

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

Official Minutes
October 31, 2002

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**MINUTES OF REGULARLY SCHEDULED HIGHWAYS AND
TRANSPORTATION COMMISSION MEETING HELD IN
JEFFERSON CITY, MISSOURI, ON THURSDAY, OCTOBER 31, 2002**

A regularly scheduled meeting of the Missouri Highways and Transportation Commission held on Thursday, October 31, 2002, in Jefferson City, Missouri, was called to order at 9:45 a.m. by the Chairman, Mr. Ollie W. Gates. The following members were present: Mr. W. L. (Barry) Orscheln, Vice Chairman, Ms. Marjorie B. Schramm, Mr. Bill McKenna, Mr. James B. Anderson, and Mr. Duane S. Michie.

The meeting had been called pursuant to Section 226.120 of the 2000 Revised Statutes of Missouri, as amended. The Secretary verified that notice of the meeting was posted in keeping with Section 610.020 of the 2000 Revised Statutes of Missouri, as amended.

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Mr. Henry Hungerbeeler, Director of the Missouri Department of Transportation; Mr. Rich Tiemeyer, Chief Counsel for the Commission; and Mrs. Mari Ann Winters, Secretary to the Commission, were present on Thursday, October 31, 2002.

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*"Department" or "MoDOT" herein refers to Missouri Department of Transportation.
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.*

CLOSED MEETING

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo., including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.
2. Section 610.021(1) – Legal actions and attorney-client privileged communications.
3. Section 610.021(3), (13) – Personnel administration regarding particular employees.

The Commission met in the Closed Meeting from 8:45 a.m. until 9:45 a.m.

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**APPROVAL OF MINUTES, REGULARLY SCHEDULED
HIGHWAYS AND TRANSPORTATION COMMISSION
MEETING, OCTOBER 4, 2002, AND SPECIAL MEETING MINUTES
OF OCTOBER 3, 2002 AND OCTOBER 24, 2002**

Upon motion by Commissioner Michie, seconded by Commissioner Schramm, the Highways and Transportation Commission unanimously approved the minutes of its October 4, 2002, regularly scheduled meeting. In addition the Commission approved, with corrections, the minutes of the special meetings held on October 3, 2002, and October 24, 2002. The Chairman and Secretary to the Commission were authorized and directed to sign and certify said minutes and to file same in the office of the Secretary.

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CONSENT AGENDA

In order to make the most efficient use of Commission meeting time and to ensure the Commission members are well informed on issues requiring their action, the staff prepares and submits to the Commission members, in advance of their meeting, internal memoranda consisting of advice, opinions, and recommendations related to the items on the Commission meeting agenda. Those items considered by the staff to be of a routine or noncontroversial nature are placed on a consent agenda. During the meeting, items can be removed from the consent agenda at the request of any one Commission member. The items that are not removed from the consent agenda are approved with a single motion and unanimous vote by a quorum of the members.

Minutes reflecting approval of items on the consent agenda are singly reported herein and intermingled with minutes reflecting action on related subjects that were openly discussed. Reference to "consent agenda" is made in each minute approved via the process described in the paragraph above. Minutes reflecting action on items removed from the consent agenda and openly discussed reflect the open discussion and vote thereon.

No items were removed from the consent agenda. Upon motion by Commissioner Orscheln, seconded by Commissioner Michie, the consent agenda items were unanimously approved by a quorum of Commission members present.

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REPORTS OF COMMISSION COMMITTEES AND COMMISSION RELATED BOARDS

The Commission has five committees (Audit Committee, Bond Financing Committee, Building Committee, Compensation Committee, and Legislative Committee) and elects Commission representatives to two boards (Missouri Transportation Finance Corporation and

Highway and Transportation Employees' and Highway Patrol Retirement System). The following committee report was made during the October 31, 2002, meeting.

Audit Committee

Commissioner Anderson reported that the Audit Committee had received the recently completed financial audit from KPMG, MoDOT's outside independent auditor, at its meeting on October 30, 2002.

Mr. Drew Blossom, partner of the KPMG firm, provided an overview of the audit. KPMG has issued an unqualified opinion stating that the financial statements are fairly presented in accordance with generally accepted accounting standards. No issues of material weaknesses or material noncompliance were found.

Mr. Blossom explained that Governmental Accounting Standards Board Statement No. 34 requires state and local governments to record the cost of long-term capital assets and long-term debt in their financial statements. In complying with that requirement, the MoDOT staff used an estimation process to determine the cost to replace the existing road and bridge system; the resulting amount was \$65 billion. After deflating that amount back to the time the road and bridge facilities were constructed and then applying depreciation, the amount for the road and bridge asset to be reported on the financial statements was determined to be \$20 billion. In determining the current year's depreciation expense of \$954 million, the staff used the following basis: 12 years for depreciation of asphalt roads, 25 years for concrete roads, and 50 years for bridges.

Mr. Blossom will report further at the Commission's January 10, 2003, meeting.

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HEARING – CITY OF HOLLISTER PRESENTATION ON GROWTH AND REGIONAL TRANSPORTATION CHALLENGES

Mayor David Tate, city of Hollister, and Rick Ziegenfuss, Community and Economic Development Director, city of Hollister, were spokesmen for a delegation asking the Commission to begin construction of the four-lane improvement of Route 65 from just south of Missouri Route 76 at Branson to the Arkansas State Line. Western Taney County District Commissioner Ron Herschend accompanied the delegation. Mr. Ziegenfuss presented letters of support from the Taney County Commission and the City of Branson.

Mr. Ziegenfuss reported that population in the region surrounding Hollister had doubled since the last census and is anticipated to double again in the next ten-year period. Economic growth is also occurring very rapidly in the area, benefiting the region, as well as the state.

Mr. Ziegenfuss expressed appreciation for the four-lane improvements on Route 65. He explained that Route 65 in the Hollister area is a nine-mile, 25-year-old, two-lane facility connecting to the four-lane improvements on both ends. He said the road was extremely congested; 25,000 vehicles per day use this facility. This growth is expected to continue, with 58,000 cars per day anticipated in 2027.

Mr. Ziegenfuss noted that Route 65 has become a motor freight corridor with heavy truck traffic intermingled with senior citizens driving recreational vehicles and pulling campers, boats, and trailers. He reported that the Hollister area hosts 7 million visitors annually. He stated that Route 65 was also the main route used by the western Taney County ambulance and fire fighting departments and local area school buses.

Mr. Ziegenfuss said the Hollister officials have worked with the MoDOT District 8 office to explore alternatives for constructing the four-lane improvement as quickly as possible; the delegation's presentation to the Commission was a continuation of that effort. He noted that

Hollister is a community of 4,000 citizens with an annual budget of \$2.3 million, which would make it difficult for the community to significantly participate in the cost to construct the four-lane improvement. The improvement, which is estimated to cost \$32 million, includes a second bridge over Lake Taneycomo, additional lanes, and an interchange. Mr. Ziegenfuss suggested the work be accomplished in stages.

Chief Engineer Kevin Keith stated that the improvement of Route 65, as requested by the delegation, is a high priority project for Missouri; however, given existing resources, he could not say when the staff could propose its construction. He noted there are similar gaps in four-lane improvements in other locations of the state that need to be completed, but are currently not funded.

Commissioner Anderson expressed his support of cost-sharing projects, wherein local communities partner with MoDOT to construct needed highway improvements. He encouraged the delegation to continue to work with the MoDOT District 8 staff to pursue alternatives and/or innovative funding mechanisms to accomplish the Route 65 improvement.

Chairman Gates thanked the delegation for its presentation.

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AASHTO 2002 TEAM EXCELLENCE AWARDS

On behalf of the American Association of State Highway and Transportation Officials, Don Hillis, Director of Operations, presented AASHTO Trailblazer for Quality Team Achievement awards to two MoDOT teams. Al Kladiva accepted the award for the Maintenance Quality Assurance Team, which devised and implemented a method for measuring maintenance performance based on outcomes. Frank Abart accepted the award for the Dump Truck Disposal

Team, which expanded the market for disposing of used dump trucks. Using historical data, the expanded markets for disposing of the dump trucks will result in a \$1.5 million net gain to the Department this year.

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BEST PRACTICES AWARD

On behalf of the International Traffic Records Forum, Henry Hungerbeeler, Director, presented awards to representatives of MoDOT, the Missouri Division of Highway Safety, and the Missouri State Highway Patrol for an automation project that implemented a core traffic records database for Missouri. The project was designed to promote safety, save money and time by omitting duplication, and ensure accuracy. Accepting the award were Myrna Tucker, Joe Miller, Joe Rickman, and Mike Curtit for MoDOT; Russ Dunwiddie for the State Highway Patrol; and Randall Silvey for the Division of Highway Safety.

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STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM 2002-2006 AMENDMENT

On behalf of the Director, Kevin Keith, Chief Engineer, noted that at the Commission's October 24, 2002, meeting, the members had concurred with his recommendation to amend Fiscal Year 2003 of the current 2002-2006 Statewide Transportation Improvement Program (STIP) in lieu of preparing a 2003-2007 STIP. Toward that end, he referred to a list of 88 project amendments for Fiscal Year 2003 and recommended approval thereof.

- Seventy-three of the projects involved preservation of the existing system: 21 safety projects and 52 rehabilitation and reconstruction projects. Generally, these projects were small in scope of work and cost.
- Eight projects involved work funded by the Federal Transportation Enhancement Program.
- Seven projects involved system expansion or regional projects. Three of those will be financed from other sources, three have become high priority, and two are small demolition projects. Projects previously programmed will be delayed to fund the higher priority projects.

Mr. Keith explained that the biggest change in project priority involved Route 21, Jefferson County, where the local community and metropolitan planning organization preferred to accelerate the projects at Hillsboro prior to the projects extending from Lake Lorraine Road to Hayden Road.

Mr. Keith also recommended amendments to the aviation portion of the STIP that would accelerate projects located in Eldon, Portageville/New Madrid, and St. Joseph and add an estimated \$1.2 million project for Mark Twain National Forest Park, Reynolds County, to be accomplished with federal Forest Highway funds.

In response to Commissioner Anderson, Mr. Keith stated that MoDOT had received no public reaction to the Commission's agreement to amend Fiscal Year 2003 of the STIP in lieu of preparing a 2003-2007 STIP.

Commissioner Schramm commended the staff for identifying fewer projects in Fiscal Year 2003 than anticipated revenue would suggest could be accomplished in order to be able to react to unforeseen economic or project scope adjustments.

After discussion and upon motion by Commissioner McKenna, seconded by Commissioner Michie, the Commission unanimously approved the Fiscal Year 2003 amendments to the 2002-2006 STIP as submitted. Commissioners Orscheln and Gates submitted letters to the Secretary to the Commission abstaining on specific projects located within one mile of their respective properties.

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2002 REPORT TO THE JOINT COMMITTEE ON TRANSPORTATION OVERSIGHT

On behalf of the Director, Pat Goff, Chief Operating Officer, reported that the 2002 Report to the Joint Committee on Transportation Oversight was being assembled and would be forwarded to the Commission prior to it being filed with the Joint Committee on Transportation Oversight on November 8, 2002.

Financial Statements

The report to the Joint Committee on Transportation Oversight will include the recently completed audit of the financial statements with an unqualified opinion that the statements are fairly presented in accordance with generally accepted accounting standards. The auditor, KPMG, found no items of material weaknesses or material noncompliance; there were no significant audit adjustments.

Statewide Transportation Improvement Program

Kevin Keith, Chief Engineer, stated that delivery of the Fiscal Year 2002-2006 Statewide Transportation Improvement Program (STIP) projects was very good, with only five percent of the projects being added and six percent being reprioritized. Regarding program cost, Mr. Keith reported that in 2002, 206 projects were completed and closed out. The cost of the completed projects was slightly below \$600 million, which was .78 percent under the program estimates.

Construction Change Orders

Mr. Keith briefly discussed the change order process noting that change orders are a routine and necessary part of any construction endeavor. He noted that change orders can result in increased cost, decreased cost, or no cost. He stated that both MoDOT and the contractors recognize that unknown conditions exist when the contract is awarded. Change orders are used to fairly determine the cost of these unknown items.

Summary

The Commission commended the staff for the positive outcome to be reported in the 2002 Joint Committee on Transportation Oversight report.

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FLEET FUEL CARD AGREEMENT

On behalf of the Director, Frank Abart, General Services Director, recommended approval of a Fleet Fuel Card Agreement with FleetOne, LLC, Nashville, Tennessee, to acquire fuel and track fuel usage. The contract period will end June 30, 2004, with three optional one-year renewal periods.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the Director of Administrative Services to execute the agreement and any optional renewals.

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SHOPPES AT CROSS KEYS TRANSPORTATION DEVELOPMENT DISTRICT, APPOINTMENT OF AN ADVISOR, AND APPROVAL OF THE PROJECT

On behalf of the Director, Ed Hassinger, District Engineer, District 6 and Pat Goff, Chief Operating Officer, reviewed a transportation related improvement proposed by Shoppes at Cross Keys Transportation Development District. The improvement includes roadways within the Shoppes at Cross Keys Redevelopment Project as well as widening, access, and signalization improvements to Lindbergh Boulevard and New Halls Ferry in the city of Florissant.

Via approval of the consent agenda, the Commission (1) appointed the District 6 North St. Louis County Area Engineer as the Commission's advisor to the Shoppes at Cross Keys Transportation Development District board of directors and (2) determined that the state portion of the project is a necessary and desirable extension of the state highways and transportation system, subject to the District making any revisions in the plans and specifications required by the Commission, and subject to the District entering into a mutually satisfactory agreement with the Commission regarding development and future maintenance of the state portion of the project.

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AWARD OF CONTRACTS ON FEDERAL-AID AND STATE PROJECTS, BID OPENING OF OCTOBER 18, 2002

On behalf of the Director, Diane Heckemeyer, State Design Engineer, stated that bids for road and bridge improvement projects had been received on October 18, 2002.

Ms. Heckemeyer presented a tabulation of the bids received on all projects and recommended awards be made to the lowest responsive and responsible bidder noted below.

Route County Project	Bid Amount Plus 3% for Contingencies	Non- Contractual Costs	Contractor
Call 101 29 Holt J1I0736	\$10,456,367.88	\$7,774.97	U. S. Asphalt Co. Omaha, NE
Call 102 46 Worth J1L0301A B Gentry J1L0301B	577,532.30	2,620.37	Herzog Contracting Corp. St. Joseph, MO
Call 201 W Putnam & Schuyler J2L0302A A Schuyler & Adair J2L0302B	955,757.03	5,384.33	W. L. Miller Company Hamilton, IL
Call 202 Long Branch State Park Macon J2L03LON	193,927.55		APAC-Missouri, Inc. Columbia, MO
Call 301 54 Pike J3P0645	962,667.41	963.57	APAC-Missouri, Inc. Columbia, MO
Call 302 54 Audrain J3P0643	3,958,548.83	387.49	Chester Bross Const. Co./ C.B. Equipment, Inc. Hannibal, MO
Call 303 54 Pike J3P0644	366,751.27	333.72	Mid-River Asphalt, Inc. Moscow Mills, MO

Route County Project	Bid Amount Plus 3% for Contingencies	Non- Contractual Costs	Contractor
Call 304 Mark Twain State Park Monroe J3L03MAR F Ralls/Audrain J3L0303A 161 Montgomery J3L0303B	850,583.21	3,876.71	APAC-Missouri, Inc. Columbia, MO
Call 401 470 Jackson J4I1405 291 Jackson J4P1418 291 Jackson J4P1419	619,927.90	3,097.78	James H. Drew Corporation Indianapolis, IN
Call 402 69 Clay J4P1471	181,581.37	637.01	Capital Electric Line Builders, Inc. Kansas City, MO
Call 403 7 Jackson J4P1477 AA Jackson J4S1423	205,949.73	355.56	James H. Drew Corporation Indianapolis, IN
Call 404 W Lafayette J4S1585 Y Lafayette J4S1587	65,218.44		APAC-Missouri, Inc. Columbia, MO

Route County Project	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 501 70 Callaway J5I0762	6,014,678.97	194.62	APAC-Missouri, Inc. Columbia, MO
Call 502 52 Miller J5S0613	822,404.24	706.48	Don Schnieders Excavating Company, Inc. Jefferson City, MO
Call 503 Van Meter State Park J2L03VAN 135 Cooper J5L0305A 41 Saline J5L0305B	552,433.06		APAC-Missouri, Inc. Columbia, MO
Call 601 115 St. Louis City J6S1510	2,901,758.18	389.24	Pace Construction Company LLC St. Louis, MO
Call 701 43 Jasper J7S0727	93,222.39	393.15	Vance Brothers, Inc. Kansas City, MO
Call 702 249 Jasper J7U0436F	3,308,120.95	583.86	APAC-Missouri, Inc. Columbia, MO
Call 703 71 Barton J7P0737	342,997.36		APAC-Missouri, Inc. Columbia, MO

Route County Project Call 704	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
C St. Clair J7P0737B	285,866.20	389.24	Mill Valley Construction, Inc. Shawnee Mission, KS
Call 705 71 Bates J7P0738	552,707.90		APAC-Missouri, Inc. Columbia, MO
Call 706 96 Jasper J7L0307A 37 Jasper J7L0307B V Newton J7L0307C 60 Newton J7L0307D	449,831.19	5,097.16	Blevin's Asphalt Construction Company Mt. Vernon, MO
Call 801 44 Laclede J8I0506 5 Laclede J8P0701	5,447,586.61	35,497.83	APAC-Missouri, Inc. Columbia, MO
Call 802 13 Polk J8P0590	18,512,865.87	12,120.38	Illinois Valley Paving Co. Springfield, IL

Route County Project	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 803			
YY	584,992.90	4,020.30	Blevin's Asphalt Construction Company
Greene J8L0308A			Mt. Vernon, MO
Webster J8L0308B			
14			
Douglas J8L0308C			
Call 901			
44	11,186,013.04	15,423.24	Freesen, Inc.
Phelps J9I0484B			Springfield, IL
44			
Phelps J9I0484C			
Call X01			
60	492,416.16	1,579.40	Girardeau Contractors, Inc.
Mississippi J0L0329			Cape Girardeau, MO
Totals	<u>\$70,942,707.94</u>	<u>\$102,215.65</u>	

Construction speed limits conform to the standard work zone speed limits shown on Standard Drawing No. 616.10 as approved by the Commission.

After consideration and upon motion by Commissioner Schramm, seconded by Commissioner Michie, the Commission unanimously awarded the projects to the lowest responsive and responsible bidder, as recommended and noted above, and authorized an additional three percent of the contract amount for contingencies. The Commission also approved the allocation of funds covering the non-contractual costs included in the various projects, as indicated, and authorized execution of the necessary contracts by the Director, Chief Engineer, or Chief Operating Officer.

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AUTHORITY TO REJECT BIDS

On behalf of the Director, Diane Heckemeyer, State Design Engineer, advised the Commission that bids were received October 18, 2002 on the following project. She recommended all bids on call number 405 be rejected because they were considered excessive.

<u>Route</u>	<u>County</u>	<u>Project</u>
Call 405		
152	Clay	J4S1392

Upon motion by Commissioner Schramm, seconded by Commissioner Michie, the Commission, by unanimous vote of all members present, rejected the bids received on the above-mentioned project.

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ROADWAY LOCATION AND DESIGN APPROVAL

On behalf of the Director, District Engineers informed the Commission that preliminary plans and exhibits for the following project was presented at a public hearing.

Business Route 54, Audrain County
Route J East 3.0 Miles to 0.5 Miles East of Route JJ
Job No. J3P0679

Public Hearing Held August 22, 2002

This improvement will rehabilitate the pavement by removing the existing wearing surface and replacing it with new asphaltic concrete pavement. An asphaltic concrete surfacing will also be added to the existing aggregate shoulders. The design presented at the hearing also included a short section of total pavement replacement (less than 300 feet). This section would have required the road to be closed during construction. Considering the comments received at the hearing and based upon further investigation of the existing pavement conditions this section will not be replaced. It will be rehabilitated in the same manner as the remainder of the project. Under the design proposed at the hearing, traffic would have been detoured approximately 10.3 miles on state routes for a period of at least two weeks while the short section of pavement was replaced. Considering the impacts of the road closure to traffic in the area, the

rehabilitation work for the remainder of the project would have been performed during daytime hours. Since the road closure is no longer required, the work will be performed at night to minimize the impact to traffic. Traffic will be maintained over the existing roadway and will be controlled by the use of flagmen restricting traffic to a single lane while work is done on the adjacent lane and its shoulder. Adequate signing will be provided to control traffic flow in the area and will be augmented through public information and outreach efforts to advise motorists of this traffic situation. This project is 3.0 miles in length.

Mr. Kirk Juranas, District Engineer, District 3, recommended approval of the location and design as presented at the public hearing and revised as noted above.

After full consideration of the favorable and adverse economic, social and environmental effects of the recommended location and design, the Commission via approval of the consent agenda, unanimously found and determined the recommended location and design would best serve the interest of the public and approved the recommendations.

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**REPORT AND RECOMMENDATION REGARDING
NOTICE OF AMENDED RULEMAKING, 7 CSR 10-10,
CONTRACTOR PERFORMANCE RATING TO
DETERMINE RESPONSIBILITY**

On behalf of the Director, Don Hills, Director of Operations, recommended amendments to Chapter 10 of the administrative rules to revise and clarify the process for evaluating the performance of contractors. The amendment will add a fourth rating category, "Contract Administration," provide a description of interim, annual, and final reports, and address other items of clarification and process revisions. Amended rules 7 CSR 10-10.010 and 7 CSR 10-10.030 through 7 CSR 10-10.090 were provided to the Commission for review.

Via approval of the consent agenda, the Commission (1) authorized the staff to file the amended rules with the Joint Committee on Administrative Rules and the Office of the Secretary of State and (2) authorized the Director, Chief Engineer, or Chief Operating Officer to execute any document appropriate to initiate this rulemaking process.

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RATIFICATION OF APPROVAL OF RIGHT OF WAY PLANS FOR CONDEMNATION

On behalf of the Director, Diane Heckemeyer, State Design Engineer, recommended the Commission ratify the approval by the Chief Engineer of the following right of way plans, which have been filed for condemnation.

<u>County</u>	<u>Route</u>	<u>Job Number</u>	<u>DATE COMMISSION APPROVED DESIGN</u>
Clinton	BB	J1S0810	July 12, 2002
Greene	LP 44	J8S0698	March 1, 2002
Dade	M	J7S0443	August 10, 2001
St. Charles	364	J6U0803Z	November 2, 1990 (2 nd Amended)
Daviess	6	J1P0760C	January 4, 2002
Jefferson	21	J6P0876N	May 5, 2000
Jefferson	21	J6P0876F	May 5, 2000
Putnam	136	J2P0663	October 19, 1999
Buchanan	116	J1S0568	October 5, 2001

In accordance with Section 227.050 RSMo, the Commission, via approval of the consent agenda, approved the right of way plans for the above noted projects and directed they be filed as necessary for the condemnation of right of way.

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COMMISSION ISSUES

The following issues were brought up by the Commission members at the conclusion of the meeting.

Pavement Selection Process

In response to an inquiry from Commissioner Anderson, Dave Nichols, Director of Project Development, reported that the MoDOT team working on the pavement analysis process to refine how MoDOT selects pavement types has resulted in a report on the history of pavement development to date. The MoDOT staff will now be seeking involvement from pavement industry firms. Mr. Nichols expressed the hope that work on the pavement selection process would be completed by spring 2003.

Communication Audit

Commissioner Anderson encouraged the Director of Communications to include a review of MoDOT's website as he conducts his planned communication audit. Commissioner Anderson felt the current website was not user-friendly and not conducive to positive communications.

Road and Bridge Consultant Contracts

Commissioner Anderson asked for a status report on road and bridge consultant contracts that were being considered for cancellation. The staff will provide a report to the Commission no later than the November 20, 2002, Commission meeting.

Correspondence, Route 63, Howell County

Commissioner Anderson referred to recent correspondence from Mr. Gary Gabel regarding an impending improvement of Route 60/63, Howell County. Mr. Gabel expressed concern that the design plans for the project would not allow large trucks to navigate the turns necessary to access his business, as promised by the MoDOT staff following his presentation to the Commission on April 5, 2002.

Tom Stehn, District Engineer, stated that the staff had worked closely with Mr. Gabel as they developed plans for this project and, prior to Mr. Gabel's meeting with the Commission on April 5, 2002, the staff had made the following three changes in the design plans to accommodate large trucks.

- The outer road pavement surface was upgraded from aggregate to asphalt.
- The turning radius at County Road 5900 was increased from 30 feet to 50 feet.
- The turning radius to Business Route 63 was increased from 50 feet to 60 feet and the shoulders were upgraded from aggregate to full depth asphalt.

Mr. Stehn stated that MoDOT had attempted to alleviate Mr. Gabel's concern about the loss of direct access from Route 60 to his business by providing the upgrades noted above. He will meet with Mr. Gabel to ensure that Mr. Gabel's concerns are fully understood and that reasonable effort and expenditure has been expended to lessen his anticipated negative impact of the Route 60/63 improvement on his business.

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-- REPORTS --

MHTC DEBT MANAGEMENT POLICY

In May 2000, the Commission adopted the MHTC Debt Management Policy. The intent of the policy is to maintain top credit ratings on long-term debt issued by the Commission and to minimize borrowing costs. Reports were furnished to the Commission on the projected annual debt limit and obligations and MoDOT's program acceleration commitments. As of November 2002, the Commission is in compliance with its Debt Management Policy.

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EQUAL OPPORTUNITY UNIT – QUARTERLY REPORT

Brenda Treadwell-Martin, Equal Opportunity Director, presented a chart summarizing minority and female hires/promotions by job groups.

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FY 2003 BUDGET UPDATE

Pat Goff, Chief Operating Officer, presented an update on the Fiscal Year 2003 budget.

- ADMINISTRATIVE HEARING -

**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO TERMINATE NONCONFORMING OUTDOOR ADVERTISING
HEARING NO. 01-02-168
ALFORD ADVERTISING CO., APPLICANT
ADMINISTRATIVE HEARING NO. 690**

This is the final decision and order of the State Highways and Transportation Commission following a request for administrative review of a Notice to Terminate Nonconforming Outdoor Advertising issued under 7 CSR 10-6.060(3) by the Missouri Department of Transportation (hereinafter, Department) to Alford Advertising Co., (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highways and Transportation Building, Jefferson City, Missouri, on May 23, 2001. The Department was represented by Mr. Robert Hibbs, Senior Assistant Counsel. Mr. John Ruth, Attorney at Law, made a limited entry of appearance for the sole and limited purpose of requesting a continuance (T. 3 of Hearing No. 00-02-167). The Hearing Examiner denied the application for continuance (T. 3). The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 8-15; Ex. F-M) owned and maintained by Applicant adjacent to Route 36 in Livingston County at county log mile 9.8521 (T. 4-5, 15; Ex. A).

The sign is visible from the main traveled way and is located within 660 feet of the right-

of-way of Route 36 which is a part of the primary highway system (T. 15-16, 18).

Applicant filed with the Department an application for permit to erect and/or maintain outdoor advertising in zoned commercial or industrial area (T. 5-6; Ex. C). The Affidavit of Corporation portion of the application was subscribed and sworn on April 28, 1993 (T. 5-6; Ex. C).

The Department issued a permit for the sign on May 6, 1993 (T. 5-7; Ex. C-D). The permit was renewed on April 28, 1999 (T. 7-8; Ex. E). The sign was erected in 1993 (T. 16).

According to the application, the sign was a double face structure (T. 5-6; Ex. C). On March 29, 1995, the sign consisted of 2 faces, side by side, approximately 2 feet apart (T. 8-9, 18; Ex. G). On March 21, 1997, the sign was the same as on March 29, 1995 (T. 8-9; Ex. F). On March 24, 1999, a border was added around the sign (T. 10; Ex. H).

On November 14, 2000, the face which advertised "Never Shake a Baby" had an increase in size of 2 feet in height (T. 10-13; Ex. I, K). On the same date, a face which advertised "Proposition A" was added onto the back of the face which advertised a Dodge product (T. 12-13; Ex. J, K). The size of the sign was increased (T. 10-13; Ex. I-K).

At the time of the increase in size, the Department classified the sign as nonconforming (T. 17). The sign was nonconforming because it was within 200 feet of an existing sign on the same side of the highway (T. 17-18).

On April 2, 2001, the size of the sign is unchanged from November 14, 2000 (T. 14-15; Ex. M). The sign's condition remained the same on May 21, 2001 (T. 17).

On August 16, 1999, the Department issued a Notice to Terminate Nonconforming Outdoor Advertising for the sign which was received by Applicant on December 8, 2000 (T. 4-5; Ex. A-B).

The sign is located within the city limits of Chillicothe in an area zoned for commercial use (T. 16).

CONCLUSIONS OF LAW

The Commission has jurisdiction under 7 CSR 10-6.060(3), 23 CFR 750.707(d) and Section 226.150 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of right-of-way and is visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and 7 CSR 10-6.060.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to directional and other official signs and notices, on-premises signs, signs located in areas zoned commercial, industrial, or the like, signs located within 600 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations, and nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060.

A sign which is lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which fails to comply with state statutes due to changed conditions is a nonconforming sign. See 7 CSR 10-6.015(24). Such a sign may be repaired and maintained by the signowner subject to the limitations of the Commission's administrative rules regarding maintenance of nonconforming signs. Violation of such rules, however, disqualifies the sign from being maintained as a nonconforming sign and subjects it to removal without compensation by the Commission. Boyce Industries, Inc. v. Missouri Highway and Transportation Commission, 670 SW 2d 147 (Mo. App. 1984). Knowledge of any of the violations is not required. Martin Oil Co. v. Missouri Highway and Transportation Commission, 2 SW3d 144 (Mo. App. S.D. 1999).

The two faces are less than 15 feet apart and are considered one sign under 7 CSR 10-6.040(4).

We conclude the sign was a lawful nonconforming sign on March 29, 1995, but was increased in size after March 29, 1995 in violation of 7 CSR 10-6.060(3)(C). Hulshof v. Missouri Highway and Transportation, 737 SW2d 726 (Mo. Banc. 1987); State ex rel. National Advertising Company v. Missouri Highway and Transportation Commission, 801 SW2d 421 (Mo. App. W.D. 1990).

The increase in size occurred to both original faces. The addition of a back face to a nonconforming sign is an increase in size. State ex rel. Western Outdoor Advertising v. Missouri Highway and Transportation Commission, 776 SW 2d 496 (Mo. App. W.D. 1989).

The Department properly issued the Notice to Terminate Nonconforming Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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By unanimous vote of all members present, the meeting of the Commission was adjourned.

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