These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on March 25, 2004, in Austin, Texas. The meeting opened at 9:13 a.m. with the following commissioners present:

**Texas Transportation Commission:**
Ric Williamson  
John W. Johnson  
Robert L. Nichols  
Hope Andrade  
Ted Houghton, Jr.

**Commissioner**  
Chair  
Commissioner  
Commissioner  
Commissioner

**Administrative Staff:**
Michael W. Behrens, Executive Director  
Steven E. Simmons, Deputy Executive Director  
Richard Monroe, General Counsel  
Dee Hernandez, Chief Minute Clerk

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

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 1:06 p.m. on March 16, 2004, as required by Chapter 551, of the Government Code, referred to as “The Open Meetings Act.”

**ITEM 1. Approval of Minutes** of the February 26, 2004, regular meeting of the Texas Transportation Commission

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the February 26, 2004, regular meeting of the Texas Transportation Commission.

**ITEM 2. Awards/Recognitions/Resolutions**
Presentation of award by the National Business Aviation Association to the commission and TxDOT

The commission received comments from Paul Smith, Regional Representative, National Business Aviation Association, Inc.

**ITEM 3. Aviation**

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

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved, Commissioner Nichols abstained from voting, the following minute order, presented by Aviation Division Director David Fulton:
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.

A public hearing was held on Monday, March 8, 2004, 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 $8,335,223.

Note: Exhibit A on file with chief minute clerk.

ITEM 4. Public Transportation

a. Various Counties - Award FY 2004 federal §5311 funds to rural transportation operators providing rural public transportation

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

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

The 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 October 25, 2001; and further acknowledges that federal program regulations require the department to ensure that these grant funds are distributed fairly and equitably within the state.

Title 43, Texas Administrative Code, §31.36(g) establishes a formula by which §5311 program funds shall be distributed to the nonurbanized areas of the state. The distribution of the available and total FY 2004 allocation is shown in Exhibit A and has been calculated in accordance with the provisions of §31.36(g).

The United States Congress has passed a five-month extension of the Transportation Equity Act for the 21st Century (TEA-21). FTA has available funds for the five-month extension. As soon as authorizing legislation covering the remainder of the fiscal year, March 1, 2004 through September 30, 2004, or a portion of it has been enacted, the entire apportionment or the additional authority will be made available. It is possible that there will be reductions or increases above the total amount. Reductions or increases in allocations to individual rural transit systems will be calculated on a pro rata basis in accordance with the formula in §31.36(g)(3).
IT IS THEREFORE ORDERED by the commission that the executive director or the director’s designee is directed to proceed with the available FY 2004 §5311 FTA allocation for the program as described in Exhibit A, submit the necessary state application to FTA, and enter into the necessary contracts for the FY 2004 program of projects.

IT IS FURTHER ORDERED that the executive director or the director’s designee is directed to issue contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with chief minute clerk.

b. Various Counties - Award FY 2004 federal §5310 funds to transportation operators serving the elderly and persons with disabilities

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

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

The commission takes special note of its designation by the governor as the administering agency for the Federal Transit Administration (FTA) grant program, "Planning and Design of Mass Transportation Facilities to Meet Special Needs of Elderly and Persons with Disabilities" (49 U.S.C. §5310), in a letter dated October 25, 2001; and further acknowledges that federal program regulations require the department to ensure that grant funds are distributed fairly and equitably within the state.

Title 43, Texas Administrative Code (TAC), §31.31(g) establishes a formula by which §5310 program funds shall be distributed to the department’s (25) districts. The distribution of the FY 2004 allocation is shown in Exhibit A and has been calculated in accordance with the provisions of §31.31. Projects are depicted in two categories: Category A, available funding; and Category B, apportioned, but unavailable funding. Projects in Exhibit A will be matched with local funds.

The United States Congress has passed a five-month extension of the Transportation Equity Act for the 21st Century (TEA-21). FTA has available funds for the five-month extension. As soon as authorizing legislation covering the remainder of the fiscal year, March 01, 2004 through September 30, 2004, or a portion of it has been enacted, the entire apportionment or the additional authority will be made available. It is possible that there will be reductions or increases above the estimated amount. Reductions or increases will be calculated on a pro rata district level based on the formula in 43, TAC §31.31(g). Districts will then reduce or increase funds for transit agencies in accordance with the priorities established in the §5310 district program of projects.
IT IS THEREFORE ORDERED by the commission that the executive director or the director’s designee is directed to proceed with the available FY 2004 §5310 FTA allocation for the program as described in Exhibit A, submit the necessary state application to FTA, and enter into the necessary contracts for the FY 2004 program of projects.

IT IS FURTHER ORDERED that the executive director or the director’s designee is directed to issue contracts in accordance with the priorities established in this minute order.

Note: Exhibit A on file with chief minute clerk.

The commission received a report on notification and public discussion regarding the Texas Transportation Commission meetings from Steve Simmons, Deputy Executive Director.

ITEM 5. DELEGATION
BRAZOS VALLEY COUNCIL OF GOVERNMENTS
Present transportation challenges in the Brazos Valley Region

The commission received comments from Brazos County Judge Randy Sims; College Station City Councilman John Happ; Washington County Judge Dorothy Morgan; Constance Allison representing Senator Steve Ogden; and Representative Fred Brown.


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

Chapter 21 - Right of Way and Title 16, Chapter 11 - Surface Mining and Reclamation Division

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

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

IT IS THEREFORE ORDERED by the commission that the repeals and 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 through D on file with chief minute clerk.

b. Final Adoption

(1) Chapter 5 - Finance

New Subchapter E, §§5.51-5.59, Pass-Through Tolls

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

The Texas Transportation Commission (commission) finds it necessary to adopt new §§5.51-5.59, relating to pass-through tolls, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted new sections, attached to this minute order as Exhibits A 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 new §§5.51-5.59 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

(2) Chapter 15 - Transportation Planning and Programming

New Subchapter N, §§15.170-15.174, State Highway Projects Financed Through the Issuance of Bonds and Other Public Securities

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Traffic Operations Division Director Carlos Lopez:

The Texas Transportation Commission (commission) finds it necessary to adopt new §§15.170-15.174, relating to state highway projects financed through the issuance of bonds and other public securities, to be codified under Title 43, Texas Administrative Code, Part 1.
The preamble and the adopted new sections, attached to this minute order as Exhibits A 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 new §§15.170-15.174 are adopted and are authorized for filing with the Office of the Secretary of State.

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

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

ITEM 7. Discussion Items
a. Rules establishing a formula allocating funds among individual eligible public transportation providers

This item was presented by Public Transportation Division Director Sue Bryant. The commission received comments from Representative Dan Ellis; Kay Dorman, Executive Director, Minibus, Inc.; Roxanne McKinley, Rural Transportation Manager, East Texas Council of Governments; Dean Danos, Deputy Director, Alamo Area Council of Governments; and Robert Stephens, Director of Transportation, Concho Valley Council of Governments.

b. Advanced Right of Way Acquisition

This item was presented by Right of Way Division Director John Campbell, and Assistant Executive Director for Engineering Operations Amadeo Saenz:

c. Utilization of toll credits for commuter rail or other modes of public transportation

This item was presented by Transportation Planning and Programming Division Deputy Director Wayne Dennis.

ITEM 8. State Infrastructure Bank

Bexar County - Cancel Minute Order 109524 granting final approval of an application from Bexar County for a State Infrastructure Bank loan to fund roadway improvements along Zarzamora from Loop 410 to Applewhite and from Zarzamora south to Watson (Spur 66) in San Antonio, and consider granting final approval of a State Infrastructure Bank loan in the amount of up to $4,000,000, with revised repayment terms, to fund a portion of the cost of those improvements

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

In accordance with 43 TAC §6.23, Bexar County (county) submitted an application to borrow from the SIB up to $9.1 million to assist in the cost of reconstructing Zarzamora Road from IH 410 to Applewhite Road, and Applewhite Road from Zarzamora Road to Watson Road.

In Minute Order 109524, dated December 18, 2003, the commission determined that the application for SIB financial assistance met the requirements of 43 TAC §6.32(e), and in accordance with that section, granted final approval of the application to borrow up to $9.1 million from the SIB to be repaid over a period of 15 years at 4.3 percent interest per annum, with interest only payments during the first two years.

Refinement of the cost estimates for the reconstruction projects has resulted in a determination that the county needs to borrow no more than $4 million from the SIB. The reduction in the amount that could potentially be borrowed by the county by more than 50 percent has resulted in the need to reduce the repayment period and interest rate from that approved by the commission in Minute Order 109524.

Zarzamora Road and Applewhite Road are functionally classified as rural major collectors, thus making the reconstruction projects eligible for federal funds and SIB funding. The projects are also authorized for Category 12, Strategic Priority funds. The roadway improvements are needed to safely and efficiently accommodate the anticipated increase in traffic as a result of the construction and operation of the Toyota automobile manufacturing facility. The completion of the projects will provide for economic development and improve safety for the traveling public, thus improving the efficiency of the state transportation system. These facts indicate that there is a transportation need for and anticipated public benefit from the proposed projects. The projects are consistent with the Texas Transportation Plan, and are included in the 2004-2006 Statewide Transportation Improvement Program.

The county has represented that the loan will be secured by ad valorem tax on parity with the county's current outstanding limited tax general obligation indebtedness. The county has been assigned a rating of AA+ by Fitch on outstanding obligations issued by the county. Thus, the projects and the applicant are likely to have sufficient revenue to assure repayment of the requested financial assistance. The present and projected financial condition of the SIB is sufficient to cover this request.

On May 20, 2003, the county commissioners court passed an order authorizing submission of this application to the department. This order indicates the official written approval of the projects by the governing body of the county and demonstrates local public support.
In accordance with 43 TAC §6.32(d), all necessary studies of the social, economic, and environmental impacts of the projects have been conducted, resulting in a finding of no significant impact and no further coordination is required. Accordingly, the projects will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

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

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

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by Bexar County meets the requirements of 43 TAC §6.32(e), and in accordance with that section, the commission grants final approval of the application to borrow up to $4.0 million from the SIB to be repaid over a period of 5 years at 2.4 percent interest per annum, with interest only payments during the first two years, and authorizes and directs the executive director to enter into a financial assistance agreement with Bexar County.

IT IS FURTHER ORDERED that Minute Order 109524, dated December 18, 2003 is canceled, and the provisions of Minute Order 109524 are superseded by the provisions of this order.

ITEM 9. Texas Turnpike Authority
   a. Travis and Williamson Counties - Accept the General Engineering Consultant Quarterly Progress Report for the Central Texas Turnpike Project

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

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

In TRAVIS and WILLIAMSON COUNTIES, State Highway 45 has been designated a turnpike project and a controlled access state highway from west of U.S. 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, State Highway Loop 1 has been designated a turnpike project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45.
The Texas Transportation Commission (commission) has issued turnpike revenue bonds and other obligations to finance a portion of the costs of the Central Texas Turnpike Project, a turnpike project composed of the SH 130, SH 45, and Loop 1 project elements (2002 Project), and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

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

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

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending February 2004, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

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

Note: Exhibit A on file with chief minute clerk.

b. Various Counties - Authorize payment for the work product of unsuccessful proposers submitting responsive detailed proposals to plan, develop, acquire, design, construct, finance, maintain, and operate the priority element of the Trans-Texas Corridor system generally paralleling IH 35

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

Transportation Code, §227.023(c) provides that to the extent and in the manner that the Texas Department of Transportation (department) may enter into comprehensive development agreements under Transportation Code, Chapter 361 with regard to turnpikes, the department may enter into a comprehensive development agreement that provides for the financing, development, design, construction, or operation of a facility or a combination of facilities on the Trans-Texas Corridor. All provisions of Chapter 361 relating to comprehensive development agreements for turnpikes apply to comprehensive development agreements for facilities on the Trans-Texas Corridor.
Transportation Code, §361.3022(m) requires the department to pay an unsuccessful private entity that submits a response to a request for detailed proposals for the construction, maintenance, repair, operation, extension, or expansion of a turnpike project under a comprehensive development agreement a stipulated amount of the final contract price for any costs incurred in preparing that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions.

On June 26, 2003, in Minute Order 109298, the Texas Transportation Commission (commission) authorized the department to publish a request for competing proposals and qualifications (RFPQ) for the development of the priority element of the Trans-Texas Corridor parallel to I-35, I-37, and proposed I-69, from the Denison area to the Rio Grande Valley (TTC-35).

The department issued the RFPQ on July 25, 2003, determined that all three teams submitting proposals and qualifications statements in response to the RFPQ were qualified to be on the short list of teams that will be requested to submit detailed proposals for the TTC-35 project, and intends to issue a request for detailed proposals to plan, develop, acquire, design, construct, finance, maintain, and operate the TTC-35 project on or about April 30, 2004.

In the request for detailed proposals, the department anticipates requesting conceptual development and financial plans that will outline project sequencing and phasing, near term facility implementation strategies, and feasibility studies with facility funding options and strategies, and that will include detailed engineering, financial, and other information from the short listed proposers that may be used by the department in the performance of its functions.

Payment for this work product would allow the department to use the work product for the benefit of the TTC-35 project or other department projects without further payment to the applicable proposers. Payment for the work product of proposers is also anticipated to provide an incentive to potential proposers to participate in the procurement process and increase the quality of detailed proposals submitted for Trans-Texas Corridor projects developed under a comprehensive development agreement.

IT IS THEREFORE ORDERED by the commission that the department is authorized to pay to each proposer that submits a responsive, but unsuccessful detailed proposal for the planning, development, acquisition, design, construction, financing, maintenance, and operation of the proposed TTC-35 project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of $750,000.

IT IS FURTHER ORDERED that compensation may only be paid if the work product submitted meets the minimum criteria and other conditions to payment identified by the department in the TTC-35 procurement documents.
ITEM 10. Contracts  

a. Award or Reject Highway Improvement Contracts  

(1) Maintenance

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

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 March 9 and 10, 2004.

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

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

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

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

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

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

Note: Exhibit A on file with chief minute clerk.
(2) **Highway and Building Construction**

Commissioner Houghton made a motion, seconded by Commissioner Johnson, and the commission approved, Commissioner Nichols abstained from voting, the following minute order, rejecting Project No. STP 2000(649)TE in Cherokee County, as recommended by staff and presented by Construction Division Director Thomas Bohuslav:

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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 March 9 and 10, 2004.

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

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

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

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

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

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

Note: Exhibit A on file with chief minute clerk.
b. **Various Counties** - Approve award of $1,000,000 acquisition services to Halff Associates, Inc.

Commissioner Johnson made a motion, seconded by Commissioner Houghton, and the commission approved the following minute order presented by Assistant Executive Director for Engineering Operations Amadeo Saenz:

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

Halff Associates, Inc. (Halff) employs Charles W. Heald, the former executive director of the Texas Department of Transportation (department). Mr. Heald served as the department’s executive director within the previous four years. The department advertised for acquisition services to obtain right of way and administer all acquisition activities, including but not limited to negotiations to purchase, relocation assistance, property management and eminent domain, in connection with the right of way necessary for highway projects. Halff was chosen to be a provider in accordance with the competitive selection procedures set forth in the Professional Services Procurement Act, Government Code, Chapter 2254, and 43 Texas Administrative Code §§9.30 et seq. The $1,000,000.00 contract is for various counties throughout Texas. Under Government Code, §669.003, the department may enter into a contract if it is approved by the Texas Transportation Commission (commission).

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

**ITEM 11. Routine Minute Orders**

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

a. **Eminent Domain Proceedings**

(1) **Various Counties** - noncontrolled and controlled access highways

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:
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**CONTROLLED ACCESS**

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Note: Exhibits 1 through 16 and A through T on file with chief minute clerk.
The Texas Transportation Commission (commission) has determined that in order to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its highways, public necessity requires the construction, expansion, enlargement, extension, or operation of the following turnpike projects in this state as a part of the state highway system (highway system), as described in this order.

The commission has determined that each of the following listed parcels of land, each being more particularly described in the exhibits attached to this order and being designated, identified, and listed by an alphabetical exhibit reference in this order under “CONTROLLED ACCESS”, and such additional lesser estates or property interests described in the exhibits, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Transportation Code, §361.131, §361.132, §361.135, and §203.054, as a part of the highway system to be constructed, expanded, enlarged, extended, or operated thereon.

The commission has determined that in order to facilitate the flow of traffic and promote the public safety and welfare and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the turnpike projects to be constructed on said parcels of land are designated as controlled access highways, and on such parcels of land where there is remaining abutting private property, roads are to be built as a part of said turnpike projects whereby the right of ingress and egress to or from the remaining private property abutting on said turnpike project is to be permitted and/or denied, as designated and set forth on each of the exhibits attached to this order.

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

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

(2) **Williamson County - controlled access turnpike projects**

**ROW**
b. Load Zones & Postings

Various Counties - Revise load restrictions on the state highway system:

(1) Roadways

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

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

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

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

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

Note: Exhibit A on file with chief minute clerk.

(2) Bridges

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 chief minute clerk.

c. Right of Way Dispositions and Donations
(1) Austin County - US 90, northeast corner at Loop 350 in Sealy - Consider the sale of surplus right of way

In the city of Sealy, AUSTIN COUNTY, on US HIGHWAY 90, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 111, Page 437, Deed Records of Austin County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for highway or public transportation purposes.

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.

Krampitz Partnership, a Texas general partnership whose partners are H.E. Krampitz and David Krampitz, (partnership) is the abutting landowner and has requested that the surplus land be sold to the partnership for $19,058.

The commission finds $19,058 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 highway or public transportation purposes 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 Krampitz Partnership, a Texas general partnership whose partners are H.E. Krampitz and David Krampitz, for $19,058; 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 chief minute clerk.
(2) **LaSalle County** - IH 35 - Consider the donation of a 6.9975 acre parcel of land for the renovation and/or reconstruction of the State’s existing Safety Rest Area

In **LaSALLE COUNTY**, on **IH 35**, 3 miles north of Artesia Wells. The Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the 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 a gift or donation valued at $500 or more by majority vote at an open meeting.

LaSalle County (owner) is the owner of the property described in Exhibit A. The owner wants to donate this property estimated at $13,995 to the department for a highway improvement project to renovate and/or reconstruct an existing safety rest area.

The owner is not subject to department regulations or oversight, is not currently a party to a contested case before the department, and is not interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

A donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

**IT IS THEREFORE ORDERED** by the commission that the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and 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, §1.504.

Note: Exhibit A on file with chief minute clerk.

(3) **Tarrant County** - Spur Highway 350 at SH 183 in Fort Worth - Consider the sale of a surplus drainage easement

In the city of Fort Worth, **TARRANT COUNTY**, on **SPUR HIGHWAY 350**, the State of Texas (state) acquired an easement interest in certain land for highway drainage purposes by instrument recorded in Volume 4392, Page 801, Deed Records of Tarrant County, Texas.

A portion of the land (surplus easement), described in Exhibit A, is no longer needed for highway or public transportation purposes.

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

The owner of the fee underlying the surplus easement has requested that the surplus easement be sold for $8,100.

The commission finds $8,100 to be a fair and reasonable value of the state’s rights and interest in the surplus easement.
NOW, THEREFORE, 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 highway or public transportation purposes and that the value of the surplus easement is less than $10,000 and authorizes the executive director to execute a proper instrument releasing all of the state’s rights and interest in the surplus easement for a cash consideration of $8,100.

Note: Exhibit A on file with chief minute clerk.

(4) **Taylor County** - SH Loop 322 at SH 36 in Abilene - Consider the conveyance of surplus right of way to the City of Abilene to honor a reversionary clause

In the city of Abilene (city), TAYLOR COUNTY, on STATE HIGHWAY LOOP 322, the State of Texas (state) acquired certain land needed for highway purposes by instruments recorded in Volume 564, Page 560, and Volume 576, Page 386, of the Deed Records, Taylor County, Texas.

The instruments conveying the land to the state provided that if the land should be abandoned, then the land would automatically revert to the grantors.

A portion of the land (surplus right of way), described in Exhibits A and B, is no longer needed for highway or public transportation purposes.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the quitclaim of the state’s interest to comply with a reversionary clause contained in the instrument that originally conveyed the interest to the state.

The commission finds that it is proper and correct that the state quitclaim all of its rights, title and interest in the surplus right of way to the city to comply with the reversionary clause contained in the instrument of conveyance to the state since the city was the grantor in one of the conveyances and since the city is the assignee of an inactive corporation that was the grantor in the other conveyance to the state.

NOW, THEREFORE, the commission finds that the surplus right of way is no longer needed for highway or public transportation purposes and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument quitclaiming all of the state’s rights, title and interest in the surplus right of way to the city.

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

(5) **Tyler County** - Former Railroad Right of Way east of US 69 and south of the Jasper County line - Consider the release of railroad right of way

In TYLER COUNTY, the State of Texas (state) acquired a railroad corridor from Southern Pacific Transportation Company by instrument recorded in Volume 575, Page 640, of the Deed Records, Tyler County, Texas. This railroad corridor is subject to a Notice of Interim Trail Use (NITU) issued by the Surface Transportation Board (STB) in Washington, DC.
The railroad easement interests in a certain segment of the railroad corridor, described in Exhibit A (surplus easement), are no longer needed for either interim trail use and railbanking or highway transportation purposes.

In order to resolve a dispute with Louisiana-Pacific Corporation concerning the effect of the NITU on fee interests it owns in such railroad corridor, TxDOT entered into a settlement agreement wherein, among other things, TxDOT agreed to release the surplus easement.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the release of the state’s interest where the state has the right to use property.

The commission finds that it is proper and correct that the state release all of its rights and interest in the surplus easement in consideration of the settlement agreement between TxDOT and the Louisiana-Pacific Corporation.

NOW, THEREFORE, the commission finds that the surplus easement is no longer needed for either interim trail use and railbanking purposes or highway transportation purposes 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.

FURTHER, these recommendations, findings, and orders are subject to STB authorization of the termination of interim trail use and full abandonment of that segment of railroad corridor described in Exhibit A, and Louisiana-Pacific Corporation’s execution and delivery into escrow of (i) a General Warranty Deed conveying to the state approximately 286.421 acres more particularly described in the settlement agreement, and (ii) a Mutual General Release of Claims as set forth in the settlement agreement, and, if not so performed within 240 days of the date hereof, these recommendations, findings and orders shall be automatically cancelled.

Note: Exhibit A on file with chief minute clerk.

d. Speed Zones

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

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

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

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.
Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

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

It has also been determined that speed limits on various segments of the state highway system, previously established by the commission by minute order and listed in Exhibit C, are no longer necessary or have been incorporated by cities which have the authority to set speed limits on these sections of highways.

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

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

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

ITEM 12. 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. Discussion of the possible purchase of that certain facility known as the Camino Colombia in Webb County, Texas
c. Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.

At 2:10 p.m. the chair recessed the regular meeting for executive session. Commissioner Houghton did not attend.

At 2:42 p.m. chairperson Williamson reconvened the meeting and stated that no action was taken during the executive session.

OPEN COMMENT PERIOD - The commission did not receive any comments.

Commissioner Johnson made a motion, seconded by Commissioner Nichols, and the commissioners approved adjourning the meeting. The regular meeting of the Texas Transportation Commission adjourned at 2:43 p.m.
The regular meeting of the Texas Transportation Commission adjourned at 12:50 p.m.

APPROVED:

[Signature]
Ric Williamson, Chair
Texas Transportation Commission

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 March 25, 2004, in Austin, Texas.

[Signature]
Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation