS FURTHER ORDERED by the commission that the department is directed to present for the commission's consideration at a future meeting one or more minute orders to approve the final documentation authorizing the issuance of such additional Senior Obligations, including any agreements related thereto.

ITEM 8. CONTRACTS

a. Award or Reject Highway Improvement Contracts

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

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110977
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 June 7 and 8, 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 Nos. BR 2007(589) in Bexar County, CL 2377-1-38 in Brown County, STP 2007(498) in Duval County and STP 2007(616) in Lubbock County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

110978
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 June 7 and 8, 2007.

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.

b. Brazoria County – Project RMC 6157-99-001. Award of maintenance contract to second lowest bidder (MO)

Commissioner Holmes made a motion, seconded by Commissioner Underwood and the commission approved the following minute order as recommended by staff and presented by Maintenance Division Director Zane Webb:

110979
MNT

Project RMC 6157-99-001 (Pump Station and Drainage System Cleaning) was let on March 13, 2007 in the Houston District. Millenium Consultants, Inc. was the low bidder but was unable to fulfill bonding requirements. The second lowest bidder, All Points Inspection Services, Inc., has indicated in writing that they are willing to perform the work at the unit bid prices set forth in the lowest bid.

Section 221.0041 of the Transportation Code allows the Texas Transportation Commission (commission), under certain conditions, to award a maintenance contract of less than \$300,000 to the second lowest bidder when the lowest bidder does not execute a contract.

Title 43, Texas Administrative Code §9.17(d) allows the commission to accept the withdrawal of the lowest bid and award the contract to the second lowest bidder on

the recommendation of the executive director when the executive director determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder, the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices.

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

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

IT IS THEREFORE ORDERED by the commission that Millenium Consultants, Inc. be allowed to withdraw its bid for the contract for Project RMC 6157-99-001.

IT IS FURTHER ORDERED that the contract for Project RMC 6157-99-001 be awarded to All Points Inspection Services, Inc., in the low bid amount of \$123,540.00.

Note: Exhibit A on file with minute order clerk.

ITEM 11. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Underwood, and the commission approved the following minute orders presented by Executive Director Michael W. Behrens. Commissioner Holmes abstained from voting on Item 9.b.

a. Donations to the Department

(1) Construction Division – Acknowledge a donation from PRI Asphalt Technologies, Inc. for a department employee's travel expenses related to participation at the Tire Rubber and Other Polymers in Asphalt Binder Conference that was held on May 18, 2007 in Tampa, Florida (MO)

110980
CST

This minute order acknowledges a donation of \$704.26 from PRI Asphalt Technologies, Inc. (PRI) for a Texas Department of Transportation (department) employee's travel expenses related to making a presentation at the Tire Rubber and Other Polymers in Asphalt Binder Conference in Tampa, Florida on May 18, 2007.

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 \$704.26 by PRI 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) General Services Division – Consider a donation from Financial Research Associates, LLC for a department employee's travel expenses related to participation at the Biofuels Marketing & Distribution Conference to be held in San Diego, California from September 17-18, 2007 (MO)

110981
OGC

This minute order considers a donation of an estimated amount of \$1,122.00 from Financial Research Associates, LLC (FRALLC) for a Texas Department of Transportation (department) employee's travel expenses related to participation at the Biofuels Marketing and Distribution Conference to be held in San Diego, California from September 17-18, 2007.

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 is not interested in a contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of approximately \$1,122.00 by FRALLC is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(3) Texas Turnpike Authority Division – Acknowledge a donation from the Washington State Department of Transportation for a department employee's travel expenses related to participation on a toll operations peer review panel that was held in Gig Harbor, Washington from June 3-4, 2007 (MO)

110982
OGC

This minute order acknowledges a donation to the Texas Department of Transportation (department) from the Washington State Department of Transportation (WSDOT) for \$1,084.20 in travel expenses related to a department employee that participated on a peer review panel in Gig Harbor, Washington from June 3-4, 2007.

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 90th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in

any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

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

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that the donor previously donated travel funds to the department but is not interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of \$1,084.20 by the WSDOT 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.

(4) Amarillo District – Acknowledge a donation from Potter/Randall Safe Kids Coalition for a department employee's travel expenses related to participation at the Child Passenger Safety Instructor Conference that was held in San Antonio from June 19-21, 2007 (MO)

110983
OGC

This minute order acknowledges a donation of \$723.96 from Potter/Randall Safe Kids Coalition for a Texas Department of Transportation (department) employee's travel expenses related to participation at the Child Passenger Safety Instructor Conference that was held in San Antonio from June 19-21, 2007.

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 is not interested in a contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the donation of \$723.96 by Potter/Randall Safe Kids Coalition 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.

(5) Various Counties – Consider a donation from Texas Good Roads/Transportation Association for costs associated with the design, fabrication and installation of signs designating SH 130, from I-35/SH 195 in Williamson County south to I-10, in Guadalupe County as the Pickle Parkway (MO)

110984
OGC

This minute order considers a donation to the Texas Department of Transportation (department) from Texas Good Roads/Transportation Association (TGRTA) for an estimated \$18,620 for costs associated with the design, construction, and installation of four highway signs. The signs will be used to designate STATE HIGHWAY 130, from I-35/SH 195 in Williamson County south to I-10 in Guadalupe County, as the Pickle Parkway.

This donation has been examined, and 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 but may have members that are interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department. Nonetheless, the donation will provide a significant benefit to the public.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$18,620 by TGRTA 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.

(6) Polk County – Consider a donation from Card-Miles Enterprises, Inc. for construction of a curb system at the exit ramp on Loop 287 and US 59 to accommodate a proposed driveway location (MO)

110985
OGC

Card-Miles Enterprises, Inc. proposes to donate to the Texas Department of Transportation (department) an estimated \$4,570 necessary for the construction of a curb system at the exit ramp on Loop 287 and US 59 to accommodate a proposed driveway location.

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

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

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the

acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days. The commission also finds that the donor is not subject to department regulation or oversight and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

IT IS THEREFORE ORDERED by the commission that the estimated donation of \$4,570 by Card-Miles Enterprises, Inc. is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acceptance of the donation.

(7) Various Counties – Amend Minute Order 110857 to correct the name of the donor from TXU Corporation to TXU Generation Development Company LLC and the amount of the donation (MO)

110986
OGC

A private company donated funds for costs the department incurred associated with reviewing right-of-way, engineering, and environmental plans for possible grade separations and other modifications to state highways.

The Texas Transportation Commission approved Minute Order 110857 on February 28, 2007 accepting the amount of the estimated donation. The name of the company in the minute order was incorrect and is being corrected by this minute order. The estimated amount of the donation has also been revised from \$195,000 to \$27,000.

NOW, THEREFORE, IT IS ORDERED that Minute Order 110857 be amended so that the name of the company, TXU Corporation, in that minute order be replaced with TXU Generation Development Company LLC and the amount of funds be changed from \$195,000 to \$27,000.

c. Load Zones & Postings

Various Counties – Revise load restrictions on various roadways on the state highway system (MO)

(1) Roadways (MO)

110987
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 June 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)

110988
BRG

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

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

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

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

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

Note: Exhibit A on file with minute order clerk.

e. Right of Way Dispositions and Donations

(1) Denton County – FM 30 at Valley Parkway in Lewisville – Consider the exchange of right of way (MO)

110989
ROW

In the city of Lewisville, DENTON COUNTY, on FARM TO MARKET ROAD 3040, the State of Texas (state) acquired certain land for a state highway purpose by instrument recorded in Volume 630, Page 368 of the Deed Records of Denton County, Texas.

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

Payne-Johnston Management, Inc.; Robert B. Payne; Robert B. Payne, Jr.; Marshall B. Payne; The Payne Family Partnership, Ltd., a Texas limited partnership; Susan Payne Madole, Trustee of the Catherine Pomeroy Payne Trust and the John McMahon Payne Trust; Robert B. Payne, Jr., Trustee of the Marshall Benton Payne Trust, the William Robert Payne Trust, and the Laura Lyman Payne Trust; and Paluxy Partners West Lewisville, Ltd., a Texas limited partnership (owners), have conveyed to the state land needed for a state highway purpose (new land), described in Exhibit B, and desire to make a partial donation to the state of the difference in value between the new land and the surplus land.

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 owners 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 land provided by the owners, which is \$60,935, exceeds the value of the surplus land, which is \$43,021.

The owners have executed and delivered a conveyance document under the terms of the donation agreement to convey the new land to the state and have requested that the state's rights, title and interest in the surplus land be conveyed to the owners.

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

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus land to the owners in exchange and as consideration for the partial donation and the conveyance of the new land to the state.

IT IS THEREFORE ORDERED by the commission that the executive director is hereby authorized to accept the donation of the new land and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owners, 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 land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the owners in exchange and as consideration for the conveyance of the new land to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and 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.

110990
ROW

In the city of Lewisville, DENTON COUNTY, on FARM TO MARKET ROAD 3040, the State of Texas (state) acquired certain land for a state highway purpose by instruments recorded in Volume 1813, Page 176, and under Document Number 2006-35401, of the Deed Records of Denton County, Texas.

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

The Payne Family Partnership, Ltd., a Texas limited partnership; Marshall B. Payne; Robert B. Payne; Joan M. Payne; Robert B. Payne, Jr.; Susan Payne Madole, Trustee of the Catherine Pomeroy Payne Trust and the John McMahon Payne Trust; Robert B. Payne, Jr., Trustee of the Marshall Benton Payne Trust, the William Robert Payne Trust, and the Laura Lyman Payne Trust; Payne-Johnston Management, Inc.; Paluxy Partners West Lewisville, Ltd., a Texas limited partnership; David L. Johnston, Trustee of the David L. Johnston Family Trust #1 U/A dated the 30th day of December 1992, and the David L. Johnston Family Trust #2 U/A dated the 30th day of December 1992; Douglas A. Johnston, Trustee of the Douglas A. Johnston Family Trust #1 U/A dated the 30th day of December 1992, and the Douglas A. Johnston Family Trust #2 U/A dated the 30th day of December 1992; and Laura A. Johnston, Trustee of the Laura A. Johnston Family Trust #1 U/A dated the 30th day of December 1992, and the Laura A. Johnston Family Trust #2 U/A dated the 30th day of December 1992 (owners), have conveyed to the state land needed for a state highway purpose (new land and new easement), described in Exhibits B and C, and desire to make a partial donation to the state of the difference in value between the new land and easement and the surplus land.

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 owners 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 land provided by the owners, including improvements and damages, which is \$45,755, and the value of the new easement provided by the owners, which is \$55,321, exceed the value of the surplus land, which is \$18,381.

The owners have executed and delivered conveyance documents under the terms of the donation agreement to convey the new land and easement to the state and have requested that the state's rights, title and interest in the surplus land be conveyed to the owners.

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

It is the opinion of the commission that it is proper and correct that the state convey its rights, title and interest in the surplus land to the owners in exchange and as consideration for the partial donation and the conveyance of the new land and 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 land and easement and that the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owners, 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 land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to the owners in exchange and as consideration for the conveyance of the new land and easement to the state; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(2) Harris County – I-45 at Airtex Drive, approximately two miles north of Beltway 8 – Consider the sale of surplus right of way (MO)

110991
ROW

In HARRIS COUNTY, on INTERSTATE 45, the State of Texas acquired certain land needed for state highway purposes by instruments recorded in Volume 3556, Page 286, and Volume 3553, Page 351, Deed Records of Harris 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.

PetroMax Oil, Inc., a Texas corporation, is an abutting landowner and has requested that the surplus land be sold for \$66,000.

The commission finds \$66,000 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 PetroMax Oil, Inc., a Texas corporation, for \$66,000; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(3) Henderson County – SH 155, four miles north of Frankston – Consider the sale of surplus right of way (MO)

110992
ROW

In HENDERSON COUNTY, on STATE HIGHWAY 155, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 598, Page 262, Deed Records of Henderson 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.

Atwood Family Partnership, a Texas Limited partnership, acting by and through Richard R. Atwood, Trustee for the Atwood Revocable Management Trust, its general partner, is the abutting landowner and has requested that the surplus land be sold to the partnership for \$17,275.

The commission finds \$17,275 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 Atwood Family Partnership, a Texas Limited partnership, acting by and through Richard R. Atwood, Trustee for the Atwood Revocable Management Trust, its general partner, for \$17,275; 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.

(4) Motley County – US 62/70 in Matador – Consider the sale of surplus land (MO)110993
ROW

In the city of Matador, MOTLEY COUNTY, on US 62/US 70, the State of Texas (state) acquired certain land for highway purposes by instrument recorded in Volume 51, Page 570, Deed Records of Motley 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 right of way.

AEP Texas North Company, formerly known as West Texas Utilities Company, is the abutting landowner and has requested that the surplus land be sold to the company for \$2,700.

The commission finds \$2,700 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 AEP Texas North Company, formerly known as West Texas Utilities Company, for \$2,700; 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.

e. Speed ZonesVarious Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)110994
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.

b. Eminent Domain Proceedings

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

110995
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

EXHIBIT	COUNTY	HIGHWAY	ROW CSJ NO.	PARCEL
1	Fort Bend	US 90A	0027-08-149	147
2	Collin	US 75	0047-14-058	14
3	Hopkins	SH 11	0083-03-046	1, 1E, 1TE
4	Hopkins	SH 11	0083-03-046	13, 13E
5	Hopkins	SH 11	0083-03-046	23, 23E
6	Collin	SH 289	0091-04-049	24
7	Collin	SH 289	0091-04-049	31
8	Collin	SH 289	0091-05-052	2
9	Collin	SH 289	0091-05-052	6
10	Collin	SH 289	0091-05-052	11
11	Archer	US 277	0156-05-044	81
12	Brazoria	SH 35	0178-02-072	50
13	Brazoria	SH 35	0178-02-072	56
14	Austin	SH 36	0187-03-058	19
15	Henderson	US 175	0198-02-028	103

NON-CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
16	Anderson	US 175	0198-03-029	128
17	Tyler	US 69	0200-05-039	18
18	Tyler	US 69	0200-05-039	19
19	Tyler	US 69	0200-05-039	36
20	Anderson	US 79	0205-07-066	101E
21	Anderson	US 79	0205-07-066	104E
22	Bell	FM 2305	0232-04-012	40
23	Tarrant	SH 26	0363-01-123	1
24	Tarrant	SH 26	0363-01-123	45
25	Tarrant	SH 26	0363-01-123	65
26	Tarrant	SH 26	0363-01-123	83
27	Collin	FM 982	0387-05-017	41
28	Collin	FM 982	0387-05-017	57, 57E
29	Collin	FM 982	0387-05-017	96
30	Collin	FM 982	0387-05-017	132
31	Rockwall	SH 205	0451-01-043	43
32	Tarrant	SH 121	0504-02-018	3
33	Wise	US 380	0134-08-038	3A, 3AE

CONTROLLED ACCESS

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
A	Bell	IH 35	0015-07-076	9, 9AC
B	Harris	US 90	0028-02-045	67
C	Montgomery	US 59	0177-05-100	15
D	Bell	US 190	0185-01-033	26
E	Dallas	IH 35E	0196-03-231	25
F	Dallas	IH 35E	0196-03-231	30
G	Dallas	IH 35E	0196-03-231	42
H	Dallas	IH 35E	0196-03-231	51
I	Henderson	US 175	0198-02-028	93
J	Bexar	US 281	0253-04-131	8
K	Midland	SH 349	0380-18-002	19, 19E
L	Travis	SH 130	0440-06-008	1451
M	Tarrant	SH 121	0504-02-018	4
N	Tarrant	SH 121	0504-02-018	9
O	Montgomery	IH 45	0675-08-089	105
P	Montgomery	IH 45	0675-08-089	145
Q	Montgomery	IH 45	0675-08-089	150
R	Brazoria	SH 332	1524-01-072	2
S	Brazoria	SH 332	1524-01-072	9
T	Dallas	IH 635	2374-01-151	2

CONTROLLED ACCESS (continued)

<u>EXHIBIT</u>	<u>COUNTY</u>	<u>HIGHWAY</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
U	Dallas	IH 635	2374-01-151	20
V	Dallas	IH 635	2374-01-151	27
W	Dallas	IH 635	2374-01-151	29
X	Smith	SH Loop 49	3487-01-010	59
Y	Smith	SH Loop 49	3487-01-010	134
Z	Smith	SH Loop 49	3487-01-010	143

Note: Exhibits 1 through 33 and A through Z on file with minute order clerk.

ITEM 10. 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.

OPEN COMMENT PERIOD – There were no open comments.

The regular meeting of the Texas Transportation Commission adjourned at 1:48 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 June 28, 2007, in Austin, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation